



Call for inputs for the preparation of the report of the Office of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 42/17 on “Human rights and transitional justice”

Operative paragraph 9 of Human Rights Council resolution 42/17 requests the Office of the High Commissioner for Human Rights “to examine in a report how addressing a legacy of gross violations and abuses of human rights and serious violations of international humanitarian law through transitional justice measures can contribute to sustaining peace and the realization of Sustainable Development Goal 16.”

Operative paragraph 10 of the resolution also requests the Office of the High Commissioner for Human Rights, in preparing the report, “to consult with States, relevant United Nations mandate holders, other relevant entities of the United Nations Secretariat, relevant United Nations agencies, funds and programmes, intergovernmental organizations, national human rights institutions, non-governmental organizations and other relevant stakeholders, including practitioners.”

To inform the preparation of this report, the Office of the United Nations High Commissioner for Human Rights would welcome information from States and all relevant stakeholders, concerning:

- The contribution that transitional justice measures, policies and strategies adopted and/or supported at the local, national and/or regional level - to address a legacy of gross human rights violations and serious violations of international humanitarian law - have made to sustaining peace and the prevention of human rights violations, violence, and conflict. Please highlight information on measures that address root causes of conflict, violence, and human rights violations (e.g., discrimination, inequality, corruption, and impunity). Please also identify or include related public reports in this regard.

Close the knowledge gap between policy and grassroots experiences through meaningful victim participation

Meaningful victim participation in TJ processes has been widely acknowledged as essential for sustaining peace and prevention of Human Rights Violations. Impunity Watch’s research and experiences have shown that current approaches to victim participation in justice and accountability processes are overly narrow, technical, and fail to represent grassroots voices most affected by violence and impunity. Those most affected by abuse, exclusion and impunity hold most insights into the impacts of these violations, the structures and mechanisms that led to them, and thus, what needs to change to prevent them and how. For policymakers to understand the root causes of violence and impunity and reflect that in well-crafted and effective policies and decision making, inclusion of those most impacted is key. While there is broad

political support for meaningful victim participation, this has not translated into practice that leads to transformative change. At regional and international policy levels and decision making, as well as in programming, victim participation remains a box-ticking exercise, which is measured in numerical terms rather than the extent to which victims' voices and needs are incorporated in policy. Policy spaces at the UN or EU may claim to give space for local voices, but these are filled by international NGOs and agencies that purport to represent the grassroots, yet do not cede their own positions for victims and victim groups themselves to participate. This undermines the extent to which grassroots voices and needs are truly represented and understood in policy discussions. Equally, decision making around justice is often happening behind closed doors or in consultations with a few hand-picked experts. This leaves a significant knowledge gap that weakens the quality and effectiveness of these policy processes and the programmes and projects they set in motion on the ground. Policy makers miss crucial information that can help navigate conflict and post-conflict contexts of increasing complexity and uncertainty. Opportunities for policies to be informed and shaped by victims' own knowledge and experiences are missed, local ownership is undermined, and trust in the credibility and capability of external actors such as the UN, EU, and donor countries to support truly victim-centred justice interventions is eroded. Absent representation of voices, information, and evidence from the grassroots, policy decisions made at international or regional level will most likely fail to respond to victims' needs and priorities and fail to achieve the level of transformative change needed to break cycles of impunity, and with that ensure legitimate stability and sustainable peace.

Building on comparative knowledge on ways to integrate grassroots voices in TJ processes meaningful victim participation needs to build and capture grassroots knowledge and linking this knowledge to policy levels systematically and strategically. This can be done by sensitising awareness of relevant policy processes at grassroots level. Secondly, more efforts need to be made to identify together with grassroots actors, in particular victims' groups, and on their own terms, entry points for placing their ideas to combat impunity in policy discussions that directly impact them. Both are interlinked and will mutually reinforce each other.

