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**Promotion and protection of all human rights,  
civil, political, economic, social and cultural rights,  
including the right to development**

## **Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice**

### **Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

#### *Summary*

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, presents his report on memorialization processes in the context of serious violations of human rights and international humanitarian law as the fifth pillar of transitional justice.

The report deals with the regulatory framework concerning the obligation to adopt memory processes and ensure their non-regression, analyses the challenges and opportunities surrounding these processes in situations of conflict and transition, and addresses the problem of the weaponization of memory on social networks. The report highlights the need for vigorous, active and multidimensional memory policies in order to respond adequately to past crimes and prevent their recurrence. The report concludes with recommendations that are addressed primarily to States but also to the United Nations.



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## Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, pursuant to Council resolution 36/7. In the report, the Special Rapporteur lists the main activities that he undertook between July 2019 and June 2020 and provides an analysis of memorialization processes in the context of serious violations of human rights and international humanitarian law as the fifth pillar of transitional justice.
2. In 2019, the Special Rapporteur held an expert meeting at the United Nations Office at Geneva to obtain input for the present report. He also organized an open-ended consultation with States, international organizations, national human rights institutions and non-governmental organizations to give them an opportunity to express their views on the issue. The Special Rapporteur is grateful for the valuable contributions received.

### I. Activities undertaken by the Special Rapporteur

3. Between 1 July 2019 and 30 June 2020, the Special Rapporteur sent visit requests to Bosnia and Herzegovina, Croatia, the Gambia, the Republic of Korea, Serbia and Tunisia. He is grateful for the positive responses received from these countries. He also renewed his request to visit Côte d'Ivoire.
4. On 10 September 2019, the Special Rapporteur met with Commissioner Antonia Urrejola of the Inter-American Commission on Human Rights.
5. On 11 September 2019, the Special Rapporteur participated in the forty-second session of the Human Rights Council, at which he presented his thematic report on domestic reparation programmes.
6. On 24 October 2019, the Special Rapporteur participated in the seventy-fourth session of the General Assembly, at which he presented his report on apologies for serious human rights violations.
7. On 22 October 2019, the Special Rapporteur held a meeting with the Assistant Secretary-General for Peacebuilding Support, Oscar Fernández-Taranco, and with the interregional Group of Friends on the Responsibility to Protect.
8. On 25 October 2019, the Special Rapporteur met with representatives of the office of the Special Adviser to the Secretary-General on the Prevention of Genocide, Adama Dieng.
9. From 20 to 27 November 2019, the Special Rapporteur made an official visit to the Gambia.
10. From 6 December 2019 to 31 January 2020, the Special Rapporteur collected contributions for the present report through an open-ended consultation.
11. On 10 and 11 December 2019, the Special Rapporteur held an expert meeting to obtain input for the present report.
12. On 26 February 2020, the Special Rapporteur participated in a lunchtime briefing in New York with representatives of Member States to discuss the role of the Security Council and the United Nations in the area of transitional justice.
13. From 27 April to 29 May 2020, through an open-ended consultation, the Special Rapporteur collected input on the gender perspective in transitional justice processes, for use in preparing his next report to the General Assembly.
14. Owing to the coronavirus disease (COVID-19) pandemic, the Special Rapporteur had to postpone his official visit to Bosnia and Herzegovina and an expert meeting on the gender perspective in transitional justice processes, and was unable to participate in several other events.

## II. General considerations

15. The present report on memorialization processes in the context of serious violations of human rights and humanitarian law is a continuation of the work already initiated by the Special Rapporteur, and the Special Rapporteur in the field of cultural rights, on the writing and teaching of history,<sup>1</sup> memory processes in divided societies,<sup>2</sup> the prevention of gross human rights violations,<sup>3</sup> and archives.<sup>4</sup> The report focuses on the crucial role played by memorialization processes in the context of transitional justice, which is fully recognized by the rules and standards of contemporary international law. The work carried out on these past violations serves as a basis for reflection on the present and identification of contemporary issues related to exclusion, discrimination, marginalization and abuses of power, which are often linked to toxic political cultures. Positive work in the area of memory not only helps to build democratic cultures in which human rights are respected but also fulfils the legal obligation of States to guarantee human rights.

16. The present report seeks to identify the obligations of States and other stakeholders with regard to memory work. It is based on the assumption that memory work, like history, cannot be dissociated from the political influences and debates of the present, although it has clear limits: memory processes should never result in the revictimization of victims of human rights and/or humanitarian law violations by failing to recognize or attach sufficient importance to the harm that such victims have suffered.

17. The report describes good practices in memorialization processes and focuses on finding answers to three particular challenges: memorialization in times of conflict, memorialization in post-conflict situations and weaponization of memory in connection with the politicization of social networks.

18. These three challenges cannot be considered in isolation in a world where multilateralism and the human rights system are being called into question and populist and xenophobic ideologies are on the rise in different parts of the world. This situation is reflected in the upsurge in racism, antisemitism, anti-Muslim hatred and persecution of Christians, as well as in the increasing flashpoints in inter-State relations.<sup>5</sup>

19. This report mirrors the views of the Secretary-General, António Guterres, who highlighted the “pivotal moment” that the world is experiencing:

No country alone, no organization alone, can provide the solutions we need for today’s global challenges, but multilateralism is under attack. The world is threatened by global warming, but also by a heating up of global political tensions. We are seeing an increasing deficit of trust in governments and politicians, and the rising appeal of nationalist and populist voices that demonize and divide. This is very dangerous at a time when collective action is essential.<sup>6</sup>

## III. Objectives and regulatory framework of memorialization processes

### A. Objectives

20. The underlying assumption of transitional justice is that past crimes – committed during an armed conflict, or by a repressive regime – must be adequately addressed in order to build a democratic, pluralistic, inclusive and peaceful society. The acknowledgement of war crimes and mass human rights violations is essential for restoring dignity to victims,

<sup>1</sup> A/68/296.

<sup>2</sup> A/HRC/25/49.

<sup>3</sup> A/HRC/37/65, A/72/523.

<sup>4</sup> A/HRC/30/42, annex.

<sup>5</sup> [www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action\\_plan\\_on\\_hate\\_speech\\_EN.pdf](http://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf).

<sup>6</sup> Guterres, António, “Multilateralism: The Backbone of Lasting Peace”, in Pierre Hazan and others (eds.), *War and Peace*, Gallimard and Fondation Martin Bodmer, 2019.

enabling society to regain trust and initiating a process of reconciliation – both vertical (between citizens and State authorities) and horizontal (between different groups in cases involving conflicts between populations) – that duly complements the criminal prosecution and sentencing of perpetrators and the award of reparations to victims. Failure to recognize and punish the crimes and violations that have occurred leads to denialism and perpetuates and legitimizes violence.

