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

Questionnaire

The roles and responsibilities of non-state actors in 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, Fabian Salvioli, has decided to devote his report to the 51st session of the Human Rights Council, in September 2022, to examine the question of the roles and responsibilities of non-state actors (NSAs) in transitional justice processes.

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 inputs regarding the roles and degree of involvement of non-state actors (armed groups or other NSAs who have been directly or indirectly involved in serious violations of human rights and international humanitarian law committed in conflict and authoritarian settings) in the implementation of measures in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence adopted to address those violations, or the obstacles that prevented their involvement.

We kindly request that written contributions be sent in Word format to ohchr-srtruthcalls@un.org by **14 January 2022**. Please limit your contributions to a maximum of 750 words per response and attach annexes, if necessary. We would also welcome any other document, report or article providing further information on this topic.

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, please clearly indicate it in your response.**

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

All Permanent Missions to the United Nations Office and Observers Missions at Geneva

Questionnaire

You can choose to answer all or some of the questions below

If the answers are quoted, we would like to see it before, otherwise they could be quoted anonymous, as we're still engaging these actors on human rights and IHL issues.

1. Please inform about instances in which non-state actors (armed groups or other NSAs who have been directly or indirectly involved in serious human rights violations in conflict or authoritarian settings) have participated in or assisted the mechanisms created to **hold accountable** the persons accused of committing, or bearing responsibility, for the aforementioned violations and provide the relevant details. This may include engagement with national or international justice systems or 'internal' efforts by non-state armed groups themselves to hold accountable those guilty of violations of humanitarian law or human rights laws. Please indicate the challenges and opportunities encountered in non-state actor's engagement in accountability processes.

FfH: In terms of 'internal' efforts, many NSAs regularly deal with violations of IHL and human rights law by their own forces. Examples include the PKK in Turkey, the SDF in Syria, and the ELN and FARC in Colombia. The Palestinian armed factions in the Lebanese camps are on a regular basis dealing with such issues, especially related to inter-factional clashes, and set up permanent mechanisms to such end.

NSAs also take measures to deal with human rights violations in the territories that they control, such as dealing with acts of criminality, domestic violence, and sexual violence notably against women and children.

Actors such as the SDF and the Autonomous Administration of North and East Syria (AANES) have also been putting enemy fighter such as of the Islamic State on trial for violations against IHL and human rights, however the framework for this they have chosen the local 'counter-terrorism law' rather than international law. As additional challenges, legal staff involved in this are often lacking the training and expertise in collecting and safeguarding evidence and fair trial guarantees have been insufficient.¹ The cross-boarder cooperation (Iraq-Syria) in cases of violations of ISIS member has also been insufficient,² leading to an accountability and truth gap for victims and their families. Hundreds of suspected and/or condemned ISIS members were also released and handed over to local tribes in local reconciliation efforts, which could be a challenge to justice and access to truth for victims. Hundreds of Iraqi alleged ISIS members have also been handed over by the AANES to Iraq, in spite of concerns related to the use of death penalty in Iraq and concerns about the application of fair trial guarantees.

2. Please inform about instances in which those non-state actors have participated in or assisted **the truth-seeking processes established in connection** to the

¹ See for example <https://www.fightforhumanity.org/post/legal-solutions-for-members-of-the-islamic-state-detained-in-syria>

² See <https://www.fightforhumanity.org/post/promoting-the-rights-of-victims-of-isis-a-first-meeting-between-iraqi-and-syrian-ngos>

aforementioned violations, and provide the relevant details. This may include processes of engagement with international or national institutions designed to facilitate truth recovery or ‘internal processes’ wherein non-state actors have established their own truth recovery processes. Please indicate the challenges and opportunities encountered in this regard.

FfH: In addition to globally well-known cases such as the FARC in Colombia, the PKK in Turkey made internal efforts towards such a truth-seeking mechanism in 2012-14 and was advocating for a bilateral process. Some challenges were: the lack of capacity and knowledge to deal with such efforts, internal disagreements concerning how to deal with the movement’s own violations, and the lack of advances in the peace process.

The AANES in Syria has been supportive of and participated in the establishment of a platform of ISIS victims.³

3. Please inform about instances in which those non-state actors have participated in or assisted mechanisms established to **provide** either practical or symbolic **reparations** to victims (e.g., compensation, apologies, de-mining, acknowledgement, efforts to locate ‘disappeared’ bodies) of the aforementioned violations, and provide the relevant details. Please indicate the challenges and opportunities encountered in this regard.

FfH: NSAs frequently perform reparatory acts following acts that have targeted or affected civilians in a disproportionate way. Public apologies, compensation, ceremonies or even monument are examples of this. The YPJ, within the framework of a process towards inter-Kurdish dialogue, issued an official apology for killings within the framework of demonstrations, and separately, committed itself to clarifying the circumstances around the disappearances of opposition figures.

In Batman Turkey, following an anti-vehicle mine detonation that killed four civilians in 2012, the HPG/PKK publicly apologized and committed itself to trying the perpetrators.

For a discussion reparations by NSAs see:

<https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/beyond-the-state-of-play-establishing-a-duty-of-nonstate-armed-groups-to-provide-reparations/56A5F03F1F35390E7DDD0D955506748A>

4. Please inform about instances in which those non-state actors have assisted or participated in mechanisms created to **memorialize and to guarantee non-recurrence** of the aforementioned violations, and provide the relevant details. This may include practical steps such as engagement in processes of disarmament, demobilization and reintegration, as well as formal declarations regarding non-recurrence. Please indicate the challenges and opportunities encountered in securing credible guarantees of non-recurrence.
5. Please indicate categories of **interlocutors** which have engaged with those non-state actors in your local context in order to assist their engagement with transitional justice processes (e.g. state agencies, churches, international

³³ <https://www.fightforhumanity.org/post/north-east-syria-launch-of-a-platform-to-advocate-for-the-rights-of-isis-victims>

institutions, tribal leaders, victim leaders, external facilitators etc.)? What are the broader lessons as to who is best suited to facilitate the engagement of non-state actor engagement in transitional justice processes?

6. If those non state actors have engaged differently at different stages of transition, please explain the possible variables. What are the **factors which encourage or impede non-state actor's engagement** with transitional justice processes.

FfH: Impede: lack of preparation and understanding, lack of capacity, difficulties to collaborate with international actors due to political and legal restrictions.