- The contribution of such transitional justice measures, policies, and strategies to the realization of the 2030 Sustainable Development Agenda, in particular Sustainable Development Goal 16, on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable, and inclusive institutions at all levels. Please highlight coordination with relevant policy areas (e.g., prevention of violence, economic development, poverty reduction, promotion of rule of law, access to justice, good governance, fight against corruption, and security and justice sector reform), specific results in the contribution to development, and key elements that contributed to their success. Please share relevant documents, data, and links.

Victim Participation and people centred justice

Victim participation is an essential component of people-centred justice, ensuring increased focus on “those furthest behind,” as identified by the 2030 Sustainable Development Agenda, and can contribute significantly to reducing the justice gap. But little is done to bring victims to the table when decisions about the past are made. Policy spaces are filled by political elites, international actors, and NGOs, each bringing a particular perspective informed by different agendas and experiences. But few ask, and even fewer listen directly to victims about what their experiences are, and what justice should look like for them. What results are knowledge gaps that fundamentally undermine transitional processes and risk entrenching social divisions and inequities. Victim perspectives can be significantly different to what external actors assume but have the potential to strengthen and make justice processes more effective. For example, a partnership between Impunity Watch and five Syrian victims’ organisations led to the development of a Truth and Justice Charter that was launched in February 2021. The Charter places victims at the forefront of justice efforts and pushes international actors and civil society allies to prioritise the voices and demands of survivors, victims, detained, and the forcibly disappeared and their families at the forefront of any lasting political solution in Syria.¹

Victims and victims’ groups often encounter great obstacles in their efforts to participate in both judicial and non-judicial initiatives. Limited capacities and resources to meaningfully take part in these processes are amplified by the lack of political will or expertise and knowledge among those heading justice processes to effectively involve victims in their initial design and implementation. Meaningful participation is even more challenging for women given that structural inequalities, sexual hierarchies, and patriarchal structures are often reinforced instead of dismantled in periods of transitions and processes of transitional justice. Without strengthening more meaningful victim participation, structural inequalities and injustices that drive violence and impunity are less likely to be redressed.

The dominance of technical approaches to victim participation

While the principle of victim participation is recognised as a vital component of justice and accountability processes, in practice, it is more often a box-ticking exercise that fails to ensure meaningful representation of victims’ voices and perspectives. A forthcoming global study by Impunity Watch highlights the disconnect between survivor and institutional definitions of principles of justice, reparation, and institutional reform. The findings show a gap in meaningful representation as victims’ participation in official processes is ineffective if not accompanied by strong victim movements and organising. Another Impunity Watch study found that transitional justice is seen by victims as a technical exercise with extraordinarily little attention to the experience and political agency of victims.

¹ For more information on the Syria Charter please see: <https://www.impunitywatch.org/truth-and-justice-charter-syri>

Victim participation is often understood in narrow technical terms such as involving victims in proceedings and court hearings. But few (international) justice and accountability processes enable direct participation of victims in decision making, despite including policies to support victims, and even fewer are initiated by victims themselves. What results is a misrepresentation of meaningful victim participation in these processes at grassroots, national, regional, and international levels. As a result, the local knowhow of victims and victim's groups, especially women's groups who are often at the forefront in the fight against impunity, are not considered. And consequently, decisions around justice and accountability fail to respond to real needs and aspirations of victims to the fullest.

For women, and particularly indigenous women, and women in other marginalised groups, the obstacles to victim participation and consequences of continual cycles of impunity are particularly acute. Patriarchal norms are entrenched at all levels of society and institutions and are a key driver of impunity. Fear and social stigma dissuade women from speaking out about violations they have suffered, especially sexual violence, and from taking part in social movements and political action. The lack of meaningful women's participation in justice and accountability processes also means that violence against women, in particular invisible forms of harm, receives insufficient attention. Women activists are also more likely to experience gendered violence, harassment, and intimidation as tactics to prevent political participation. At the same time, women are mainly portrayed as victims, with no political agency of their own, which creates further invisible barriers, even when spaces for women's participation are in principle included in these processes. For men and boys too, entrenched patriarchy enforces highly militarised conceptualisations of masculinity. In Iraq and Burundi for example, this is exploited for militia recruitment. Breaking down gendered norms and analysing the ways in which different power inequities manifest are essential to understanding root causes of conflict and drivers of impunity. Please see our response to the next question on gender responsive TJ processes.

