Nations Unies A/HRC/48/60/Add.1

Assemblée générale

Distr. générale
5 août 2021
Français
Original : anglais

Conseil des droits de l'homme
Quarante-huitième session
13 septembre-1er octobre 2021
Point 3 de l'ordre du jour
Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement

Suivi des visites en Tunisie, en Uruguay et en Espagne

Rapport du Rapporteur spécial sur la promotion de la vérité, de la justice, de la réparation et des garanties de non-répétition, Fabián Salvioli*, **

Résumé

Le Rapporteur spécial sur la promotion de la vérité, de la justice, de la réparation et des garanties de non-répétition, Fabián Salvioli, soumet le présent rapport dans le cadre du suivi des visites officielles effectuées par son prédécesseur en Tunisie (2012), en Uruguay (2013) et en Espagne (2014).

Dans ce rapport, le Rapporteur spécial évalue l'état de la mise en œuvre des recommandations contenues dans les rapports de visite des pays et examine l'évolution de la situation dans ce domaine depuis les visites. Cette évaluation est censée aider les États, la société civile et les autres parties prenantes importantes à faire le point sur les progrès réalisés et sur les domaines qui nécessitent une action supplémentaire.

* Il a été convenu que le présent rapport serait publié après la date normale de publication en raison de circonstances indépendantes de la volonté du soumetteur.

** Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, joint en annexe, est distribué dans la langue originale seulement.

Annex

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli on his visits to Tunisia, Uruguay and Spain

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I. Introduction

1. Pursuant to Human Rights Council resolution 36/7, the Special Rapporteur on the promotion of justice, reparation and guarantees of non-recurrence, Fabián Salvioli, submits the present report in follow-up to the official visits undertaken by his predecessor, Pablo de Greiff, to Tunisia (2012), Uruguay (2013) and Spain (2014). In the report, the Special Rapporteur provides an assessment of the status of implementation of the recommendations contained in the reports on those visits, and considers related developments that have taken place since the visits.

2. To gather input for the report, in December 2020 the Special Rapporteur sent questionnaires to the States concerned and other relevant actors, including United Nations funds, programmes and specialized agencies and national and international human rights organizations. The Special Rapporteur also issued an open call for submissions, requesting input from civil society and other interested actors. Official replies were received from Spain and Uruguay, and submissions were received from 11 non-governmental organizations and other interested parties. These submissions, together with information provided by United Nations bodies and civil society, as well as desk-based research, form the basis for the present report.

3. The Special Rapporteur thanks all those who responded to his call for submissions for the report, which is intended as a useful reference for States, civil society and other key stakeholders and was prepared in recognition of the importance of continuity in the discharge of the mandate.

II. Follow-up on the visit to Tunisia

4. The former Special Rapporteur conducted an official visit to Tunisia from 11 to 16 November 2012, at the invitation of the Government. In September 2013, he presented his report on the visit[1] to the Human Rights Council at its twenty-fourth session.

5. The Special Rapporteur regrets that the Government did not provide a submission for the preparation of the present report. Comments on the report itself were received from the Government on 14 July 2021. The assessment of the status of implementation of the recommendations contained in the country visit report is summarized in table 1 below.

6. At the time of the former Special Rapporteur's visit, the country was transiting from a long period marked by political repression, corruption and disregard for human rights and freedoms, and the State had started undertaking multiple transitional justice initiatives with an event-based approach, focusing mainly on truth seeking and reparations.

7. On 24 December 2013, the National Constituent Assembly adopted Organic Law No. 53 on the establishment and regulation of transitional justice, which lay the foundation for the creation of a truth commission and the specialized criminal chambers. The Organic Law includes provisions under the five pillars of transitional justice.

8. The Truth and Dignity Commission was formally established on 9 June 2014 to investigate human rights violations committed by the Government of Tunisia between 1955 and 31 December 2013. It concluded its mandate on 31 December 2018, as stipulated in the Organic Law. In a communication dated 30 April 2018, the Special Rapporteur appealed to the Government to allow the Commission a second term in order to bring its work to a satisfactory conclusion. The Government replied that the transitional justice process would continue through the work of the specialized criminal chambers and the fund for the dignity and rehabilitation of victims of the dictatorship, both set up under Organic Law No. 53.[2] In 2020, the Human Rights Committee also noted the insufficient duration of the Commission's mandate.[3]

[1] A/HRC/24/42/Add.1.

[2] See communication TUN 1/2018 and the State response thereto. Available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[3] CCPR/C/TUN/CO/6, para. 11.

9. During its tenure, the Truth and Dignity Commission received 62,720 claims of human rights violations. A total of 16,105 claims related to violations of economic, social and cultural rights; 38,488 related to violations of civil and political rights, including 14,984 grave violations of human rights. Mainly for lack of time and resources, only 205 of those claims were processed and transferred to the 13 specialized criminal chambers. A search and investigation manual was adopted in 2016. The Commission also received 13,586 requests for urgent interventions and issued 537 intervention decisions benefiting victims. The Commission faced continuous procedural and political obstacles, suggesting a weak political will to allow it to deal thoroughly with the country's past. It was reported that the Ministry of the Interior had been reluctant to cooperate with the mechanism and share key information in its custody. The Commission concluded public hearings of victims and witnesses in 2016 and 2017, which are reflected in the Commission's final report, submitted in 2019. Organic Law No. 53 required the adoption of an action plan for the implementation of the Commission's recommendations, within one year of their publication, and the establishment of an ad hoc parliamentary committee to monitor the action plan. Unfortunately, both actions are pending.

10. Article 8 of the same Organic Law provides for the creation of the specialized criminal chambers, with a mandate to adjudicate cases related to gross violations of human rights committed between 1 July 1955 and the issuance of the Organic Law that are referred to it by the Truth and Dignity Commission. The chambers were formally established through Decree No. 2887 of 8 August 2014 and operate within the courts of first instance at the 13 Courts of Appeal across the country. Hearings have been held in all 13 chambers since May 2018. The chambers issued 69 indictments and brought charges against 1,426 suspected perpetrators, in connection with 1,220 victims. A total of 131 files were referred without indictments, as the Commission could not complete the respective investigations.

11. The trials held by the chambers represent a step in the right direction for justice to be delivered eventually for at least some of the victims of past human rights violations and their families. However, the Special Rapporteur is concerned that the work of the chambers is still being hampered by procedural and legal obstacles that compromise the ability of the chambers to adjudicate on cases promptly and efficiently. Such obstacles include: (a) the annual rotation of magistrates, sometimes midway through the adjudication of a case, and the double workload they often face as they also serve as judges for regular jurisdictions; (b) the insufficiency of technical support and training of staff; and (c) the non-execution by the police of subpoenas and other court orders issued by the chambers.[4] The Special Rapporteur is concerned that the turnover of judges and the opaque manner in which the Supreme Judicial Council manages the transfers may compromise the right to a fair trial, cause undue delays in the delivery of justice and undermine the security of tenure of judges. In 2020, the Human Rights Committee expressed concern about the aforementioned obstacles and the low number of cases referred by the Commission.[5] The Government informed the Special Rapporteur that the Supreme Judicial Council had set the strengthening of the chambers as a goal for the period 2020–2021, and training was being provided to the chamber judges.