21. The approach to be taken to such crimes is based on the pillars of transitional justice: without the memory of the past, there can be no right to truth, justice, reparation, or guarantees of non-recurrence. For this reason, memory processes in connection with serious violations of human rights and international humanitarian law constitute the fifth pillar of transitional justice. It is both a stand-alone and a cross-cutting pillar, as it contributes to the implementation of the other four pillars and is a vital tool for enabling societies to emerge from the cycle of hatred and conflict and begin taking definite steps towards building a culture of peace.

22. In addressing past violations, transitional justice processes seek to contribute to the fulfilment of several objectives associated with different time frames:

(a) To shed light on past violations (by establishing the facts and criminally punishing the perpetrators);

(b) To address the challenges of the present (by recognizing, honouring and commemorating the memory of victims, providing reparation, allowing stories to be told, making public apologies, combating denialism, bringing calm and restoring trust in the State and between communities); and

(c) To prepare for the future (by preventing future violence through education and awareness-raising and establishing a culture of peace). Memory processes help to promote commitment to a democratic society, encourage debates on the representation of the past and allow the problems of the present to be addressed in a relevant manner.

23. In the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted in Durban in 2001, the role of memory is understood as a tool for combating injustice and promoting peace:

Remembering the crimes and wrongs of the past, wherever and whenever they occurred, unequivocally condemning its racist tragedies and telling the truth about history are essential elements for international reconciliation and the creation of societies based on justice, equality and solidarity.<sup>7</sup>

24. Memorialization deals with events that took place long ago, such as the slave trade, and violations committed in the recent past or during ongoing conflicts.

## **B. United Nations regulatory framework and standards**

25. States have adopted various instruments that recognize the fundamental role played by memory in creating an environment conducive to coexistence in the wake of violations of human rights and international humanitarian law.

26. It is first necessary to emphasize the general obligation to guarantee the right not to be a victim of serious violations, such as enforced disappearance, arbitrary execution, torture and genocide. The prohibition and prevention of such violations are provided for in the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>8</sup> the International Covenant on Civil and Political Rights,<sup>9</sup> the Convention against Torture and

<sup>7</sup> [https://www.ohchr.org/Documents/Publications/Durban\\_text\\_en.pdf](https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf), para. 106.

<sup>8</sup> Art. 1.

<sup>9</sup> Art. 2.

Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>10</sup> and the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>11</sup>

27. The updated set of principles for the protection and promotion of human rights through action to combat impunity<sup>12</sup> establishes the right to know the truth about such violations (also called the right to the truth) as an individual right of every victim, or his or her family members, and also as a collective right whose “full and effective exercise ... provides a vital safeguard against the recurrence of violations”.<sup>13</sup> The same instrument establishes the duty of States in connection with memory and their responsibility for transmitting history with a view to “preserving the collective memory from extinction and, in particular, ... guarding against the development of revisionist and negationist arguments”.<sup>14</sup>

28. All too often, this fundamental obligation of States remains a dead letter in many societies that have suffered under authoritarian regimes or endured internal conflicts: violence in the present, which is closely bound up with past events, is related to the fact that generations have grown up knowing almost nothing about the past.

29. The updated set of principles for the protection and promotion of human rights through action to combat impunity, formulated by Louis Joinet and his successor, Diane Orentlicher, supplements the principles developed by the Special Rapporteur of the Subcommission, Theo van Boven,<sup>15</sup> and updated by the Special Rapporteur of the Commission on Human Rights, Cherif Bassiouni,<sup>16</sup> which formed the basis for the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in resolution 60/147.

30. In this resolution, which was adopted by consensus in 2005, the General Assembly recalled that memorialization processes are also part of the right to reparation. The resolution specified that satisfaction should include the following measures: verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims; and the inclusion of accurate information on violations in training courses on international human rights law and international humanitarian law and in educational materials used at all levels.

31. In societies that have suffered gross violations of human rights or serious violations of international humanitarian law, the general obligation to safeguard human rights acquires a distinct and particular dimension insofar as it relates to memory processes. The duty to carry out memory processes in such cases derives from primary (covenants and conventions) and secondary (principles and guidelines) sources of international human rights law. It must also be stressed that memory processes cut across all aspects of full reparation – especially the dimensions of satisfaction and guarantees of non-recurrence – as a new obligation arising from the violations committed.

#### IV. Memory as a battlefield

32. Memorialization takes many forms and should be a tool for fostering recognition of otherness, the consideration of all persons as rights holders and the promotion of peace, justice and social coexistence. But it is also part of a broader cultural framework in which different visions, values and narratives come together. Culture is a prism through which we

<sup>10</sup> Art. 2 (1).

<sup>11</sup> Preamble, seventh para.; the substantive articles contain several provisions concerning the duty of prevention.

<sup>12</sup> E/CN.4/2005/102/Add.1, report by Diane Orentlicher, building on work previously carried out by Louis Joinet.

<sup>13</sup> Principle 2: The inalienable right to the truth.

<sup>14</sup> Principle 3: The duty to preserve memory.

<sup>15</sup> E/CN.4/1997/104.

<sup>16</sup> E/CN.4/2000/62.

perceive the world and other people perceive us. Celebrating certain pieces of music; glorifying certain events, heroes or heroines, whether real, mythological or fictional; and repudiating other events form perceptions and help to define relationships.<sup>17</sup>

33. Conversely, the logic of marginalization, exclusion, negative stereotyping, dehumanization and denialism makes perverse use of these instruments, with the opposite results.

34. The legal and regulatory framework for transitional justice has changed radically over the period between its origins and the present day. The current view is that transitional justice processes must be focused on and implemented in line with the effective fulfilment of States' human rights obligations.<sup>18</sup>

35. States must play an active and decisive role in this area, in accordance with international standards. The Special Rapporteur concurs with the view of the Inter-American Commission on Human Rights, which recommends the adoption of comprehensive public policies on memorialization.<sup>19</sup>

36. As a part of transitional justice, memory must take and be consistent with a human rights approach. The purpose of the proper use of memory is to establish “a dialogic truth”,<sup>20</sup> that is, to create the conditions for a debate within society on the causes and consequences of past crimes and violence and on the attribution of direct and indirect responsibility. This makes it possible to go beyond “completely separate and unreconciled accounts of what had happened”<sup>21</sup> and thus narrow “the range of permissible lies”.<sup>22</sup>

37. The aim is to enable victimized populations to explain a brutal past without justifying it, thereby easing existing tensions and allowing society to live more peacefully with the legacy of past divisions. Without falling prey to a dangerous relativism or establishing a homogeneous way of thinking, different narratives and interpretations of past violence can coexist in a democratic society, and this feeds into the dynamics of social reconstruction.

