

**United Nations Special Rapporteur
on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence
Questionnaire “Transitional justice measures to address the legacy of serious violations
of human rights and humanitarian law committed in colonial contexts” | 7 April 2021**

Opinion by Antoon De Baets | 14 April 2021

Dear Rapporteur,

In response to your appeal to fill out the Questionnaire “Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts,” I want to comment the following.

1. Your appeal has an intimate connection with the United Nations discussion on impunity, which was launched in the early 1990s within the Sub-Commission on the Promotion and Protection of Human Rights. The Sub-Commission distinguished between political and civil impunity and economic, social, and cultural impunity. The work on the former was taken up by Louis Joinet and it eventually gained worldwide notoriety in 2005 as the so-called Impunity Principles (UN Doc. E/CN.4/2005/102/Add.10). The work on the latter was taken up by El Hadji Guissé, who produced a report in 1997, eventually leading to a decision and two resolutions of the Sub-Commission. In 2002, however, the work on economic, social, and cultural impunity stopped.

It is difficult to know why the Joinet report became a success and the El Hadji Guissé report did not. Here is a possible explanation: in 1985 the UN published their *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (UNGA Resolution 40/34) (29 November 1985), which contained a definition of victim still in use today: “‘Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power” (§ 1), adding “The term ‘victim’ also includes, where appropriate, the immediate family or dependants [sic] of the direct victim” (§ 2). In his 1997 report, El Hadji Guissé argued that this definition ought to be expanded: “The status of victim and the rights attaching thereto are transmissible to the successors. This concept of successor should be understood in a wide sense ...” (§ 137). This plea was not taken up, presumably because it would create a macrohistorical chain of victims with reparation claims. Accordingly, the report never gained the status of its twin.

The documents are:

- UN Commission on Human Rights, *Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Economic, Social and Cultural Rights)* (UN Doc. E/CN.4/Sub.2/1997/8 (27 June 1997).
- Sub-Commission on the Promotion and Protection of Human Rights, *Recognition of Responsibility and Reparation for Massive and Flagrant Violations of Human Rights Which Constitute Crimes against Humanity and Which Took Place During the Period of Slavery, of Colonialism and Wars of Conquest*:
 - Decision 2000/114 (18 August 2000).
 - Resolution 2001/1 (6 August 2001).
 - Resolution 2002/5 (12 August 2002).

These documents are available in English, French and Spanish at the website of the Network of Concerned Historians ([here](#)).

2. I also want to draw your attention to an essay that I wrote five years ago: Antoon De Baets, “Censorship by European States of Views on Their Past as Colonizers,” in Laurent Martin, ed., *Les Censures dans le monde, XIXe–XXIe siècle* (Censorship in the world, 19th-21st centuries) (Rennes: Presses Universitaires de Rennes, 2016), 229–245. It is attached to this message.

3. You will find an abundance of country materials related to the question of the adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts in the *Annual Reports* of the Network of Concerned Historians. All reports contain entries listed per country. The complete series (1995–2020) can be found [here](#). The 2021 edition will appear this July.

4. Finally, it is probably an open door to mention that the *Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban, 31 August – 8 September 2001) is indispensable for your report.

I am looking forward to your UNGA report this October and I wish you much success in writing it. Please let me know whether I can be of further help.

With best wishes,

Antoon De Baets