12. Organic Law No. 53 and Organic Law No. 17 of 2014 established a special regime for the operation of the specialized criminal chambers, which differed significantly from the existing criminal legal framework in that, under Organic Law No. 53, the authority of the Truth and Dignity Commission to investigate crimes and determine which cases would be referred to the chambers was normally entrusted to the Office of the Public Prosecutor, investigating judges and the indictment chamber. Furthermore, the Code of Criminal Procedure does not provide sufficient procedural standing for victims and their families, as required under international human rights law.[6] There is also a lack of clarity regarding the applicable body of law criminalizing certain offences that fall within the jurisdiction of the special criminal chambers, as set out in Organic Law No. 53, but that have not been adequately integrated into the legal criminal framework, such as the crimes of enforced

[4] Related concerns were expressed in communication TUN 2/2021. Available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26008.

[5] CCPR/C/TUN/CO/6, para. 11.

[6] Ibid., para. 12 (c).

disappearance,[7] torture,[8] and excessive use of force.[9] In addition, Tunisian law does not recognize the particular gravity of crimes against humanity as stipulated and defined under international law. The Criminal Code and the Code of Criminal Procedure are both under revision, but these urgent reforms have moved slowly and have yet to be presented to the parliament.

13. Alarmingly, in April 2019 the Minister for Relations with Constitutional Bodies and Civil Society and for Human Rights proposed that the special criminal chambers be abolished and replaced by two new bodies: one on reconciliation and one on settlement, which would have the authority to issue "certificates of reconciliation" that, in turn, would enable prosecutors to present "certificates of amnesty" before the appeals courts, opening the door to immunity from prosecution for serious human rights violations and for financial and economic crimes. The proposed procedure would not guarantee any participation of victims or civil society. The Special Rapporteur, in a joint communication with the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 2 August 2019, expressed concern that the proposed reform would result in impunity and violate the State's international human rights obligations. Bills promoting reconciliation have also been submitted to the National Constituent Assembly for its consideration.

14. As regards reparation, during its tenure the Truth and Dignity Commission ruled in favour of thousands of victims, providing a list of those entitled to receive reparation, and presented a comprehensive reparation scheme (General Framework Decision No. 11 of 2018), following national consultations. However, those decisions have yet to be implemented by the relevant authorities. Five arbitral decisions were awarded by the Court of Appeal to victims of human rights violations through the arbitration and reconciliation mechanism, and the establishment of the fund for the dignity and rehabilitation of victims of the dictatorship was provided for under Organic Law No. 53. While the fund was formally established in February 2018, it has yet to become fully operational – almost seven years after the adoption of the law. The Government has a legal and moral obligation to ensure that the victims of serious abuse have prompt and unhindered access to full reparation, which comprises compensation, restitution, rehabilitation, satisfaction and non-recurrence, for the harm suffered.

15. With regard to guarantees of non-recurrence, the legal framework on the competences, authority and oversight of the security forces remains largely unreformed since 1968, giving the security forces wide-reaching powers to restrict rights and freedoms. There is an urgent need for comprehensive reform of the security sector, to ensure that these services operate with adequate civilian oversight and in line with the 2014 Constitution and the State's international human rights obligations. The Truth and Dignity Commission organized forums regarding the preservation of transitional justice archives and institutional reform to prevent the recurrence of violations.

16. Despite the guarantees for independence of the judiciary contained in article 105 of the Constitution, the 1967 law on the organization of the judiciary, which is still in force, places the Office of the Public Prosecutor under the authority of the Ministry of Justice. This legal ambiguity risks undermining the integrity of the Office of the Public Prosecutor, which reportedly still experiences interference by the Ministry of Justice.

17. The Constitutional Court, provided for in the 2014 Constitution, has yet to become operational; only one member has been appointed to date.

18. The Special Rapporteur recognizes that some progress has been made to bring coherence to the transitional justice system, notably under Organic Law No. 53. However, significant legislative gaps and procedural obstacles still stand in the way of effective and meaningful criminal accountability for gross human rights violations, the effective provision

[7] Domestic law does not criminalize the refusal to disclose the fate or whereabouts of a disappeared person. See also TUN 2/2021.

[8] "Punishment" is not prohibited as a purpose of torture.

[9] The Criminal Code does not regulate the use of force by State actors in accordance with international standards.

of reparation to victims, and the establishment of guarantees of non-recurrence. The judiciary must be able to carry out its mandated role with independence and integrity and key domestic legislation needs to be brought into line with international standards and good practice. The Special Rapporteur recalls that Tunisia must comply with its obligations under international law in the field of transitional justice.

Table 1
Tunisia: status of implementation of recommendations

Recommendations contained in A/HRC/24/42/Add.1	*Status*
In the area of a comprehensive transitional justice strategy, the Special Rapporteur recommends that the authorities: **Ensure that the notion of human rights guides the design and implementation of all transitional justice measures; in particular, guarantee that the violation of human rights is a sufficient reason for access to redress measures rather than other considerations relating to affiliation with or contribution or opposition to any given cause, or any other contingent factor (para. 83 (a))** **Ensure that a truly comprehensive policy involving the elements of transitional justice is effectively adopted, avoiding overreliance on any element to the exclusion of others (para. 83 (b))**	Partially implemented. Organic Law No. 53 reflects the elements of a transitional justice process. While the truth component has been implemented satisfactorily, legislative gaps and procedural obstacles, underpinned by weak political will, have hampered progress on accountability, reparation and guarantees of non-recurrence.
Ensure that the draft law on transitional justice, currently long on definitions but short on specifying functions, clearly establishes how the different elements will be effectively adopted (para. 83 (c)) **Ensure effective victim participation in all areas of transitional justice while providing for adequate protection schemes (para. 83 (d))** **Find ways to ensure that the voices of society, and particularly victims, are taken into account in an ongoing manner (para. 83 (e))** **Take effective efforts to remedy shortcomings in consultations, such as by reaching out to all sectors of society in a non-discriminatory manner, including women, thereby bridging the gap between the urban coast and the country's interior. Inclusive consultations are a precondition for reversing the trend of social fragmentation (para. 83 (f))**	Partially implemented. Organic Law No. 53 provides for the establishment of the Truth and Dignity Commission, the specialized criminal chambers and the fund for the dignity and rehabilitation of victims of the dictatorship. The progress achieved by the Commission has not been matched by the two latter institutions. The Organic Law further requires the adoption of an action plan for the implementation of the Commission's recommendations, and the establishment of an ad hoc parliamentary committee to monitor the action plan; both actions are pending. The active participation and inclusion of victims was a central tenet of the work of the Commission, which included civil society consultations and public hearings. However, victims had few opportunities to follow the process after the Commission completed its mandate. Opportunities for public participation in the reform process and outreach to communities have been limited.
In the area of truth seeking, the Special Rapporteur recommends that the authorities: **Transparently present the actions taken and planned in response to the reports**	Partially implemented. The reports of these commissions were published and have driven progress regarding truth, reparations and participation. The authorities have failed to