38. The process referred to in the previous two paragraphs should never result in the denial or downplaying of the violations committed, nor should it give rise to scepticism about the findings of truth commissions and/or legal proceedings, which provide a verified minimum record of violations, whose real number, in practice, is usually much higher. The voices of the victims of human rights violations must play a key role in the construction of memory, thereby avoiding the distortions that the perpetrators may attempt to impose.

39. In specific cases involving armed conflict between different groups, including tribal or ethnic groups, the process of memory must not give rise to competition between victims. This occurs when certain groups receive the backing of the authorities while others are marginalized, either deliberately or because they do not have sufficient sway in political circles or the media to make their voices heard in the public arena.

40. Memory processes related to armed conflict can lead to the manipulation of history and the cult of martyrdom, which tends to reopen past wounds, intensify hatred and incite new acts of violence. The 2010 report on the mapping exercise documenting the human rights violations committed between 1993 and 2003 within the territory of the Democratic Republic of the Congo warns of the dangers of vengeful memorialization.<sup>23</sup> Similarly, the

<sup>17</sup> Examples include works of fiction such as the television series *Derry Girls*, which gave Irish and British teenagers a better understanding of the conflict in the north of the island, and the television miniseries *Holocaust*, which has resonated around the world since 1978.

<sup>18</sup> Salvioli, Fabián, “La justice transitionnelle aujourd’hui”, in Julián Fernández and Olivier de Frouville (eds.), *L'hirondelle et la tortue. Quatrièmes journées de la justice pénale internationale*, pp. 109–114, Paris, Pedone, 2020.

<sup>19</sup> “Principles on Public Policies on Memory in the Americas”, resolution 3/2019, adopted on 9 November 2019.

<sup>20</sup> Sachs, Albie, *The Soft Vengeance of a Freedom Fighter*, Berkeley, University of California Press, 2000.

<sup>21</sup> Ibid.

<sup>22</sup> Ignatieff, Michael, “Articles of faith”, *Index on Censorship* 5, 1996, p. 111, available at <https://journals.sagepub.com/doi/pdf/10.1177/030642209602500522>.

<sup>23</sup> [www.ohchr.org/Documents/Countries/CD/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf), para. 111.

Working Group on Enforced or Involuntary Disappearances concluded, in the report on its mission to Bosnia and Herzegovina, that the inability of minorities in different parts of the country to build memorials has caused much controversy and unhappiness in the country.<sup>24</sup>

41. Memory work can also lead to abuse or even to the so-called “tyranny of memory”<sup>25</sup> when the message conveyed has the aim of confining people to their status as victims in the name of past violence in order to justify and incite new acts of violence. In societies in conflict, irresponsible political leaders often construct narratives out of past defeats, in some cases inflicted many centuries ago, in order to stir up the emotions of their fellow citizens and awaken a desire for revenge based on the memory of these humiliations. Shedding light on past events, acknowledging responsibility and bringing the perpetrators to justice are the best antidotes to the manipulation of the past and the glorification of violence. Such measures also serve as the basis for genuine and lasting peace with no impunity.

## V. Memorialization in times of conflict

### A. Temporality

42. Over the past 30 years, dozens of truth commissions and commissions for investigating and establishing the facts of mass violations of human rights and international humanitarian law have been established and numerous criminal tribunals have been set up to try war crimes and other international crimes. These instruments are of recognized educational importance and exemplary value in relation to crimes that humanity “can neither punish nor forgive”<sup>26</sup> because of their magnitude, although justice can, and must, be done in respect of them. The role that these bodies play in preventing the recurrence of such crimes must also be highlighted.

43. The issue of memory is one of the main reasons for the existence of these transitional justice mechanisms. This dimension of memory forms part of a medium- and long-term process, since, in the wake of mass violence, the task of democratically rebuilding a community can take decades or even generations.

### B. Limits of transitional justice

44. Notwithstanding the foregoing, experience shows that immediate action is hardly ever taken to approach crimes through the prism of education and to identify them as examples of conduct to be repudiated. Many obstacles prevent this from happening: for example, truth commissions and special criminal courts are sometimes set up while the conflict is ongoing, international crimes continue to be committed, and warring groups continue to disseminate their warmongering propaganda. In such conditions, memorialization is extremely difficult.

45. In recent years, in places such as the Central African Republic, Mali and the Syrian Arab Republic, a number of criminal and non-criminal transitional justice mechanisms have been established in very complex circumstances. During ongoing conflicts, States are unable to exercise their authority throughout their territories and, in many cases, are themselves responsible for the commission of serious violations of human rights and/or international humanitarian law.

46. Investigation and documentation processes that take place during conflicts are very valuable because they involve the collection of evidence and testimonies that will subsequently prove to be highly important. New technologies, in particular satellites, have

<sup>24</sup> A/HRC/16/48/Add.1, para. 48.

<sup>25</sup> Todorov, Tzvetan, *Les abus de la mémoire*, Paris, Arléa, 1995.

<sup>26</sup> Hannah Arendt–Karl Jaspers, *Correspondence, 1926–1969*, letter of 17 August 1946, quoted by Claudia Hilb, “Des crimes que l’on ne peut ni punir ni pardonner. Penser avec Arendt, dans le débat sur le passé récent en Argentine”, University of Paris-Diderot, available at <http://lcsp.univ-paris-diderot.fr/Arendt/pdf/hilb.pdf>.



shed light on certain events, making it possible to identify mass graves following the massacres in Srebrenica and, more recently, to uncover serious violations of human rights and international humanitarian law committed in Myanmar, the Syrian Arab Republic and the Sudan.

47. However, these documentation processes are complex and dangerous. In different parts of the world, human rights defenders, journalists and other persons who document violations have been attacked and killed. In some cases, there have even been “preventive” killings of such persons by assailants seeking to prevent the documentation of future crimes.

48. Efforts to ensure prevention and non-recurrence through education are even more difficult while conflicts are still ongoing, but this work is of great importance once the weapons have been laid down.

### C. Managing victims’ expectations

49. It is now possible to establish and document serious violations of international humanitarian and human rights law more immediately and effectively than ever before. However, this essential work may paradoxically aggravate the victims’ feelings of abandonment and impotence by highlighting the international community’s ineffectiveness in putting an end to such violations. During a conflict, transitional justice mechanisms must be sure-footed in their dealings with victims.

