

Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Questionnaire

Accountability for gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes

Within the framework of Human Rights Council resolution 45/10, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has been mandated to “*identify, exchange and promote good practices and lessons learned, and to identify potential additional elements with a view to recommending ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence.*”

In compliance with this mandate, the Special Rapporteur decided to devote his report to the 48th session of the Human Rights Council, in September 2021, to examine the scope of the legal obligation to prosecute and sanction gross violations of human rights and serious violations of international humanitarian law, as well as the constraints, gaps and opportunities encountered in the implementation of this obligation in transitional justice contexts.

In order to obtain a broad representation of views to inform the thematic report, the Special Rapporteur is seeking written contributions by Member States, civil society and other relevant stakeholders through responses to the questionnaire below.

In particular, the Special Rapporteur would appreciate receiving specific examples regarding the design and implementation of accountability mechanisms to address gross human rights violations and serious violations of international humanitarian law, or mechanisms that prevented their establishment, as well as on the normative and conceptual frameworks applicable to such cases. In this regard, the Special Rapporteur is particularly interested in identifying challenges and lessons learned, good practices and opportunities, as well as relevant national, regional and international jurisprudential developments.

Please note that you can choose to answer all or some of the questions below

Questionnaire

1. Please indicate which mechanisms have been established in your country, or country where you work, to hold accountable persons accused of committing gross violations of human rights and serious violations of international humanitarian law and whether there is a prosecutorial prioritization strategy to

strengthen accountability for such violations. Please specify whether the accountability mechanism envisages the use of national criminal courts, national military courts, or international or internationalised tribunals. Please provide information on the legal framework and justice model applicable to accountability in the country concerned, and indicate the difficulties and opportunities encountered. If such mechanisms were not adopted, please explain why.

2. Please indicate the types of penalties prescribed for crimes such as genocide, torture, enforced disappearance, massacres, ethnic cleansing, mass forced displacement, among others that are qualified as crimes against humanity under Article 7 of the Rome Statute. Please describe the legal framework underpinning these penalties and how it was established (by law, decree, or otherwise). Please indicate the standard followed in the country to determine the penalties for such violations (e.g. Rome Statute and others). Please mention the challenges and opportunities encountered in the qualification of penalties for these crimes, the investigation of the crimes, the determination of penalties/sanctions for the crimes, and the enforcement of the sanctions.
3. Please indicate if in your country, or country where you work, limits or obstacles have been imposed on the criminal prosecution and/or sanction of perpetrators of those violations, such as: prior legal immunities or exemptions from legal responsibilities (including amnesties, defense of superior orders), termination of criminal proceedings, statutory limitations, benefits in the enforcement of sentences (including pardons, humanitarian pardons, commutation of sentences, and alternatives to imprisonment), or laws/policies of repentance or of reconciliation in exchange for immunity or commutation of sentences. Explain the reason for their introduction and whether you consider them to be in conformity with international standards in this field. What has been the impact of such mechanisms on perpetrators, victims and their families, and on the other pillars of transitional justice? Please give examples.
4. Please indicate good practices and challenges in implementing accountability mechanisms, and their impact on other areas of transitional justice (truth, reparation, historical memory, guarantees of non-repetition and reconciliation).
5. Please indicate if the design and implementation of the accountability mechanism was grounded on effective consultation with victims (including women and victims in vulnerable situations). Please indicate examples of good practice in this regard and the impact of consultation on the accountability process. Please indicate whether there were procedural barriers, difficulties in legal representation, threats, or other obstacles to the participation of victims (including women and victims in vulnerable situations) in the accountability mechanisms and what measures were taken to ensure their effective and safe participation.
6. Please indicate the impact that the political context in your country, or country where you work, (internal stability, security, democratic governance, etc) has had on the mechanisms of accountability or impunity adopted in response to gross violations of human rights or serious violations of international

humanitarian law. What is the relationship between peace, justice and reconciliation in the model of justice adopted in your country, or country where you work? Explain if you think this model meets international standards and why.

Given the timeline for the preparation of the thematic report, we kindly request that written contributions be sent in Word format to srtruthcalls@ohchr.org by **15 January 2021**. We would also welcome any other document, report or article providing further information on this topic in the country concerned.

Please limit your contributions to a maximum of 750 words per response and attach annexes, where necessary. Your responses may be published on the website of the Office of the High Commissioner for Human Rights.

Should you not wish to have your response published on the website, please indicate so in your response.

We thank you in advance for your cooperation, and for your responses.