Recommendations contained in A/HRC/24/42/Add.1	*Status*
published by the National Fact-Finding Commission and the National Commission of Investigation on Corruption and Embezzlement, and explain how their findings and recommendations have been taken into account during the elaboration of the overall transitional justice strategy, and effectively incorporate the expertise and information of the two commissions in ongoing efforts (para. 84 (a))	transparently present the measures taken to implement the commissions' recommendations, resulting in controversies regarding sensitive issues such as the list of martyrs and wounded and looted funds. Implementation of the recommendations of the National Commission of Investigation on Corruption and Embezzlement has lagged behind.
Revisit the suggested competences, functions and responsibilities of the new Truth and Dignity Commission to ensure it delivers on its core objective (para. 84 (b))	Partially implemented. Organic Law No. 53 entrusted the Truth and Dignity Commission with a broad mandate that covered most issues raised by the Special Rapporteur. However, the work of the Commission was hindered by a lack of cooperation on the part of the executive branch.
In the area of justice initiatives, the Special Rapporteur recommends that the authorities: **Facilitate the adoption of a coherent and systematic prosecution strategy that does not lend itself to charges that it is too narrow, ad hoc or politically biased; the strategy should aim at establishing the full chain of command for gross violations during the uprising and preceding periods (para. 85 (a))**	Insufficiently implemented. Only 205 of the 62,720 complaints received by the Truth and Dignity Commission were transferred to the special criminal chambers. Due to a lack of time and resources, the Commission selected emblematic cases and those that it could document within its time frame. Political bias was not detected and chains of command were established in most cases. Prosecution strategies were not adopted for the claims submitted to regular courts; claims were dismissed with "statutes of limitation" cited as the reason for the dismissal.
Conduct prosecutions and trials in compliance with international human rights standards, and allow for the effective participation of victims in proceedings while affording adequate protection (para. 85 (b))	Not implemented. Several procedural obstacles and legal deficiencies, coupled with insufficient capacity and independence of the judiciary, compromise the ability of the specialized criminal chambers to adjudicate on cases timely and efficiently. The Code of Criminal Procedure does not provide sufficient procedural standing for victims and their families.
Adopt legislation and guarantee in practice that the investigation and jurisdiction of cases involving gross violations of human rights, including those with the alleged involvement of military and security forces, are transferred from military courts to the ordinary civilian justice system, and ensure that the jurisdiction of military tribunals is limited to military personnel who have committed military offences	Partially implemented. In accordance with the Code of Military Justice, military courts remain competent to hear cases under ordinary law involving military personnel on active duty, as well as cases of offences committed by civilians against the military. Cases related to transitional justice have been transferred to the specialized criminal chambers, pursuant to article 148.9 of the Constitution, under which the evocation of res judicata is not admissible for transitional justice cases. All

Recommendations contained in A/HRC/24/42/Add.1	*Status*
(assuming demonstrable progress by civilian courts) (para. 85 (c))	other cases involving military personnel are handled in the military jurisdiction.
(d) Consider the possibility of retrials or review of cases, conducted in accordance with international fair trial standards, in ordinary civilian courts, including the proposed constitutional court, for cases involving gross human rights violations previously tried before military courts (para. 85 (d))	
With regard to reparation, the Special Rapporteur recommends that the authorities:	Not implemented.
Take a human rights-based approach when designing and implementing reparation schemes; the same type of violations should trigger the same possibilities and equivalent forms of redress (para. 86 (a))	In its final report, the Truth and Dignity Commission outlined a comprehensive reparation programme, which included financial compensation, rehabilitation, public apologies and professional reintegration, with provisions to prevent gender-based discrimination in the granting of reparations. However, the Government has failed to act on these recommendations and fully operationalize the fund for the dignity and rehabilitation of victims of the dictatorship.
Ensure that there is no gender discrimination in relation to the provision of reparation, including financial compensation (para. 86 (b))	The list of martyrs and wounded of the revolution was published in the official gazette in March 2021.
Ensure that reparations include the provision of free medical and psychosocial assistance, on a continuing basis if warranted by the harm suffered, and measures that further the rehabilitation and reintegration of victims and/or their family into society (para. 86 (c))	Implemented. Free medical care and psychological support has been provided to the victims of human rights violations, although public health services for the wounded have not always been adequate.
Given the devastating effect of decades of deliberate marginalization of entire areas of the country, include collective reparations in such reparation schemes, in addition to and distinct from regional development initiatives (para. 86 (d))	Not implemented. The Truth and Dignity Commission put forward a comprehensive reparations plan for regions that were particularly victimized during the dictatorship. The programme also took into account regional socioeconomic disparities. However, the Government has not taken the steps required to execute the plan.
With regard to guarantees of non-recurrence, the Special Rapporteur recommends that the authorities:	Not implemented. The individual complaints procedure before the Constitutional Court was not extended.
Adopt strong institutional and procedural provisions for human rights protection, and reform the public education system by:	
Considering extending planned individual complaints procedures before the proposed constitutional court to all violations of constitutional rights resulting from the unconstitutional	

Recommendations contained in A/HRC/24/42/Add.1	*Status*
implementation of any acts of public authority (para. 87 (a) (i))	
Strengthening the competences and role of the Higher Committee for Human Rights and Fundamental Freedoms (para. 87 (a) (ii))	Not implemented. The Committee faces internal problems and a lack of human and financial resources, despite having assumed responsibility for drafting the final list of martyrs and wounded of the revolution. The 2014 Constitution provides for the Committee's replacement by a national human rights institution, which is still pending.
Revising the curricula of the public education programme to reflect historical changes, the importance of the rule of law in practice and the role that human rights defenders play in the transitional process (para. 87 (a) (iii))	Not implemented. School curricula has not been revised to reflect the country's political transition, the human rights violations that were perpetrated or the transitional justice process.
In the area of judicial reform, the Special Rapporteur recommends that the authorities: **Adopt constitutional guarantees and legislation providing for the independence of the judiciary, and guarantee the conditions of service, appointment, mandate, promotion and discipline of magistrates in accordance with international standards (para. 87 (b) (i))**	Partially implemented. The 2014 Constitution guarantees the independence of the judiciary and protects magistrates against dismissal or transfer. New regulations on the organization of the judiciary were not adopted. The legislation in force places the courts and the Office of the Public Prosecutor under the authority of the Ministry of Justice.
Guarantee in law and in practice the self-regulation of the judiciary, including by putting an end to all forms of control and influence retained by the Minister for Justice (para. 87 (b) (ii)) **Prioritize the establishment and functioning of a permanent, independent high judicial council in charge of administering the judiciary, including appointments, promotions and disciplinary procedures (para. 87 (b) (iii))** **Define standards of misconduct that would trigger disciplinary action, adopt an ethical code for the judiciary and ensure that the high judicial council is the body responsible for the initiation and conduct of any disciplinary proceedings, in compliance with international human rights standards (para. 87 (b) (iv))**	Insufficiently implemented. The Ministry of Justice retains control and influence over the judiciary. Under the 2014 Constitution and Organic Law No. 34 of 2016, the Supreme Judicial Council has the autonomy to appoint, promote and transfer magistrates, but depends on the Ministry of Justice for their assessment and disciplinary proceedings. The Supreme Judicial Council was entrusted to draft a code of ethics for magistrates, which is pending.
Gradually establish security of tenure guaranteeing the irremovable status of judges, coupled with vetting initiatives, applied in a systematic manner and compliant with international human rights standards of due process (para. 87 (b) (v))	Partially implemented. Security of tenure for judges is guaranteed under the Constitution and Organic Law No. 34. However, the latter charges the Supreme Judicial Council with rotating all Tunisian judges annually, which causes serious disruption to the work of the specialized criminal chambers, as judges are sometimes