Strengthen regional and international partnerships

Regional and international partnerships can help strengthen and multiply the impact of grassroots justice initiatives. Connecting locally led processes to regional and international levels creates opportunities for exchange and learning and generates greater solidarity for fights against impunity on the ground. Regional and international partnerships are essential for sustainable development, as outlined in SDG 17 "*Strengthen the means of implementation and revitalize the global partnership for sustainable development*". Even more, these partnerships play crucial roles in providing meaningful access to justice, if they include victim's needs and perspectives. Without the meaningful engagement of victims in regional and international policymaking processes, international actors and elites are often the ones deciding how victims participate in transitional justice mechanisms, according to their ideas and interests. But international actors often maintain uneven power dynamics by imposing their own justice agenda and ideas.

More horizontal partnerships result in non-exclusionary approaches and enable policymakers to capture victims' needs and consider victims' perspectives on the best ways to tackle root causes of violence. Impunity Watch's research has demonstrated that robust informal organising led by grassroots victims' activists is a strong predictor of effective formal justice processes. Across contexts, the stronger their voice in the public sphere, the more their demands will be heard by regional and international policy makers. Hence, regional, and international justice and accountability policies (e.g., AU and EU transitional justice policies, UNSCR 1325) and processes (e.g., the Lausanne process but also the Justice Action Coalition) can contribute to change when they prioritise victim participation and provide the most effective means for them to participate directly in a meaningful way. In Uganda, for instance, international actors have not worked with victims in a horizontal manner, limiting the ability of victims to influence the transitional justice process, to actively participate in the design of mechanisms, and importantly, to define the terms of their participation. On the other hand, the active engagement of victims in Guatemala has challenged structures of impunity and contributed to transformative change. The current situation in Guatemala also shows that regional and international long-term support is essential to ensure the sustainability of victim's activism and work. Guatemala now faces challenges of weakening international support, as interest in the country and economic priorities have changed, leaving victims more vulnerable to retaliation from authorities while key achievements that were made in the fight for justice and against impunity are increasingly being undermined and undone, which negatively affect the achievement of SDG 16 goals. As shown in long-term research by Impunity Watch, a lack of long-term commitment of regional and international actors can undermine the possibilities for transitional justice.

Effectives of long-term regional and international partnerships

To be effective in the long-term, regional, and international policies and processes cannot match the real justice needs and aspirations of victims without true representation of victims. To make these policies and processes more effective, regional, and international partnerships can be a key tool to help catalyse meaningful participation of victims. An example of how these partnerships can catalyse meaningful participation is the following. Victims and survivors around the world, especially women, experience widespread human rights abuses such as (but not limited to) sexual violence in conflict zones, and most often these violations go unnoticed. While acts of sexual violence in the context of armed conflict have been internationally recognised as a war crime and a crime against humanity, perpetrators are rarely brought to justice. For many women, the violence continues after conflict ends. Furthermore, women, in particular indigenous women, and women from other marginalised groups, are disproportionately impacted by a range of human rights violations during and after conflict. Despite this, women's representation and participation in justice and political processes is marginal. This also stands at odds with the role women play as peacemakers in communities; during conflicts, women are on the frontlines fighting against militarisation, ending violence, and searching for the disappeared. But as soon as a conflict ends, they are marginalised and excluded from central roles in peace negotiations and reconstruction policies. As a result, peace processes fail to reflect women's experiences and expertise, replicating

patriarchal structures that entrench exclusion, inequality, and violence. Regional and international partnerships, for instance those building on the implementation of UNSCR 1325, can support women by providing capacity building training, networking opportunities including with key policymakers on the national, regional, and international level, and resources enabling them to overcome obstacles and participate meaningfully in justice and accountability processes. Partnerships can also uncover the mechanisms of how exclusion works at various levels and shine a light on the consequences of exclusion. They can strengthen collective calls for meaningful inclusion of women in peacebuilding, justice and accountability processes in ways that go beyond the usual box-ticking exercise, but which recognises the diversity of women's voices and experiences and contributes to challenging and uprooting hegemonic patriarchal structures that are a root cause of (gender) inequality and structural violence.

