



HUMAN RIGHTS COUNCIL - 48th SESSION

Interactive Dialogue with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence – 16 September 2021

[Mr Fabián Salvioli – Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence](#)

- Thematic report “**Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes**” ([A/HRC/48/60](#)).
- Follow-up on the visits to **Tunisia, Uruguay and Spain** ([A/HRC/48/60/Add.1](#)).
- Follow-up on the visits to **Burundi, the United Kingdom of Great Britain and Northern Ireland and Sri Lanka** ([A/HRC/48/60/Add.2](#)).

The obstacles to the pursuit of justice, and their disappointing effects, are numerous, even though **accountability is a legal obligation** of States. Several international instruments underline the **duty to investigate and punish serious violations** of human rights and IHL, and customary international law establishes the obligation to investigate and punish brutal atrocities such as genocide, crimes against humanity and war crimes. International human rights law also indicates that the penalty imposed for these acts must be **proportional to the seriousness** of the crimes committed.

The Special Rapporteur referred to constraints and **challenges to ensuring accountability**, illustrating them with examples of practices in countries such as *Albania, Argentina, Cambodia, Chad, Chile, Colombia, Gambia, Guatemala, India, Ireland, Kenya, Lebanon, Liberia, Libya, Maldives, Myanmar, Peru, Rwanda, El Salvador, Senegal, Sierra Leone, South Africa, Sudan, Tunisia, Turkey, Uganda, United Kingdom, United States*. The report identified **insufficient actions or omissions**, which lead to **scenarios of total or partial impunity**: adoption of laws of amnesty, immunity, and pardons; application of the criminal statute of limitations; inadequate typification; establishment of penalties that do not correspond to the seriousness, or contain a wrong classification of the criminal types; reduction of sentences, premature release or granting of improper house arrest; adoption of weak or simulated criminal trials, to evade proceedings before international criminal tribunals; lack of cooperation with international tribunals or judicial processes established by virtue of the principle of universal jurisdiction.

He also referred to **good practices and lessons learned**, based on experience of *Albania, Argentina, Colombia, Ireland, Guatemala, Liberia, Maldives, Nepal, Peru, Rwanda, El Salvador, Tunisia, Ukraine, Uganda*, among others. At the legislative level, some countries have adopted norms that adequately criminalize these unacceptable crimes; frameworks were created for transitional justice processes that complement ordinary criminal law; criminal prosecution strategies have been designed; legal obstacles to criminal investigation and punishment were removed; military and police files were opened to facilitate accountability processes; and effective mechanisms for the participation of victims and civil society were developed.

The urgency of **cessations of the conflict** or achieving a regime transition may negatively affect the quality of the model and implementation of accountability. While the objective of achieving peace and democracy is imperative, impeding accountability can strengthen a culture of impunity and violence. Debates regarding the adoption of mechanisms that impede criminal investigation and punishment for the benefit of other pillars of transitional justice, places victims at an improper crossroads.

The report concluded with **21 concrete recommendations** on how to improve accountability for gross violations of human rights and serious violations of international humanitarian law.

The Special Rapporteur also presented to the Council **his follow-up reports**:

- **Tunisia**: since the last visit in 2012, certain progress had been made to bring coherence to the transitional justice system, notably under Organic Law No. 53. Significant legislative gaps and



procedural obstacles still stand in the way of effective and meaningful criminal accountability, the effective provision of reparation to victims, and the establishment of guarantees of non-recurrence.

- **Uruguay:** some progress in the collection and preservation of archives, strengthening the independence of the judiciary, creation of the WG on Truth and Justice, and the specialized Prosecutor's office. The Special Rapporteur regretted the insufficient progress in the search for disappeared persons, the serious legal and de facto obstacles to accountability, and the inadequacies in terms of comprehensive reparation for victims.
- **Spain:** many of the challenges examined in 2014 report have persisted, limiting the victims' right to truth, justice, comprehensive reparation, guarantees of non-repetition, and memory. The Special Rapporteur regretted the numerous decisions of the courts not to investigate serious violations. However, the recent creation of the State Secretariat for Democratic Memory, the increase in the budget to exhume and identify victims, the gradual removal or re-designation of Francoist symbols, and the draft Democratic Memory Bill are important advances.
- **Burundi:** progress in the exhumation of the remains of victims, but there is lack of progress in other aspects recommended in 2014 report, in particular accountability, reparations, land restitution, and security and justice reform. The alleged perpetrators of the serious violations, several of whom hold high positions in the Government, or within Imbonerakure, have not been brought to justice.
- **United Kingdom:** The Special Rapporteur acknowledged the frameworks set out in the Stormont House Agreement, 2014. He regretted the lack of progress on this matter, and the recently announced plans by the government to establish a new "legacy package".
- **Sri Lanka:** the past 18 months have witnessed a profound deterioration in the human rights situation. The Special Rapporteur regretted the lack of implementation of the recommendations made in 2017 report, the insufficient progress in relation to the search for the truth, and the flagrant setback in the areas of accountability, memory and guarantees of non-repetition.