Recommendations contained in A/HRC/24/42/Add.1	*Status*
	transferred while adjudicating a case. The arbitrary and opaque manner in which the Supreme Judicial Council manages rotations also affects security of tenure.
Guarantee, in law and in practice, the impartiality of the Office of the Public Prosecutor, thereby ending the authority and control exercised by the Minister for Justice (para. 87 (b) (vi))	Not implemented. The legislation in force places the Office of the Public Prosecutor under the authority of the Ministry of Justice, despite the guarantee of independence provided by the Constitution.
In the security sector, the Special Rapporteur recommends that the authorities: **Clearly define the competences of the different internal security forces, including intelligence services, ensuring that there is no overlap of competences; and also, at the constitutional level, the function of the military in external defence (para. 87 (c) (i))** **Guarantee, in law and in practice, the neutrality of the internal security forces, to prevent them from being unduly instrumentalized by the executive branch (para. 87 (c) (ii))**	Not implemented. The legal framework regulating the security sector remains mostly unchanged, and has led to abuse of authority and human rights violations. Serious questions remain as regards the neutrality and deontology of the security forces. The 2014 Constitution does not expressly exclude the internal defence competence of the army.
Establish effective oversight mechanisms to ensure transparency and accountability of the internal security forces, coupled with institutionalized vetting procedures that respect human rights standards (para. 87 (c) (iii))	Partially implemented. A central inspectorate established in 2017 within the Ministry of the Interior is charged with the internal oversight of the security sector. However, the operation of the inspectorate remains opaque. The Directorate of Human Rights, established in 2017 within the Ministry of the Interior, also receives complaints, which it investigates in cooperation with other directorates of the Ministry. The impact of its work has yet to be determined.
Break the cycle of impunity and promptly investigate past practices of torture and ill-treatment, and other gross human rights violations, in an independent, impartial and expedient manner, and prosecute all allegedly involved perpetrators and sanction them, if found guilty, in a way commensurate with the violations committed (para. 87 (c) (iv))	Not implemented. The specialized criminal chambers have yet to deliver a single verdict. In the ordinary jurisdiction, prescription and non-retroactivity rules hamper accountability. Lack of cooperation of the judicial police, overloading of courts and weak political will also hinder justice.
Effectively involve civil society, including victims and associations of law enforcement bodies, in deliberations on the design of security sector reform initiatives (para. 87 (c) (v))	Not implemented. The authorities have not involved civil society in the design of security reform initiatives.
The Special Rapporteur suggests that the Government establish an inter-agency coordination body to lead collaboration efforts on the implementation of the	Not implemented. Such coordination has not taken place.

Recommendations contained in A/HRC/24/42/Add.1	*Status*
various transitional justice measures (para. 88)	The transitional justice portfolio, originally entrusted to the ministry responsible for human rights, is currently split between the committee for the martyrs and wounded of the revolution and an advisor on human rights with the rank of minister in the Office of the Prime Minister.
The Special Rapporteur suggests that efforts be made to coordinate international assistance on transitional justice to guarantee that different initiatives reinforce one another and avoid working at cross-purposes or overloading capacities for change. Such a coordination mechanism can take many different shapes. The Ministry of Human Rights and Transitional Justice, together with the Office of the United Nations High Commissioner for Human Rights in Tunis, for example, could play a facilitating role in this effort (para. 89)	Implemented. The Office of the United Nations High Commissioner for Human Rights, in cooperation with the United Nations Development Programme, has mobilized international assistance for institutional reforms and transitional justice, which included training and technical advice for those working in the specialized criminal chambers.

III. Follow-up on the visit to Uruguay

19. The former Special Rapporteur visited Uruguay from 30 September to 4 October 2013. In September 2014, he presented his visit report[10] to the Human Rights Council at its twenty-seventh session. The Special Rapporteur welcomes the input provided by the Government for the present report.

20. In the visit report, the former Special Rapporteur acknowledged the measures adopted by Uruguay to democratize State institutions, establish key institutions for the promotion and protection of human rights, pursue the truth, prosecute past violations, provide reparation to victims and memorialize and preserve archives. He also noted the remaining challenges, for which he provided targeted recommendations, as detailed in table 2 below.

21. Since the country visit, promising reforms have been adopted in the various areas of transitional justice. However, key recommendations have, regrettably, not been implemented. Regarding truth seeking, Decree No. 131 of 19 May 2015 established the Working Group for Truth and Justice with a mandate to investigate crimes against humanity committed during the dictatorship. However, progress in the search for disappeared persons has been limited, despite repeated commitments by the Government to address the issue. Reportedly, no remains of missing persons were found in 2020, while the remains of only five persons, of a total of 196 known cases, were uncovered between 2005 and 2019. In September 2019, the Working Group's mandate was transferred to the National Human Rights Institution and Office of the Ombudsman. There are concerns that the Working Group's authority to investigate other crimes beyond enforced disappearance has not been transferred to the Institution.

22. With regard to accountability, by Law No. 19.334 of 2015, Uruguay established the Attorney General's Office as an autonomous institution within the current constitutional regime. In 2018, the Attorney General's Office established a specialized prosecutor's office to prosecute crimes against humanity, which has enabled Uruguay to develop a prosecution policy for crimes of this nature, in compliance with the ruling of the Inter-American Court of Human Rights in *Gelman v. Uruguay*.[11] These measures are welcome, and have strengthened

[10] A/HRC/27/56/Add.2.

[11] Inter-American Court of Human Rights, *Gelman v. Uruguay*, Judgement (Merits and Reparations), 24 February 2011.

the capacity of Uruguay to achieve accountability for past human rights violations. In February 2020, the special prosecutor's office filed four indictments against retired military personnel for torture allegedly committed in 1978. Court rulings on more than 60 prosecution requests for crimes against humanity are pending.