Regional and international partnerships, embedded in different contexts, provide excellent opportunities to gain experience from different transitional justice processes and experiences and exchange lessons learned and knowledge. The horizontal partnership of the International Network of Victims and Survivors of Serious Human Rights Abuses (INOVAS) shows how victims can support each other and exchange experiences to achieve more effective victim participation. Building on strong partnerships with regional and international actors such as the AU, the EU and the UN can create entry points and enhance victims' access to these regional and international policy making processes.

- Examples and results of gender-responsive transitional justice processes - including specific measures to ensure full, effective, and equal participation of women and girls, increase their role in decision-making, and contribute to their empowerment - and their contribution to sustaining peace and development.

Guatemala Sepur Zarco case – Transformative Justice

An example of a successful gender-responsive transitional justice process is the Sepur Zarco lawsuit in Guatemala. This legal case was built on an intense and long-term collaboration between women's organisations and survivors of sexual slavery in Guatemala's Polochic region. It involved a combination of legal strategies with psychosocial support for the survivors, memory practices and training and empowerment of the survivors. The resulting court case was ground-breaking, being the first one in which a national court convicted perpetrators for sexual slavery as a crime against humanity. Furthermore, the case is important for its sentence on transformative reparations which included wider social measures such as health and education support, as well as symbolic satisfaction measures. These demands were elaborated with the survivors themselves through a process of creative and participatory action research, carried out by international and Guatemalan academic and civil society researchers. This shows the importance of building alliances and

equal collaboration opportunities between survivors and civil society organisations. The Sepur Zarco case also shows the importance of broadening the focus of legal proceedings purely from justice and punishment to restorative justice to improve the situation of the survivors through wider societal and community reconstruction. For more information on the possibilities of gender-transformative reparations, see these [guidelines](#) that Impunity Watch published.

Militarised Masculinities as an inhibitor for TJ and sustaining peace

An area where more work needs to be done is militarised masculinities. In almost all conflicts and other situations that might prompt the implementation of a transitional justice process, hegemonic and militarised masculinities are a key root cause of violations. Nonetheless, they are rarely acknowledged as such, and tend to go unnoticed. Outside of specialist circles, the concept of 'gender' is often assumed to apply exclusively to the gendered – and often sexualised – suffering of women, while the gendered suffering of men goes unnoticed and therefore unaddressed.

Iraq

Forthcoming research by Impunity Watch into the role of militarised and hegemonic masculinities in the recruitment of young men into paramilitary groups in Iraq interviewed former fighters about their experiences of membership in armed groups and motivation for joining up. It found that internalised pressure to live up to unrealistic standards of masculinity (unflinching bravery in the face of danger; control over one's emotions at all costs; defence of the nation, faith and women; and providing for one's family) motivated many to join, where some committed atrocities against civilians or the enemy, also leading to psychological and economic hardship after returning to civilian life. For many interviewees, this was their first opportunity to talk of their experiences in armed groups, and many said that this chance to express themselves was a valuable experience. Some armed factions also expressed an interest in providing better MHPSS services to fighters returning from battle. Implications from this research for practitioners of transitional justice and the SDG agenda include:

- For TJ to play a role in sustaining peace and development, gendered dynamics as they apply to men must first be acknowledged, a process that is still at an early stage in many parts of the world including Iraq. Additional research and programming on masculinities is required.
- Even in highly patriarchal societies, an appetite exists, including by affected men, to explore and alleviate the suffering of men. MHPSS services can be a good entry point at the intersection of development programming and truth telling in TJ, to address the suffering of men and as a prevention mechanism against future violations by them. In order to make MHPSS actionable,

services may be integrated into other activities, for example those focused on economic recovery as part of DDR programmes.