The Special Rapporteur has also prepared a **thematic report** on transitional justice measures and how they can tackle the legacy of serious violations of human rights and ILH committed in **colonial contexts**, which will be presented at the next session of the UN General Assembly.

INTERACTIVE DIALOGUE

Country delegations that took the floor during the Interactive Dialogue (49 statements)

Argentina (on behalf of Chile, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru and Argentina), European Union, Luxembourg (on behalf of the Group of Friends of the Responsibility to Protect: Germany, Argentina, Bangladesh, Belgium, Bosnia and Herzegovina, Botswana, Canada, Chile, Costa Rica, Côte D'Ivoire, Croatia, Denmark, Spain, United States of America, Finland, France, Ghana, Guatemala, Hungary, Marshall Islands, Ireland, Italy, Japan, Liberia, Liechtenstein, Luxembourg, Mali, Morocco, Mexico, Mozambique, Nigeria, Norway, New Zealand, Panama, Netherlands, Peru, Qatar, Republic of Korea, United Republic of Tanzania, Romania, United Kingdom, Rwanda, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, South Sudan, Sweden, Switzerland, Uruguay), Estonia (on behalf of the Nordic-Baltic countries: Denmark, Finland, Iceland, Latvia, Lithuania, Norway, Sweden and Estonia), Switzerland (on behalf of the Friends of the Mandate of the Special Rapporteur), Liechtenstein, Switzerland, France, Togo, Armenia, Ecuador, Egypt, Colombia, Iraq, Republic of Korea, Venezuela, Uruguay, Paraguay, United States, Russian Federation, India, Sri Lanka, Ireland, Peru, Malaysia, Nepal, Belgium, China, Croatia, Bolivia, Libya, Iran, Pakistan, Sudan, Ukraine, Cuba, Philippines, Chile, Azerbaijan, Mali, Botswana, Cameroon, Maldives, Uganda, Gambia, South Sudan, Chad, Indonesia, Tunisia.

States have **legal obligation** to prosecute and punish grave violations, identifying and eliminating the obstacles and limitations. The speakers agreed that **holding perpetrators accountable** is an essential part of transitional justice processes as a means to recognise **victims as rights holders**, to contribute to social reconciliation and to break spirals of violence. Several speakers expressed concern regarding the low number of atrocious crimes that are effectively **prosecuted and investigated**. The importance of safeguarding the independence and **impartiality of the judiciary**, generating **political will** to hold perpetrators accountable and providing for **effective domestic legislation** was highlighted. A number of states said that the transitional justice requires a **comprehensive approach**.

Several states said that the punishment should be **proportional to the seriousness** of the crime and that **no statutory limitation** shall apply to crimes against humanity. At the same time, other speakers spoke **against the imposition of criminal models** without taking into account the national context and underlined that each country and each situation was different, and must be treated differently.

A few speakers also saluted the important role that the **civil society** plays in transitional justice processes, and encouraged the Special Rapporteur to address **the use of technology** in the future.

National situation and efforts were brought up by *Azerbaijan, Bolivia, Cameroon, Colombia, Croatia, Ecuador, Gambia, India, Iran, Iraq, Libya, Malaysia, Maldives, Mali, Nepal, Paraguay, Peru, Philippines, Republic of Korea, Sri Lanka, South Sudan, Sudan, Togo, Tunisia, Uganda, Ukraine, Venezuela, among others*. *Sri Lanka* said it was regrettable that the follow-up report had failed to adequately portray the progressive steps taken by its Government. *India* found that the Report made unfounded, ill-informed, baseless and presumptuous allegations against the police and judiciary in India.

Some countries referred to serious **human rights violations committed in other countries**, including *China* (on *United States* and *Canada*), *Ireland* (on *United Kingdom*), *Pakistan* (on *India*), *Iran* (on *Afghanistan*), *Russian Federation* (on *Ukraine*), *Switzerland* (on *Sri Lanka*).

Additionally, *Estonia*, in a joint statement, referred to use of the **military and special militarized units to suppress peaceful demonstrations**, noting that it required a swift international response and the identification and the prosecution of the perpetrators. *France* reiterated its deep attachment to the role of international criminal justice, in particular the **International Criminal Court (ICC)**, while *Liechtenstein* also said it strongly supported the principle of **universal jurisdiction**. *Ukraine* **welcomed the visit** to its territory before the end of the Special Rapporteur's mandate. *Russian Federation* noted that a key milestone of the creation of the **Nuremberg Tribunal** was not addressed.