23. However, serious obstacles remain to making progress regarding accountability. The Special Rapporteur is deeply concerned that the legacy of the 1986 Act on the Expiry of the Punitive Claims of the State (Expiry Act) continues to be a source of de facto impunity for serious human rights violations committed during the dictatorship. He recalls that the Inter-American Commission on Human Rights, at the end of its 2019 country visit, reminded the Government to ensure that statutory interpretations no longer impeded the investigation of human rights violations, in compliance with the *Gelman v. Uruguay* ruling. The Special Rapporteur expresses further concern at reports that an initiative was recently tabled in the Senate to repeal Act No. 18.831 and reinstate the Expiry Act, as well as at reported attempts by the Government to interfere in judicial cases. It is now urgent for Uruguay to take decisive action to address this critical issue, which constitutes the single most important impediment to establishing the truth about and dispensing justice for past human rights violations.

24. While three types of reparations are provided to victims (a special compensatory pension, a special compensatory retirement benefit and a survivor's pension paid in the event of the death of a recipient of the special compensatory pension), the Government has yet to adopt a comprehensive reparations programme. The Special Rapporteur remains concerned that victims continue to be forced to choose between their right to reparation and other pension and retirement entitlements.[12]

25. Regarding memorialization, Uruguay has taken meaningful steps to ensure the collection and preservation of archives. The Project Office of the Judicial Archive of Military Court Documents (known as "Project AJPROJUMI"), has reportedly gathered some 3,000 files covering about 10,000 victims (civilians, police and military) who were subject to military jurisdiction between 1973 and 1985. The stated objectives of the Judicial Archive are, inter alia, to protect the right of individuals with a legitimate interest to access their own information in the archives, provide documentary evidence for truth seeking and reparation claims, and support the judiciary in establishing accountability for crimes of the dictatorship. In 2018, Uruguay adopted Act No. 19.641, on the creation of memorial sites, with the participation of civil society actors, families and victims.

26. The adoption of amendments to the Organic Law on the judiciary and the organization of the courts in September 2019 represents a step towards strengthening the independence and integrity of the judiciary.

Table 2.
Uruguay: status of implementation of recommendations

Recommendations contained in A/HRC/27/56/Add.2	*Status*
The Special Rapporteur urges the Government and the relevant authorities of the State, including the Supreme Court of Justice, to: **Remove all obstacles to filing and advancing legal cases without undue delays, in accordance with the right to an effective remedy and other international human rights laws, including the ruling of the Inter-American Court of Human Rights in the *Gelman* case (para. 75 (a))**	Not implemented. The legacy of the 1986 Act on the Expiry of the Punitive Claims of the State, and of the Supreme Court's 2013 decision declaring articles 2 and 3 of Act No. 18.831 unconstitutional, continue to be a source of de facto impunity for past human rights violations. The establishment of the special prosecutor's office to prosecute crimes against humanity and the adoption of a prosecutorial policy has strengthened the capacity of Uruguay to achieve accountability. As of May 2021, of the 300

[12] See joint communication URY 1/2018 and the State response thereto. Available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments. Following up on the communication, the National Human Rights Institution and Office of the Ombudsman urged the Government to adopt legislation to overcome this irregularity, to no avail.

Recommendations contained in A/HRC/27/56/Add.2	*Status*
	criminal cases related to crimes against humanity, only 140 were active; 84 per cent of those were in the pre-summary stage, and convictions with sentences had been obtained in only 10 per cent of the active cases.
Proceed with the reform of the judiciary, ensuring that the provisions of the [Organic Act on the judiciary] remain in harmony with international human rights instruments relating to judicial independence. In particular, the procedures governing the transfer, promotion and punishment of judges must guarantee their independence, which depends on transparency, objectivity and sound reasoning in all decisions; take measures to establish a higher council of the judiciary, responsible for the proper administration of the courts, as well as a higher constitutional court (para. 75 (b))	Partially implemented. Act No 19.830 of September 2019 partially amends the Organic Act on the judiciary (Law No. 15.750). The amendments concern the selection and promotion of judges, which had been criticized for being subjective and unclear. The new Act is aimed at ensuring the integrity and independence of the judiciary. However, the Supreme Court of Justice has presented an action of unconstitutionality against the Act.
Secure the reform of the Public Prosecution Service, in accordance with international human rights principles, including those contained in the report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19), while holding consultations with prosecutors, civil society and the national human rights institution, among others (para. 75 (c))	Implemented. The Attorney General's Office was established in 2015 as an autonomous institution within the current constitutional regime. In 2017, the Office was authorized to create a specialized prosecutor's office to prosecute crimes against humanity.
Formulate and adopt a State policy on truth, in consultation with victims and their family members, civil society organizations and other interested parties (para. 75 (d)) **Seriously consider establishing, as part of this policy, an official mechanism for determining the truth, designed to complement and support on a continuing basis the work begun by the Commission for Peace, the Human Rights Secretariat for the Recent Past and the University of the Republic (para. 75 (e))**	Insufficiently implemented. In May 2015, Uruguay established the Working Group for Truth and Justice, mandated to investigate crimes against humanity committed during the dictatorship, which presented its final report in 2019. In 2019 the mandate was transferred to the National Human Rights Institution and Office of the Ombudsman along with authority to search for disappeared persons, but not to investigate other serious violations, such as extrajudicial killings and torture.
Emphasize the importance of giving visibility to all types of human rights violations committed under the dictatorship, in particular arbitrary detention (in conditions of systematic ill-treatment) and torture, including sexual violence and the detention of children and adolescents: crimes which cannot be "normalized" or "lived with", as if they had not occurred or had not been serious or imposed burdens on both individuals and institutions (para. 75 (f))	Partially implemented. Civil society and the National Human Rights Institution and Office of the Ombudsman have made efforts to raise public awareness of the human rights abuses committed during the dictatorship.

Recommendations contained in A/HRC/27/56/Add.2	*Status*
Collect and preserve, on all possible media, the testimonials of every victim, with maximum consideration given to the victims and the suffering that such an effort may cause. This effort is urgent, given the advanced age of many victims (para. 75 (g))	Partially implemented. No significant action was taken by the State at the national level. The Museum of Memory in Montevideo, run by the municipal government, has an oral memory archive of testimonies. Other initiatives have been taken by civil society, in some cases with support of local governments.
Collect, systematize and disseminate information on all the factors that led to the enormous number of human rights violations committed under the dictatorship (para. 75 (h))	Partially implemented. The Working Group for Truth and Justice and the Human Rights Secretariat for the Recent Past carried out this function. However, in 2019 the mandate was given to the National Human Rights Institution and Office of the Ombudsman, but with authority restricted to searching for disappeared persons.
Develop a clear and comprehensive archival policy, and expand efforts to recover documents and archives that are not yet under the supervision of the General Archives or accessible for enquiries and investigations, as is the case with some archives of the armed forces (para. 75 (i))	Implemented. The Project Office of the Judicial Archive of Military Court Documents (“Project AJPROJUMI”) has gathered some 3,000 files covering about 10,000 victims (civilians, police and military) who were subject to military jurisdiction between 1973 and 1985. The files are accessible to anyone with a legitimate interest. The National Human Rights Institution and Office of the Ombudsman, which under Act No. 19.822 is given unrestricted access to intelligence files, is mandated to maintain an archive as part of its search for the disappeared.
Reparation	Not implemented.
Formulate and adopt a State policy on reparations supported by an appropriate budget and encouraging a comprehensive approach, incorporating material and symbolic reparations and recognizing the specificities of different groups of victims, including women and children. Encourage the participation of victims, their family members and associations in formulating this policy (para. 75 (j))	The Government has not adopted a comprehensive reparations policy. Concerning satisfaction, in July 2018, Uruguay adopted the Act on the creation of memorial sites to recognize places where victims had suffered human rights violations. It was drafted with the participation of civil society, victims and their families. However, no budget was allocated to its implementation.
Amend legislation to increase the coverage of reparation measures and eliminate incompatibilities between the right to reparations, on the one hand, and pension and retirement entitlements, on the other (para. 75 (k))	Not implemented. The legislation has not been amended. Victims are still forced to choose between their right to reparation and other pension or retirement entitlements. Following up on communication URY 1/2018, the National Human Rights Institution and Office of the Ombudsman urged the Government to adopt legislation to overcome this irregularity, to no avail.