- Furtherment of the broader SDG 16 agenda to provide better education and economic opportunities outside the military or paramilitary groups, and to encourage women's economic participation and thus reduce the pressure of the 'male breadwinner' archetype, would reduce economic incentives to join armed factions and play a role in prevention of future conflicts.

Burundi

In Burundi when it comes to Violence against Women (VaW) since the beginning of our programming implementation was based on diverse, regular research and community work undertaken to participatively explore the causes of the continuum of VaW and the dynamics and structures that sustain this violence. Our programme gradually adapted to strategically focus on alternative/positive masculinities to ensure that we capture and respond to specific issues that needed to be addressed.

Through comparative research on the role of masculinities in the militarisation of youth, we developed a strong tool that supported our advocacy on addressing VaW also during challenging moments, for example, in 2020 when Burundi was heading to the elections in a very tense context and in the absence of free media, a neutral and strong civil society, and with human rights actors exiled. From a more long-term perspective, this understanding of the construction of violent and militarised masculinities is paving the way for raising consciousness among peacebuilding practitioners and institutions of the need to rethink the 'traditional' mechanisms of post-conflict reconstruction and the concepts underpinning them. In this sense, Impunity Watch seeks to contribute to rethinking how best to ensure the non-recurrence of violence by addressing its root causes in post-conflict settings. In our work we make a strong link to the African Union's TJ Policy from a gender-transformative and masculinities lens. It is from these strategic and systematic tools produced and strategic institutions targeted that as an organisation and a programme we have sought to contribute to promote broader awareness-raising, not only at the community level but importantly at the higher levels where policy decisions are being taken in designing strategies and policies that will in the future shape a line for other actors in the fields of TJ and others connected to this.

Furthermore, systematically, and annually, our programme designed a strategy aiming to empower and coach a group of women to actively participate in politics, and in parallel working with a group of men and young men to engage them in supporting these women and girls (and others) in their electoral and civic approaches. The lobby and advocacy activities held at the provincial and national levels were organised by the women monitors and the group of women supported by these men, testifying to the change they are living in their families that allow

challenging the social-cultural markers of violent masculinities at the local, intermediary, and very high level. This touches also onto the private and public sphere by using strategies and approaches that go beyond raising awareness. Among the key approaches used to document some of these strategies of alternative masculinities has been the production of various audio-visual tools. This included a film documentary, titled '*Women and political participation*,' of the women beneficiaries of our programme, some of whom were elected or appointed to higher positions in 2020. Prior to the documentary, 13 video portraits and 12 photo portraits with testimonies from the group of 20 women and girls, and from the group of 20 men and boys, were produced in 2020 as part of a strategy to mark the 16 Days of Activism against Gender-Based violence, from 25 November to 10 December. These products were themed around the *rights of women to political participation*, pointing out how violent masculinities and socio-economic violations underpin the absence of women in political spheres and the perpetuation of violence against women in general.

- Transitional justice policies that have strengthened and opened space for civil society, and their impact on sustaining peace and development.

TJ policies that enable movement building and agency are the most sustainable and contribute to change

Survivors of human rights violations often feel excluded from policymaking processes which concern them. Despite increasing calls for 'victim-centred transitional justice,' they often feel that their needs are an afterthought, that they are being consulted without their ideas being implemented, and that they are being lectured by the State and international community about what their rights are and how to demand them.