Questions addressed to the Special Rapporteur:

- *What role does accountability and the respect of the rule of law play in the reconstruction of democratic and fair societies and their impact on the consolidation of sustainable peace?* (European Union)
- *How can the international community further mobilize benefits of complimentary efforts to enhance dealing with past processes?* (Switzerland in a joint statement)
- *What are the best practices on promoting wide dissemination of relevant criminal proceedings?* (Belgium)
- *What tools could the international community use to maximize adherence to the principle of not providing asylum to persons who have committed serious violations of human rights?* (Estonia in a joint statement)
- *Does the failure of some of the long-term procedures in international courts to reach justice and truth, represent one of the legal obstacles to holding those responsible for those violations accountable?* (Iraq)
- *What are some relevant lessons from experience of transitional justice processes internationally?* (Ireland)
- *What measures can be taken to improve the technical and institutional capacity of independent commissions established to provide transitional justice?* (Maldives)
- *What role do international and regional bodies play in strengthening national capacities to ensure accountability?* (Peru)
- *What are the Special Rapporteur's views on addressing our common aspiration for truth and justice in such cases where the actor perpetuates violence, while propagating misinformation to deceive the public about their atrocities?* (Philippines)
- *What can the international community and the Human Rights Council do to facilitate the access, exchange and preservation of the information?* (Switzerland)
- *In point 97 (f) of the report there is a recommendation that "humanitarian" pardons be granted only to those who are terminally ill and whose death is imminent. Don't you think that this option is likely to compromise the purposes assigned to the criminal penalty?* (Togo)
- *What are some ways to ensure that discrimination and violence based on gender, sexual orientation and gender identity, and race are properly considered during transitional justice processes?* (United States)
- *Based on your research, what have been or will be some perceivable challenges that States may face in undergoing transitional justice processes in post-pandemic era?* (Indonesia)

1 NHRI and 10 NGOs took the floor during the Interactive Dialogue:

NHRI: Northern Ireland Human Rights Commission.

NGOs: Amnesty International, Advocates for Human Rights, Fundación Abba Colombia, Families of Victims of Involuntary Disappearance (FIND), Centro de Estudios Legales y Sociales (CELS), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, International Commission of Jurists (ICJ), Federation for Women and Family Planning, International Movement Against All Forms of Discrimination and Racism (IMADR), Peace Brigades International (PBI).

Amnesty International expressed deep concern by the **UK** plans to legislate for a de facto amnesty for grave human rights violations committed during the Northern Ireland conflict, and called on the UK to abandon plans and revert to the Stormont House Agreement. This issue was also raised by the *Northern Ireland Human Rights Commission*. The following other country situations were addressed: **Liberia** (by *Advocates for Human Rights* on behalf of a coalition of Liberian and international NGOs), **Bolivia** (by *CELS* spoke on behalf of 16 organizations). **Colombia** (by *Fundación Abba Colombia* that spoke on massive forced internal displacement; by *Federation for Women and Family Planning* – on discrimination based on race, sexual orientation, or gender identity; by *PBU*), **Philippines** (*FIND*), **Mexico**, **Tunisia** (*ICJ* in a joint statement), **Sri Lanka** (*IMADR*), **Guatemala**, **Honduras** (*Peace Brigades International*).

Interim and final remarks and answers by Mr. Fabián Salvioli

Interim remarks: The role between all human rights bodies and other institutions, including the UN Security Council should be aligned. It is important to cooperate with **the ICC**, and the Special Rapporteur reiterated his call for ratifications. There is a duty of **collective guarantees** on the part of States. **Extradition process** and **universal jurisdiction** principle are important measures. The states should **not grant asylum** when it comes to those committed crimes against humanity. The principles of **non-refoulement** and **due prosecution** should apply. The **donors** should give importance to the need for accountability enforced for perpetrators. The concern on the **importance of archives** was voiced in the report on the visit to *El Salvador*. States and institutions that possess archives, including UN, should harmonise policies in this area. **Sexual and gender-based violence** was addressed in the report submitted to the GA in 2020. The Special Rapporteur thanked *Uruguay* for welcoming the follow-up recommendations. Regarding the statement by *Sri Lanka*, the Special Rapporteur would have appreciated a written response. The Special Rapporteur ended up by saying that peace fundamentally belongs with the victims of human rights. The search of justice in itself is choosing a way to peace.

Concluding remarks: the work of the **NGOs** is fundamental. Welcomes the invitation by *Croatia* for a visit. Commissions must be willing to go beyond the capitals, into the field, and should have **technical capacity** for doing so. The Truth Commission in *the Gambia* is doing commendable work in this regard. The violations committed by **non-state agents** is very important – and the upcoming report will be dedicated to this topic. The need to take consideration of **international tribunals**, including the Nuremburg trials. Issues related to **memory** and mechanisms of **truth and reconciliation** are the recovery of trust and need to be properly balanced. The **holistic** perspective is very important: for successful transitional justice processes, all five pillars should be respected.

Watch the full ID with the Special Rapporteur on [UN WebTV](#)