Recommendations contained in A/HRC/27/56/Add.2	*Status*
Amend exclusionary and restrictive criteria and requirements, as well as the procedures for recognizing victims (such as restrictions based on time periods, age or length of detention), in order to prevent entire categories of victims from being excluded from reparation measures. In particular, amend the provisions and procedures that require proof of the "serious" or "grievous" nature of injuries in order for the rights of victims of torture and ill-treatment to be recognized (para. 75 (l))	Not implemented. The State has not addressed the exclusions and restrictive criteria that continue to affect victims, despite further recommendations made by the Working Group for Truth and Justice and the National Human Rights Institution and Office of the Ombudsman.
Ensure that the burden of proof is reversed so that the victims are not required to provide evidence or documents that are almost impossible to obtain in order to be recognized as victims (para. 75 (m))	Not implemented./No progress reported.
Ensure that adequate training is provided to personnel responsible for attending to victims, and modify the procedures for preventing revictimization, including in cases of sexual violence (para. 75 (n))	Partially implemented. Staff are trained in victim care, through techniques that take into account both the diverse needs of each victim as well as considerations specific to certain locations and regions. It is unclear whether procedures have been modified accordingly.
Increase the resources of personnel belonging to the special commissions created by Acts No. 18.033 and No. 18.596, and improve their capacity to perform their functions (para. 75 (o))	Not implemented./No progress reported, despite the recommendations made by the Working Group for Truth and Justice on improving the performance of the personnel of the special commissions.
Guarantees of non-recurrence	Partially implemented.
Strengthen the processes for reform and democratization of the armed forces, including the reforms of the Organic Act on the Ministry of National Defence and the Organic Act on the armed forces; prevent military personnel from performing domestic security roles or acting as perimeter guards for detention centres (para. 75 (p))	Act No. 19.775 of 2019 modifies the Organic Act on the armed forces (No. 14.157), redefining the role of the armed forces, professionalizing the military career and eliminating the due obedience principle. There is no information on whether the Organic Act on the Ministry of National Defence and that of each armed force have been reformed as stipulated in Act No. 19.775.
Carry out a process of deep reflection on the responsibility of various State authorities in the commission of human rights violations under the dictatorship, including the armed forces, the judiciary and medical personnel, with a view to identifying and promoting the necessary institutional and legislative reforms, in order to guarantee the non-recurrence of any circumstances – whether legal factors, institutional culture or lack of awareness of human rights – that may have contributed to the commission of serious human rights violations. The Special Rapporteur stresses the	Not implemented./No progress reported. In fact, there are allegations that political actors with links to the military have engaged in hate speech directed against relatives of victims.

Recommendations contained in A/HRC/27/56/Add.2	*Status*
importance of including civil society organizations in these reform processes (para. 75 (q))	
Strengthen training programmes for public officials, both civilian and military, incorporating a specific, ongoing and mandatory human rights training course. Programmes intended for judicial officials, such as members of the judiciary and the Public Prosecution Service, must include human rights modules, as well as professional training in the investigation and prosecution of acts constituting human rights violations. The Special Rapporteur reiterates the importance of developing effective methods and mechanisms for evaluating and, if necessary, modifying training manuals and programmes in order to maximize their potential and promote a substantial change in public officials' knowledge of and respect for human rights (para. 75 (r))	Partially implemented. Human rights modules have been included in the training for magistrates, public defence attorneys and public prosecutors.
Approve a new Code of Criminal Procedure ensuring, in particular, that as much attention is paid to the rights of the victims as to the rights of the accused during criminal proceedings (para. 75 (s))	Implemented. The new Code of Criminal Procedure, which entered into force in November 2017, defines the rights of victims and the accused, including fair trial guarantees.
Modify domestic legislation so that it meets the country's international obligations with respect to the definition of the crime of torture, the punishments imposed for the crime of forced disappearance, the participation of victims in criminal proceedings and the regulation of writs of habeas corpus, in accordance with international human rights standards and the recommendations of international human rights mechanisms (para. 75 (t))	Partially implemented. Although Act No. 18.026 on cooperation with the International Criminal Court defines torture as a specific offence, the definition fails to fully comply with international standards. The Code of Criminal Procedure of 2017 refers to the rights of victims and the accused to participate in judicial procedures.
Modify the National Plan for Human Rights Education to include more extensive study, at various levels of education, of the dictatorship and human rights violations committed during this period (para. 75 (u))	Not implemented./No progress reported.
Ensure that an appropriate budget is allocated to the national human rights institution to enable it to effectively and independently perform its duties, and urge all State authorities to take the necessary measures to implement its recommendations (para. 75 (v))	Implemented. The National Human Rights Institution and Office of the Ombudsman has its own budget. At the end of 2019, it had 57 employees.

IV. Follow-up on the visit to Spain

27. At the invitation of the Government, the Special Rapporteur visited Spain from 21 January to February 2014. In September 2014, he presented his visit report[13] to the Human Rights Council at its twenty-seventh session. The Special Rapporteur welcomes the input to the present report, and comments thereon, provided by the Government.

28. The assessment of the implementation of the recommendations contained in the visit report is summarized in table 3 below. Many of the challenges examined in the Special Rapporteur's report have regrettably persisted. Victims of the Civil War and Francisco Franco's regime and their families have continued to be denied of their rights to truth, justice, full reparation, memory and guarantees of non-recurrence. The Special Rapporteur has taken note of numerous instances where the Spanish authorities have failed to investigate cases of enforced disappearance and torture. In those cases, the authorities have based their reasoning on jurisprudence of the Supreme Court, which, in a ruling dated 27 February 2012, had consolidated a tendency to dismiss such allegations, arguing the applicability of the 1977 amnesty law or of statutes of limitations. Several international human rights mechanisms and mandate holders, including under the present mandate, have highlighted the incompatibility of the amnesty law with the human rights obligations of Spain and recommended that the law be repealed.[14] The Special Rapporteur reiterates this recommendation and urges the Government to move swiftly to bring its laws and practice into line with the State's international commitments.