50. In times of conflict, transitional justice mechanisms must deal as best they can with the fact that they are unable, at least temporarily, to meet the unsatisfied expectations of the victims and communities on whose behalf they were created. An example of innovation in this regard is the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011,<sup>27</sup> which has taken a number of measures to respond adequately to victims’ needs and has also cooperated with national jurisdictions prosecuting the perpetrators of international crimes,<sup>28</sup> established procedures for regularly informing victims’ representatives about investigations, conducted studies on expectations and how best to meet them, and ensured that victims who testify have given their prior consent and agreement and that precautions are taken to guarantee their safety.

## VI. Memory work in situations of transition

### A. The challenge of ownership

51. When peace and/or democracy are finally restored, the educational goal of memorialization is not always achieved through transitional justice mechanisms. Although the act of prosecuting the perpetrators has enormous value for memory processes, the judgments handed down by an international or hybrid criminal court are not in themselves sufficient to change perceptions within societies. Decisions often run to hundreds of pages and are written in legal language that is not easily accessible to the general public. It has sometimes taken years to have such judgments translated into national languages.

52. For example, during its 25 years of existence (1993–2017), the International Tribunal for the Former Yugoslavia succeeded in apprehending and prosecuting many individuals, including heads of State, ministers, generals and other prominent political and military leaders of various parties. The case law of this Tribunal and of the International Criminal Tribunal for Rwanda has played an absolutely vital role in raising awareness of gender-based violence<sup>29</sup> and of other aberrant acts.

<sup>27</sup> A/73/741.

<sup>28</sup> As of January 2020, about a dozen States had submitted 41 requests to the Mechanism.

<sup>29</sup> See International Tribunal for the Former Yugoslavia, *Mucić et al.*, *Kunarac et al.*, *Šainović et al.* and *Dorđević*.

53. Despite the undeniable legal successes of the International Tribunal for the Former Yugoslavia, which were supplemented by the punitive measures taken by the War Crimes Chamber in Bosnia and Herzegovina and other national courts, it has not been possible to change the narrative established by the propaganda machines set up during the war in the societies of the former Yugoslavia or to curb denialism and hate speech, all of which are being vigorously echoed today.

54. One of the main lessons learned from the functioning of the Tribunal was that “the idea that simply flooding the public with technical information on the transitional justice mechanism’s mandate, procedures and activities is sufficient to ... create reservoirs of popular support is sheer fantasy.”<sup>30</sup> It was not until six years after the Tribunal’s establishment that an outreach office was set up, and it would take even longer for that office to have a permanent presence on the ground from which to carry out its work in the republics of the former Yugoslavia. The toxic political culture there is still resistant to change, which is why truth commissions and courts must not isolate themselves from other mechanisms required to engage meaningfully with society.

55. The Truth and Reconciliation Commission in South Africa was established when the democratization process was already under way in that country. Its immense merit lay in its ability to project and imagine a different future, making the act of addressing the crimes of apartheid an indispensable step in transforming race relations within South African society. The Commission’s approach was not technical but political, in the best sense of the word, and this enabled it to rally a sufficiently broad range of supporters around it, including victims’ groups, the media, politicians, academics, trade unionists and others, to the point where this positive dynamic attracted and held everyone’s attention. However, the Commission did not tackle head-on the issue of structural violence linked to the policy of apartheid, and its work was not accompanied by the prosecution and conviction of the perpetrators of atrocity crimes, leaving the victims without justice.

56. Justice alone, like the absence of justice, is not sufficient for the requirements of memory. These two examples show that memorialization must be part of a comprehensive transitional justice process in which the participants effectively address all components without losing sight of the goal of establishing democracy and a culture of peace. Those who lead transitional justice processes must form alliances with different civil society actors to help change a toxic political culture of violence, confrontation and marginalization. In order to make a useful contribution to the ownership of memory work, transitional justice processes must move away from a purely technocratic approach and forge bonds with civil society.

57. The Nuremberg trials held immediately after the Second World War did not transform German society on their own. That purpose could not have been accomplished without the additional trials held by the German courts from the 1960s onward and, subsequently, the thousands of books that were published, the thousands of student visits to concentration camps, and the dozens of documentaries and television drama series that were produced about the Holocaust. All this was essential to the task of recognizing the crimes committed by the Nazis and of democratically transforming society.

## **B. Good practices**

58. Memorialization is a long-term process to which other tools of transitional justice can contribute. Its success partly depends on whether the authorities in charge of the public space adopt and implement policies on memory that represent different points of view and foster good collaboration with civil society, whose actions mobilize groups of people, launch initiatives and debates and facilitate the taking of ownership by the public.

59. One very fruitful approach to memorialization is to focus on understanding the mechanisms of oppression and dehumanization that always precede large-scale violence,

<sup>30</sup> Institute for Integrated Transitions, “Changing the Narrative: The Role of Communications in Transitional Justice”, 2019, available at <https://www.ifit-transitions.org/publications/major-publications-briefings/changing-the-narrative-the-role-of-communications-in-transitional-justice/changing-the-narrative-en.pdf/view>.

opening up a broad debate on the causes and consequences of past violence and on the need to build a different future. Society must be given the opportunity to acquire a clear idea of the context that made it possible for mass violations of human rights and/or international humanitarian law to occur.

60. The examples given below are not exhaustive. It is not possible to list all the positive experiences in the area of memorialization, which include literature, the arts, academia, museums and other forums, and can make use of either physical or online means of dissemination. Other examples include the catalytic work of truth commissions, the observance of days to commemorate disappeared persons, and school textbooks.

61. The Truth and Reconciliation Commission of Canada,<sup>31</sup> after establishing the facts about persons who were directly or indirectly affected by the legacy of the Indian Residential Schools, devoted much of its work to the promotion of reflection on this past within society. In Liberia, one of the recommendations of the Truth and Reconciliation Commission was to launch a “memoryscape” that would examine forms of reparation and work on neo-traditional dispute settlement mechanisms. In Sierra Leone, the Truth and Reconciliation Commission launched a national cross-disciplinary project that triggered a broad reflection on the country’s vision for the future. In Argentina, the work of the Truth Commission (the National Commission on Enforced Disappearance of Persons) and criminal prosecutions have helped to forge a common understanding of State terrorism under the military dictatorship.

62. In different countries, works that portray the history of victims and the circumstances surrounding their disappearance or death have served to remind the public of the lives lost to political violence.<sup>32</sup> Books such as *The Northern Ireland Book of the Dead* have had a broad impact, including on the Catholic and Protestant Churches of Ireland, and have made it possible for both communities to share their suffering.