In research carried out by Impunity Watch, with OHCHR support, survivors expressed that they do not want to be seen as vulnerable, helpless individuals with no agency, who deserve pity. They are best placed to know what they need and want, even though they do not formulate this in transitional justice jargon, which is too legalistic for many grassroots survivors and their organisations. Survivors want to be more actively involved in national and international policy debates, on equal terms. To enable this, they have formed the International Network of Victims and Survivors of Serious Human Rights Abuses (INOVAS), which is a transnational survivors' network which helps to strengthen the voices and demands of survivors in policy debates that concern them. Such initiatives of transnational movement building are significant, not only for the opportunity to share experiences and create international solidarity, but also to create an international political playing field where survivors participate on more equal terms. Transforming the balance of power between States, survivors and perpetrators is a crucial step towards creating sustainable peace eventually, and the support for national and international survivors' and victims' movements is crucial for that as a long-term transitional justice strategy. This is also important, since

achievements in terms of transitional justice are often reversed by subsequent governments, while in other cases adopted laws are not being implemented. Strengthening survivors' capacities to follow up on the (promised) transitional justice advances is a strategy to prevent such setbacks.

For example, through our experiences in Burundi and Guatemala, and our in-house expertise on post-conflict and transitional settings, we know of the importance of integrating mental health and psychosocial support in justice and accountability processes. Mass atrocities cause deep societal and individual trauma, with post-conflict and transitional settings characterised by low levels of trust between the State and its people, as well as between individuals and between communities. Implementing justice and accountability processes that fail to acknowledge and address traumatic events significantly impacts the ability of victims to participate in these processes and may itself contribute to worsening trauma. This is compounded by ongoing impunity that continues to perpetuate structural injustices and abuse, which can itself be traumatising. TJ that wants to have influence needs to increase its understanding of MHPSS and the multiplier effects of trauma, as well as on measures/approaches that enable victims to increase their resilience and become active agents in political processes that directly impact them. This will increase the likelihood that justice interventions will make a more sustainable contribution to peace.

More needs to be done to capitalise on existing knowledge, as well as partnerships with organisations and networks that focus on MHPSS. Information, evidence, and voices from the grassroots need to be more systematically collected and communicated, together with identifying key moments in policy discussions to highlight these issues.

- Challenges and successful experiences in enhancing linkages between transitional justice, peace, and development, and increasing effective cooperation among relevant stakeholders in related policy areas. Kindly provide specific examples.

Reparations need to have a transformative focus to redress marginalization and discrimination that are drivers of conflict

Reparations are increasingly seen as an important aspect of transitional justice. Unfortunately, they are often understood in a narrow sense, and tend to result in limited attempts at monetary compensation. Research by Impunity Watch, supported by OHCHR, shows that for survivors, reparations are much broader than that. They indicate that for them, reparations should encompass a wide array of measures which include psychosocial support, memory initiatives, moral reparations through the recognition of the harm done and the restoration of the reputation and good name of the survivors, but also material and social support to guarantee survivors a better future, through housing, education, and health support. Reparations should have a transformative focus which aims to redress the marginalisation that led survivors to become victims, whereas support for memory initiatives through

reparations can help society to better understand its past. If reparations are conceived in this broader sense, they can play a crucial role in restoring survivors of human rights violations to equal citizens who feel trust in the State. On the contrary, reparations can also harm the restoration of trust and thus the consolidation of a peaceful society, when survivors' perceptions and needs are not considered. This has for example been the case in South Africa, where the Khulumani support group has repeatedly participated in government consultations about reparations but have felt that their ideas and demands have fallen on deaf ears. This has diminished their trust in the government and has created a great anger towards it. In this way, reparations are a crucial aspect to consider for wider processes of building peaceful and equal societies, based on trust.

- Information pertaining to other aspects of the mandate set out in resolution 42/17, including regarding the situation and perspectives of women, youth, children, older persons, persons with disabilities, as well as other relevant gender and intersectional dimensions.

Process

The report will be presented to the Human Rights Council at its forty-ninth session,² scheduled to take place in March 2022.

Contributions should be sent in Word format by email to: Registry@un.org and nekane.lavin@un.org by **18 October 2021**. It is kindly suggested to include hyperlinks to relevant websites, documents, data, and legislation providing more detailed information. Unless otherwise specified, all contributions will be made available in full and as received on the public OHCHR website at: <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>.

² A/HRC/48/36