29. The Government submitted to the Special Rapporteur information on Royal Decree No. 139 of 28 January 2020, which establishes a State Secretariat for Democratic Memory, within the Ministry of the President and for Relations with the Courts and Democratic Memory, tasked to ensure State leadership in public policy on the preservation and promotion of democratic memory, including through cooperation with the autonomous communities and other local bodies. Under the State Secretary, a Directorate General with a staff of 15 is to conduct a national census of victims of the Civil War and dictatorship, prepare an integrated map of graves, update the protocol for exhumations, develop initiatives for institutional recognition and reparation for victims and prepare a plan to locate persons who were forcibly disappeared during the Civil War and the dictatorship. The State budget for 2021 allocates 11.3 million euros for the programmes of the State Secretariat for Democratic Memory, which is significantly more than the budget allocated to such programmes in previous years.

30. The Government has also shared information about a bill on democratic memory, which is intended to replace the current Historical Memory Act (No. 52/2007). The draft was prepared and revised following extensive consultations with civil society and public hearings with the autonomous communities. The bill was approved by the Council of Ministers in September 2020 and was expected to be submitted to the Congress of Deputies in the first half of 2021.

31. If adopted and implemented, the bill could address many of the concerns raised in the visit report of the former Special Rapporteur and could also facilitate the implementation of many of his recommendations. This would represent a welcome step towards transitional justice in Spain. However, the highly contrasting approaches to this issue by successive Governments suggests that progress on transitional justice may still be hostage to party politics. Dealing with the past has yet to be fully embraced as a national human rights imperative to be pursued regardless of political affiliation. This situation risks undermining the continuity and predictability of the transitional justice process.

32. Its merits notwithstanding, the proposed bill still leaves several important areas without an adequate resolution. These should be attended to before the draft is finalized and submitted for parliamentary adoption. The Special Rapporteur underscores that it is of the utmost urgency that the new bill include adequate measures to remove any remaining obstacles to achieving criminal accountability for the serious human rights violations

[13] A/HRC/27/56/Add.1.

[14] Ibid., CED/C/ESP/CO/1, A/HRC/27/49/Add.1, CCPR/C/ESP/CO/6 and CAT/C/ESP/CO/6.

committed during the Civil War and the dictatorship. In this regard, the Special Rapporteur welcomes the creation of a new public prosecutor's office for democratic memory under the bill. It is important that the final version of the bill invest this institution with powers to investigate human rights violations and crimes under international law and to clarify the fate of victims of enforced disappearance, in full cooperation with foreign jurisdictions.

33. The Special Rapporteur welcomes the inclusion in the bill of a mechanism to annul convictions and punishment handed down for political, ideological or belief-based reasons by any court or administrative body during the dictatorship. Importantly, this annulment is to be executed regardless of the legal justification used to establish such sentences. However, it is regrettable that the bill does not provide for any economic liability on the part of the State regarding the reparations owed to those wrongfully convicted. This contravenes international standards on the obligation to provide full reparation to victims.[15]

34. The Special Rapporteur notes that the bill broadens the definition of "victim" and gives due recognition to children who were abducted and adopted without parental consent, and to their parents and siblings.[16] The draft bill also recognizes the particular suffering of women who were subjected to human rights violations during this period.

35. The Government informed the Special Rapporteur that as of 2019, over 21 billion euros had been granted in reparation measures over four decades, with more than 600,000 beneficiaries, including new groups; reparations in the context of new situations were also included. A sizable proportion of the beneficiaries appear to be former members of the military or State agencies. Among the civilian beneficiaries, it is unclear how many were Franco opponents and how many were supporters, although unofficial reports indicate that the latter were favoured in reparation schemes over the years. The Special Rapporteur recalls that full and effective reparations must be proportional to the gravity of the violations and include adequate elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Importantly, reparations must encompass an acknowledgement of the facts and acceptance of State responsibility. The Special Rapporteur notes that the bill includes measures of restitution, rehabilitation and satisfaction; however, it does not specify compensation as a form of reparation.

36. Prior to 2018, insufficient State engagement and financial support for exhumations[17] led to the privatization of efforts and costs being borne by the families of victims and civil society organizations. However, the Special Rapporteur notes that there has been a recent increase in the budget allocated to municipalities and autonomous communities for exhumations, victim identification and related memorialization. The new bill stipulates that it is the responsibility of the State to carry out exhumations and the search for persons who disappeared during the Civil War and the Franco dictatorship. This is a welcome improvement on the current Historical Memory Act, which fails to clearly define the responsibility of the State. In finalizing the draft bill, it is important to ensure that these procedures are developed within the framework of judicial proceedings to enable thorough and impartial investigations, as required under the International Convention for the Protection of All Persons from Enforced Disappearance.

37. The Special Rapporteur also welcomes the provisions in the bill regarding the redesignation of the Valle de los Caídos, as part of the Government's measures to ensure guarantees of non-recurrence. He notes that following an amendment of the Historical Memory Act in April 2018, the Government initiated a process for the exhumation of the remains of Francisco Franco from the Valle de los Caídos, which was carried out in October 2019. In November 2019, the State agency Patrimonio Nacional, which administers State-

[15] See, for instance, 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, paras. 15–23.

[16] The Special Rapporteur notes that previously submitted legislative bills related to this issue were not adopted.

[17] See communication ESP 6/2014 and the State response thereto. Available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=18905 and https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=32482.

owned sites, announced that work would begin to locate, identify and recover the remains of people buried at the site. However, it appears that the work has yet to commence.

38. The Special Rapporteur notes the legislation enacted in some autonomous communities to advance the transitional justice agenda further.[18]

39. The Special Rapporteur welcomes the efforts of the Government to put in place a legal framework that could help the country heal and finally bring justice to all victims of past violations of human rights and humanitarian law. He urges all relevant authorities to rise above partisan interests and ensure the adoption of an effective transitional justice strategy in compliance with human rights standards.

Table 3
Spain: status of implementation of recommendations

Recommendations contained in A/HRC/27/56/Add.1	*Status*
[The Special Rapporteur] calls on the Government and the State bodies concerned to:	Not implemented.
Show a firm commitment on the part of the State to fully implement, as a matter of priority, the rights to truth, justice, reparation and guarantees of non-recurrence. The Special Rapporteur insists that the shortage of resources, though they might curtail the State's capacities, cannot justify inaction with respect to such measures (para. 104 (a))	Overall, victims' rights to truth and justice continue to be denied. The current administration has drawn up a bill on democratic memory; the parliamentary process has begun, but the bill is yet to be adopted. The purpose of the bill is to advance the transitional justice agenda in compliance with international standards, although some areas fall short of these standards. Progress on this issue appears to be hostage to party politics.
Rigorously assess the implementation of the Historical Memory Act and its use by victims with a view to adapting models and measures to victim's claims, and establishing communication channels between the competent authorities, the victims and the associations (para. 104 (b))	Partially implemented. The bill on democratic memory would broaden the reach and scope of the Historical Memory Act (No. 52/2007). The bill is expected to resolve some issues raised by international human rights mechanisms, for example with regard to prioritizing the search for the disappeared. The Government held extensive consultations with civil society organizations on the new bill.
Increase and promote contact and coordination among the various public institutions of historical memory, and allocate the necessary resources for their proper functioning (para. 104 (c))	Partially implemented. The State Secretary for Democratic Memory has consulted with the autonomous communities and with representatives of various stakeholder groups in the preparation of the bill on democratic memory. The 2021 State general budget allocates 3 million euros to the State Secretariat for Democratic Memory to support the autonomous communities in undertaking exhumations, victim identification and related memorialization. A budget of 750,000 euros was allocated in 2020 to related activities.