63. The writing of collective history also addresses present and future issues, which is why history books are important for new generations. In addressing inter-State conflicts, historians from opposing countries have in some cases managed to produce a single narrative, while in other cases they have set out a range of mutually irreconcilable views. It is then up to the reader to develop his or her own interpretation of the facts, having had the benefit of access to a range of informed sources. A textbook on Franco-German history by authors from both States was published under the title *Histoire/Geschichte*<sup>33</sup> at the start of the 2006/07 school year. Another reference book worth mentioning is the Israeli-Palestinian work *Histoire de l'autre*, produced by the Peace Research Institute in the Middle East,<sup>34</sup> in which the text is set out in two columns, the first expressing the Palestinian perspective and the second putting forward the Israeli view of the same historical events; a space in the middle is left blank so that students can write their own narrative. A third example is a textbook that describes the wars that took place in the former Yugoslavia during the 1990s, placing them in the context of regional events and providing access to documents on highly controversial historical episodes.<sup>35</sup>

64. Civil society plays an important role in public memorialization activities. In 2019, voices in Lebanon were raised to express the need for dialogue, debate and the reappropriation of memory in the public arena in relation to the conflict that tore the country apart between 1975 and 1990. Walking tours along the route of the “green line” that once separated the communities, photo exhibitions on the civil war, film screenings and countless debates were organized. This swirl of activity has had the effect of transcending traditional community divisions.

<sup>31</sup> <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>.

<sup>32</sup> For example, *The Kosovo Memory Book*, [https://www.kosovskaknjigapamcenja.org/?page\\_id=29&lang=de](https://www.kosovskaknjigapamcenja.org/?page_id=29&lang=de), and *The Northern Ireland Book of the Dead*, <https://www.hotpress.com/opinion/the-northern-ireland-book-of-the-dead-417032>.

<sup>33</sup> <https://www.klett.de/produkt/isbn/978-3-12-416510-7>.

<sup>34</sup> Vidal-Naquet, Pierre and others, *Histoire de l'autre*, Liana Levi, Piccolo collection, No. 55 (February 2008).

<sup>35</sup> [www.cdrsee.org/publications/education/volume-2-wars-divisions-integration-1990-2008](http://www.cdrsee.org/publications/education/volume-2-wars-divisions-integration-1990-2008), and [www.balcanicaucaso.org/eng/Areas/Balkans/The-Balkans-rethinking-history-text-books-177099](http://www.balcanicaucaso.org/eng/Areas/Balkans/The-Balkans-rethinking-history-text-books-177099).

65. Culture in all its forms plays a key role in memory work, as it often allows mechanisms of oppression, confrontation and violence to be deconstructed. The aim is to replace toxic and negative political cultures whose legacies of violence and discrimination persist for decades. In Argentina, civil society and the authorities have carried out numerous activities in the arts, the media and public spaces that have helped successive generations to acquire critical knowledge of the violent past.

66. All these processes must observe the limits on memory practices described in paragraph 16 above.

### C. Follow-up and ownership of the recommendations of truth-seeking mechanisms

67. All too often, the recommendations contained in the final reports of truth commissions are not implemented or disclosed by States. This prevents society from effectively taking ownership of them and leaves gaps in the narratives of the past that can be exploited by political actors who are oblivious to the suffering of victims and the requirements of a peaceful society. Transitional justice mechanisms should not be established for purely cosmetic reasons or as a cover that enables States to avoid carrying out the reforms needed to fulfil their obligations to victims and improve the quality of democracy.

68. During his visit to El Salvador, the Special Rapporteur expressed concern about the long-term consequences of a policy of impunity that has been in place for more than 30 years. Although the Truth Commission recommended that the perpetrators of the most serious crimes committed during the armed conflict should be prosecuted, thereby raising victims' hopes of obtaining justice, the opposite has happened.

This mechanism for impunity was accompanied by an institutional and widespread system to deny and forget the past violations that gouged deep rifts in the social fabric and collective narrative of the Salvadoran people. In this process, the victims of the abhorrent crimes of the past were forgotten and rendered invisible.<sup>36</sup>

69. Unfortunately, this example is far from being unique in the world.

### D. Access to archives

70. Memorialization is linked to the ability to obtain access to archives. The most obvious risk is that some warring groups might deliberately seek to destroy documents that may be compromising or be used as evidence of serious violations of human rights and international humanitarian law. This desire to hide is not new: more than a century ago, King Leopold II of Belgium ordered the destruction of archives<sup>37</sup> documenting the terrible violence committed under his authority in the Congo Free State. Since then, many Governments have tried to eradicate the traces of their crimes. The Special Rapporteur considers the protection of archives to be essential for enabling societies to learn the truth and regain ownership of their history.<sup>38</sup>

71. It is not enough to protect archives. All too often, State bodies linked to security structures refuse to cooperate fully with transitional justice mechanisms or to make their archives available. This has occurred in Morocco, where the Equity and Reconciliation Commission was denied access to certain archives belonging to the security services. In some countries, such as El Salvador, it is still practically impossible to obtain access to military archives related to specific crimes, over 30 years after they occurred, owing to the

<sup>36</sup> Preliminary observations of the Special Rapporteur following his official visit, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24557&LangID=E>.

<sup>37</sup> Van Grieken, E. and Madeleine van Grieken-Tavernier, *Les archives inventoriées au Ministère des Colonies*, 21 May 1957, available at [www.kaowarsom.be/en/memoir\\_156](http://www.kaowarsom.be/en/memoir_156).

<sup>38</sup> As a positive example, Switzerland and organizations such as Swisspeace have undertaken to protect endangered archives in several countries.

lack of cooperation by the authorities who hold them.<sup>39</sup> This contrasts with the exemplary attitude of the German authorities, who have opened the archives of the Stasi (the Ministry of State Security of the former German Democratic Republic).<sup>40</sup>

72. The development of new technologies has created additional difficulties. The mechanism for the Syrian Arab Republic alone has collected over 2 million documents, including videos and testimonies related to violations of the laws of war, representing 41 terabytes of information. Managing this volume of information requires an adequate budget and specific expertise. Procedural standards for processing such voluminous archives should be developed within the United Nations.

## **E. Role of the United Nations**

73. The United Nations can play a very important role in memory work. Since its establishment, its agencies and organs have built up extensive and valuable archives in the countries where they have operated. These documents can provide a unique insight into violations of human rights and international humanitarian law and contribute to the historiography of different countries.

74. Within the institution itself, other actors, including the special procedure mandate holders of the Human Rights Council, do not always have access to these archives. In theory, all documents, except those considered to be highly confidential, are made accessible to the public after 20 years. In practice, however, this does not always occur for technical and budgetary reasons and because the resources required to process and digitize them are lacking.<sup>41</sup> The rules should be revised: in some cases, the importance of shedding light on past events may take precedence over the time limit, provided that the circumstances so permit and that mechanisms can be established to protect the identities of vulnerable persons mentioned in the documents concerned.

75. The report of the United Nations and the Economic Community of West African States on the deaths of 50 Ghanaian citizens and migrants in the Gambia under the dictatorship of Yahya Jammeh has never been published, even though five United Nations special procedure mandate holders have requested it and its release is hugely important for the societies of two countries.<sup>42</sup>

76. Given the importance of issues related to memory for societies seeking to recover from serious conflicts or periods of repression in which human rights and/or international humanitarian law were violated, the United Nations must uphold these societies' right to the truth by establishing a useful methodology for granting access to its archives. The Organization cannot neglect a principle and an obligation that it has itself identified and with which it calls on States to comply.

## **VII. Weaponization of memory through social networks**

### **A. Balance between the right to information and the prohibition of incitement to hatred**

77. Historically, information and memory have been critical political issues. The media play a vital role in documenting crucial events and reporting on them in real time: the

<sup>39</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24557&LangID=E>.

<sup>40</sup> See Federal Commissioner for the Archives of the Ministry of State Security of the German Democratic Republic, [www.bstu.de/en/](http://www.bstu.de/en/).

<sup>41</sup> By way of example, it is difficult in practice to obtain access to the archives of the El Salvador Truth Commission, which are held by the United Nations.

<sup>42</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24138> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24141>.

presence of four journalists in Guernica<sup>43</sup> during the Spanish Civil War made it possible to report on the first aerial bombing and destruction of a city, establishing the truth about the attack carried out by the German and Italian air forces while Franco's propaganda machine was blaming communist or anarchist "dynamiters". The articles by Roy Gutman published in *New York Newsday*<sup>44</sup> in July 1992 informed the world about the existence of the infamous prison camps in Bosnia and Herzegovina. The Rwandan genocide was also documented in real time by the press in 1994.<sup>45</sup> More recently, journalists working for the Reuters news agency spent over 500 days in prison for reporting on the atrocities committed against the Rohingya in Myanmar.<sup>46</sup>

78. The Special Rapporteur is deeply concerned about the possible dangerous manipulation of information and memory to the detriment of human rights, the stigmatization of certain communities and hate speech that encourages the commission of violent acts and even mass violence.

79. Discriminatory, racist, ultra-nationalist and hate-filled speech abounds in the world. Incitement to violence also proliferates on social networks, fuelling the polarization and radicalization of social behaviour, including violent acts. Specific State actions are needed to respond to these challenges.

80. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence<sup>47</sup> provides valuable guidance to ensure the indispensable right to freedom of expression<sup>48</sup> and the fulfilment of States' obligation to prohibit any expression that constitutes hate speech or incitement to discrimination, hostility or violence.<sup>49</sup> The Rabat Plan of Action identifies six criteria for defining acts that constitute incitement to hatred and are therefore offences that must be prohibited. These are:

- (a) The context, which has a direct bearing on causation or intent;
- (b) The speaker's position;
- (c) The object or intent, which requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience;
- (d) The content of the speech act;
- (e) The extent of the speech act, such as its public or non-public nature and the media used to disseminate it;
- (f) The likelihood, including the imminence, of a direct causal link between the hate speech and specific acts of violence.

81. The Special Rapporteur stresses that the right to information or any other human right may not be used as a pretext to justify acceptance of the advocacy of hatred.

## B. Criminal responsibility of ideologues and propagandists

82. The responsibility of ideologues and propagandists was clearly established as early as 1946 by the International Military Tribunal in Nuremberg, which convicted Julius

<sup>43</sup> Four journalists went to Guernica on the same day: George Steer (*The Times* (London) and *The New York Times*), Noel Monks (*The London Daily Express*), Christopher Holme (Reuters) and Mathieu Cormon (*Ce Soir*).

<sup>44</sup> Roy Gutman, *New York Newsday*, "Hidden Horror", 19 July 1992; "Witness tells of Serbian Death Camp", 19 July 1992; "For Muslims, Misery", 21 July 1992.

<sup>45</sup> See in particular the French media in 1994, Marc Le Pape, "Des journalistes au Rwanda. L'histoire immédiate d'un génocide", in Claudine Vidal and Marc Le Pape (eds.), "Les politiques de la haine: Rwanda, Burundi, 1994-1995", *Les Temps Modernes*, No. 583, July-August 1995, pp. 161-180.

<sup>46</sup> [www.voanews.com/world-press-freedom/profiles-reuters-journalists-who-exposed-myanmar-atrocities](http://www.voanews.com/world-press-freedom/profiles-reuters-journalists-who-exposed-myanmar-atrocities).

<sup>47</sup> A/HRC/22/17/Add.4.

<sup>48</sup> International Covenant on Civil and Political Rights, art. 19.

<sup>49</sup> *Ibid.*, art. 20; International Convention on the Elimination of All Forms of Racial Discrimination, art. 4.

Streicher, the founder of the anti-Semitic newspaper *Der Stürmer*. The Tribunal ruled that Streicher's incitement to murder and extermination at the time when Jews were being killed under the most horrible conditions clearly constituted persecution on political and racial grounds in connection with war crimes, as defined by the Charter, and constituted a crime against humanity.

83. The International Criminal Tribunal for Rwanda also imposed severe penalties on two officials of Radio-Télévision Libre des Mille Collines<sup>50</sup> and the presenters employed by that station for direct and public incitement to commit genocide and for persecution as a crime against humanity on the grounds that hate media had played a key role in the instigation of genocide. The Tribunal found a direct link between hate media and the killing of hundreds of thousands of Tutsis.

84. The impunity of ideologues and spreaders of hateful and discriminatory speech facilitates the construction of a false memory that is morally repugnant and that contributes to and encourages violence.

### C. Responsibility of the media and the need to adapt laws

85. National and international law must be able to respond adequately to the development of information technology. Social media that transcend borders pose unprecedented challenges, as technology companies may be based thousands of miles from the places where hate speech originates and where civilian populations suffer its violent consequences.

86. The final report of the independent international fact-finding mission on Myanmar established that incitement to hatred through social networks and other non-electronic media was correlated with violence against the Rohingya:

The Mission received information suggesting that the linkage between offline and online hate speech and real world acts of discrimination and violence is more than circumstantial. Patterns are emerging of hate speech sermons and rhetoric in specific locations that have subsequently experienced violence, and so are indications of peaks of online hate speech around outbreaks of violence. Such patterns and indications need to be comprehensively examined.<sup>51</sup>

87. The Special Rapporteur believes that, even when technology companies do not intend to engage in criminal acts, they cannot be absolved of responsibility for providing tools for the transmission of messages that may cause acts of violence to be inflicted on tens or even hundreds of thousands of people. There can be no justification for allowing social media companies to escape responsibility when they are found to have acted negligently and to have facilitated and/or permitted the dissemination of hate speech on their networks, inciting acts of violence that constitute international crimes.

### D. Fake news

88. Equally worrying is the mass dissemination of fake news that can create an atmosphere in which people are at risk of becoming dangerously radicalized, making coexistence difficult. False information is not an exception or hiccup in the democratic process; it reveals and exacerbates the collapse of values and the dissolution of societies. Its appearance in the public sphere must therefore be treated with concern because, as history shows, it has previously been a harbinger of tragedies, bloodshed and pogroms.

89. The situation is particularly serious in fragile States, where institutions are often weak and politicians use sectarian discourse – based on affiliation with an ethnic group, religion, community or clan – and fake news to manipulate identities with the aim of stirring up emotions and setting the stage for violent conflict. In this way, memory and information can easily be weaponized.

<sup>50</sup> *Nahimana et al. (Media case)* (ICTR-99-52), International Residual Mechanism for Criminal Tribunals, available at <https://unictr.irmct.org/en/cases/ictr-99-52>.

<sup>51</sup> A/HRC/39/CRP.2, para. 1326.

90. Serious media outlets have systems for monitoring information at the source, with regard to their own output. For example, *The New Yorker*, since its establishment in the 1920s, has been known for the rigour and discipline of its fact checkers. These days, however, the media are not generally known for such qualities. In recent years, the issue has taken on a new dimension with the erosion of media credibility, the emergence of 24-hour news channels, the rise of the Internet and the power of social networks that are rife with rumours and conspiracy theories, all of which increases the need for information to be checked. Such fact checking as there is has been unable to change the beliefs and behaviour of persons who consume and spread fake news.

91. Some States have enacted – or tried to enact – rules to regulate the Internet, particularly with a view to curbing hate speech and fake news. In 2018, the Act to Improve Enforcement of the Law in Social Networks (NetzDG),<sup>52</sup> which provides for heavy fines for platforms that do not remove hate speech, came into force in Germany. In late 2020, the German Government is expected to conduct a study of the Act’s impact. In late 2018, France promulgated a law prohibiting the manipulation of information,<sup>53</sup> but there are doubts about its effectiveness.

## E. Media education

92. Media and information education in schools is essential to counteract the harm and havoc caused by fake news, to address the credibility crisis affecting media outlets – which should be more rigorous – and to prevent the State from intervening more than it should in regulating information. Through education, students are taught to decipher information and images, sharpen their critical thinking skills and form their own opinions. These abilities are essential for the exercise of enlightened and responsible citizenship in a democracy where freedom of expression is upheld.<sup>54</sup> One of the priorities of the previous European Commission was media literacy, along with the adoption of codes of conduct by major digital platforms.

## F. The moral climate of an age

93. The dissemination of hate speech and fake news is part of a broader trend marked by attacks on multilateralism and human rights and the rise of exclusionary and xenophobic ideologies based on nationalistic self-interest. In 1942, Stefan Zweig finished writing *The World of Yesterday*, in which he critically described the moral climate of the age as the suicide of Europe caused by “the most terrible defeat of reason”. The moral climate of an age, when it is pernicious, allows the manifestation of ideas and behaviour that were hitherto considered repugnant because they were unacceptable to democracy and human ethics.

94. In the foreword to the United Nations Strategy and Plan of Action on Hate Speech, the Secretary-General, in addition to denouncing the rise of xenophobia, racism, intolerance, antisemitism, Islamophobia and the persecution of Christians, makes a disturbing observation:

Social media and other forms of communication are being exploited as platforms for bigotry. Neo-Nazi and white supremacy movements are on the march. Public discourse is being weaponized for political gain with incendiary rhetoric that stigmatizes and dehumanizes minorities, migrants, refugees and any so-called “other”. This is not an isolated phenomenon or the loud voices of a few people on the fringe of society. Hate is moving into the mainstream – in liberal democracies

<sup>52</sup> See [www.lemonde.fr/pixels/article/2019/07/04/lutte-contre-la-haine-en-ligne-l-impossible-bilan-de-la-loi-allemande\\_5485218\\_4408996.html](http://www.lemonde.fr/pixels/article/2019/07/04/lutte-contre-la-haine-en-ligne-l-impossible-bilan-de-la-loi-allemande_5485218_4408996.html).

<sup>53</sup> Available at [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037847559&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037847559&dateTexte=&categorieLien=id).

<sup>54</sup> For example, at the Centre for Media and Information Literacy in France, [www.clemi.fr/](http://www.clemi.fr/).



and authoritarian systems alike. And with each broken norm, the pillars of our common humanity are weakened.<sup>55</sup>

95. In places where there are ongoing conflicts – particularly the Syrian Arab Republic and Yemen – the United Nations, the International Committee of the Red Cross, other humanitarian and human rights organizations, independent media outlets and even private individuals have documented the bombings of numerous hospitals, schools and other protected sites in total disregard of international law. However, the reporting of these atrocities and the subsequent protests have neither changed the behaviour of the warring groups<sup>56</sup> nor led the Security Council to intervene appropriately.

## VIII. Progressive development of memory and non-regression

96. Progressivity is a principle that informs international human rights law from a *pro personae* perspective.<sup>57</sup> Memorialization processes must also be progressively developed: progress must be made in the search for the truth and in the active establishment of policies on memory with regard to serious violations of human rights and grave breaches of international humanitarian law that have occurred. Such policies require the establishment of programmes at all levels of formal and informal education, both as a human rights obligation and with a view to preventing future violations by moving towards a culture of peace. It is also essential to encourage new memory processes reflecting contemporary human rights perspectives, such as the gender perspective, and to review memory processes that have not taken account of it in order to ensure that it is properly incorporated.

97. There can be no regression or reversal: the denial of extermination policies such as the Holocaust, genocides and other crimes against humanity committed in the past, as well as the whitewashing or praise of the regimes that carried them out, must be fully repudiated and deemed unacceptable. Governments and other public authorities must refrain from giving voice to such ideas, which are unethical and revictimize victims, offend the international community and violate States' international obligations. The Special Rapporteur has expressed his deep concern about statements made by the President of Brazil vindicating the military dictatorship that ravaged that country and calling the Truth Commission's report into question.<sup>58</sup>

98. In this regard, any memorialization policy that is designed and implemented must be bound by the obligation not to distort or diminish the conclusions of legitimate mechanisms established to shed light on the events – truth commissions – and/or of any tribunals that have tried and convicted those responsible for them.

## IX. Conclusion and recommendations

**99. The obligation to adopt memorialization processes in societies that have suffered gross violations of human rights and serious violations of international humanitarian law derives from both primary and secondary sources of international human rights law and therefore cannot be circumvented by Governments on the basis of budgetary, political or structural arguments or claims that efforts should be focused on other areas of transitional justice.**

<sup>55</sup> [https://www.un.org/genocideprevention/documents/advising-and-mobilizing/Action\\_plan\\_on\\_hate\\_speech\\_EN.pdf](https://www.un.org/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf).

<sup>56</sup> [www.icrc.org/en/document/yemen-attacks-health-care-facilities-must-stop](http://www.icrc.org/en/document/yemen-attacks-health-care-facilities-must-stop).

<sup>57</sup> Salvioli, Fabián, “La perspectiva *pro personae* como método hermenéutico para la aplicación del derecho internacional de los derechos humanos”, in Jon-Mirena Landa Gorostiza (ed.), *Retos emergentes de los derechos humanos: ¿garantías en peligro?*, pp. 31–41, Valencia, ed. Tirant lo Blanch, 2019.

<sup>58</sup> President Jair Bolsonaro attacked the work carried out by the Truth Commission, which had shed light on 443 murders and enforced disappearances committed by the military dictatorship. See the Special Rapporteur's press release at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24431&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24431&LangID=E), and Naiara Galarraga Gortázar, “El presidente Bolsonaro cuestiona la verdad oficial sobre la dictadura de Brasil”, *El País*, 31 July 2019, [elpais.com/internacional/2019/07/30/actualidad/1564516182\\_689279.html](http://elpais.com/internacional/2019/07/30/actualidad/1564516182_689279.html).

100. Transitional justice systems require vigorous and active memory policies based on human rights approaches in order to adequately address past crimes committed by dictatorial or authoritarian regimes or crimes perpetrated in the context of an armed conflict. Without memory, the rights to truth, justice and full reparation cannot be fully realized and there can be no guarantees of non-recurrence.

101. Memory processes related to gross violations of human rights and serious violations of international humanitarian law constitute the fifth pillar of transitional justice.

102. Memory processes complement but do not replace mechanisms for truth, justice, reparation and guarantees of non-recurrence. Memory mechanisms should never serve as a pretext for granting de jure or de facto impunity to the perpetrators of gross violations of human rights or serious violations of international humanitarian law.

103. Progressivity is a principle that informs international human rights law from a pro personae perspective. Memorialization processes must also be progressively developed so as to move forward in the search for truth and in effectively establishing memory policies concerning past violations, while considering different groups of victims and duly reflecting a gender perspective. The principle of non-regression in relation to memory processes places a limit on denialist or revisionist theories that seek to deny the extent of past violations and the harm caused to victims.

104. Memorialization is a long-term process in which the State must play an active and decisive role. The authorities that adopt and implement memory policies should ensure that such policies properly represent the views of the victims and are established in collaboration with civil society, especially human rights organizations.

105. Public policy on memory should be multidimensional and include measures related to public spaces (memorials, parks, squares, etc.), artistic expressions (museums, plays, concerts, pictorial exhibits, etc.), media initiatives, and State-sponsored public events and activities held on significant dates. In the area of education, programmes under such policies should be established at all levels of formal and informal education and steps should be taken to build a culture of peace.

106. Memory processes cut across all aspects of full reparation – especially the dimensions of satisfaction and guarantees of non-recurrence – as a new obligation for States arising from the violations committed.

107. The memorialization of past times defined by violations of human rights and international humanitarian law provides an opportunity to reflect on the present and identify contemporary problems related to exclusion, discrimination, marginalization and abuses of power, which are often linked to toxic political cultures. Memorialization promotes the development of a culture of democracy and respect for human rights.

108. The purpose of the proper use of memory is to establish a “dialogic truth”, that is, to create the conditions for a debate within society on the causes and consequences of past crimes and violence and on the attribution of direct and indirect responsibility. Memory processes cannot, under any circumstances, deny or attempt to detract from violations and crimes that have been verified by truth commissions and/or legal proceedings. Such a deceptive exploitation of memory is unacceptable and contrary to international human rights obligations.

109. The voices of victims of human rights violations must play a key role in the construction of memory. This will also help to counteract attempts at denialism, revisionism and manipulation by the perpetrators of violations and by political groups or interests that seek to rekindle violence. The public authorities must refrain from making denialist statements that whitewash violations and revictimize victims.

110. The purpose of memory processes in post-conflict situations is to allow victimized populations to make sense of a brutal past, avoid vengefulness, come to terms with past divisions, repudiate the crimes committed, support justice mechanisms and, through the lessons learned, alleviate existing tensions, allowing society to live peacefully going forward.

111. Although memorialization and, in particular, the documentation of crimes and human rights violations in times of conflict are essential, they require that victims be treated appropriately. Victims should play a leading role in the process, be kept regularly informed and have their expectations met as far as possible for as long as the violence continues.

112. In transitional contexts, memorialization processes can be effective only if they pursue the political goal of establishing democracy and a culture of peace. Advocates of transitional justice mechanisms should form alliances with different civil society actors and help to change a toxic culture of political violence, confrontation and marginalization.

113. In order for memorialization processes to be effective, it is essential to protect the archives of State agencies and civil society organizations, especially those that work in the area of human rights. Archives should be accessible in accordance with established standards, and Governments should remove obstacles to such access.

114. The United Nations should establish procedures for sharing its own archives, which are important for shedding light on the past for many societies, thereby helping to uphold the right to the truth. Specifically, it should set up an efficient access methodology, with priorities defined in accordance with the purpose of investigations, in order to allow societies to learn more about their own history.

115. National legislation should be adapted to reflect technological developments. Hate speech that leads to violence cannot be accepted on the pretext that social networks are the entities that spread such statements. While freedom of expression must be guaranteed, criminal acts that constitute incitement to hatred must be banned and persons responsible for acts of discrimination, hostility or violence must be punished in accordance with international standards. Formal education in schools, colleges and universities should incorporate media and information literacy content that enables students to analyse information, sharpen their critical faculties and develop informed opinions, while ensuring full respect for human rights.

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