[18] Such as in Andalusia, Asturias, Aragon, Balearic Islands, Canary Islands, Castilla-León, Catalonia, Extremadura, Navarra, Valencia and Basque Country.

Recommendations contained in A/HRC/27/56/Add.1	*Status*
Promote actions in this respect and coordination between existing ombudsman's offices at national and autonomous community level (para. 104 (d))	Implemented. Coordination of the work of the ombudsman's offices is managed by those institutions with independence from the Government.
Avoid glaring discrepancies between autonomous community and national levels in related laws, ensuring equal and uniform protection for all victims alike. The Special Rapporteur recognizes the competence of the autonomous communities and the development of legislation and measures that offer greater recognition and protection to victims than at national level (para. 104 (e))	Not implemented. The bill on democratic memory would provide for the establishment of broad and uniform State regulations. The draft bill would create a territorial council for democratic memory to achieve maximum coherence in policy implementation.
Support the initiatives of the State and civil society that coordinate and respond to the claims of all the victims of human rights and humanitarian law violations, regardless of their political affiliation or that of the perpetrators (para. 104 (f))	Not implemented. Both the Historical Memory Act and the bill on democratic memory acknowledge the claims of all victims, regardless of their political affiliation or that of the perpetrators. However, State response to demands from victims and civil society has fluctuated with changes in administrations.
Urgently deal with the demands of victims in terms of truth, establish some mechanism to "make truth official" and resolve the excessive fragmentation to which memory-building in Spain has been subject. Restore, if not increase, the resources devoted to this purpose (para. 104 (g))	Not implemented. Such a mechanism was not established, and the bill on democratic memory does not provide for the establishment of such a mechanism. Rather, the bill includes a provision for the creation of a working group attached to the respective ministry. This model does not seem to reach the threshold of independence required of a truth commission.
In consultation with victims and associations, review the current system whereby the State delegates responsibility for exhumations. Allocate the necessary resources and ensure the participation of judicial authorities, among others, in all cases (para. 104 (h))	Not implemented. The bill on democratic memory establishes clearly that the State would be responsible for the search for the disappeared. However, the bill does not include a provision establishing a national mechanism that centralizes the search of the disappeared. Nor does it stipulate that the search is to be conducted by a competent and independent State authority, as stipulated in article 13 (1) of the Declaration on the Protection of All Persons from Enforced Disappearance.
Establish a State archive policy that guarantees access to all documentary funds, reviewing the criteria applicable to privacy and confidentiality, in order to bring them into line with applicable international standards, introducing clear regulations, for example through the adoption of an archive act (para. 104 (i))	Not implemented. There is still no general archives act that can address the current normative dispersion regarding access to public information and archives.

Recommendations contained in A/HRC/27/56/Add.1	*Status*
Guarantees of non-recurrence	Partially implemented.
Systematize all actions related to symbols and monuments of the Franco era, in accordance with current legislation, seeking differentiated approaches, the contextualization and the "reinterpretation" of symbols and monuments, failing a recommendation in favour of their simple removal (para. 104 (j))	Symbols and monuments are gradually being removed on the basis of provisions in the Historical Memory Act. On 23 February 2021, the last remaining statue of the dictator Francisco Franco was removed. Other Francoist symbols remain in place.
Implement the recommendations put forward by the Committee of Experts on the Future of the Valle de los Caídos in its 2011 report, in particular with respect to the "reinterpretation" of the site, and research, dissemination, restoration and conservation programmes, including ensuring the dignity of the cemetery and the respectful conservation of the remains of all the persons buried there. Bring greater clarity to the legislation on the legal conditions governing different parts of the site, and on the competencies and responsibilities of the State and the Church. Receive the requests of those who wish to recover the remains of family members buried there without their consent. When it is not materially possible, devise and implement, in consultation with family members, suitable measures of reparation, including symbolic or honorific measures (para. 104 (k))	Partially implemented. The exhumation of Francisco Franco's body was completed in October 2019. The bill on democratic memory reflects some of the recommendations put forward in the 2011 report by the Committee of Experts in that it, inter alia, provides for the re-signification of the site as a place of democratic memory and guarantees the right to recover the remains of family members buried there, for those who wish to do so. The bill provides for the establishment of a legal framework governing the operation and patrimonial regime of the Valle de los Caídos.
Continue consolidating the efforts made in terms of historical and human rights education and establish mechanisms for assessing the implementation of these programmes, with a view to ensuring consistency and effective implementation (para. 104 (l))	Partially implemented. At the autonomous community level, some governments have incorporated historical and human rights education in their curricula. The bill on democratic memory would provide for the incorporation of content on historical memory in the curricula for compulsory secondary education and the baccalaureate, as well as in the training of teachers.
Strengthen the programmes for the human rights training of civil servants, including the judiciary and security forces, and incorporate subjects related to the Civil War and the Franco era, in line with national study programmes, including the study of the responsibilities incurred by State institutions in the serious human rights and humanitarian law violations that occurred during this period, as a means of promoting education and awareness as well as non-recurrence. Focus this study on the rights of all victims (para. 104 (m))	Partially implemented. The continuous training programme for the judicial profession includes courses on the protection of human rights, in particular on transitional justice, victims and human rights and on human rights and enforced disappearance. However, the training is targeted at a limited number of beneficiaries and is not compulsory. The bill on democratic memory would include historic memory content in training plans for employees of the General State Administration.

Recommendations contained in A/HRC/27/56/Add.1	*Status*
Extend the recognition and coverage of reparation programmes to include all the categories of victims who have been excluded from existing programmes. Take steps to deal with claims related to the restitution of seized private belongings and documents. Undertake greater efforts to implement non-material and symbolic reparation measures (para. 104 (n)) **Extend existing studies concerning violations to the rights of women and develop measures of reparation and special recognition of the harm they suffered as a consequence of the Civil War and the Franco regime, including sexual violence, assaults, humiliations and discrimination in reprisal for their real or suspected affiliation or that of their families or companions (para. 104 (o))**	Implemented. The Government reported that 600,000 beneficiaries had received reparation over the past 40 years, although the composition of civilian beneficiaries is unclear. The bill on democratic memory provides for the carrying out of research regarding the exile, and the democratic memory, of women. It also provides for reparation for specific forms of violence and repression suffered by women.
Identify suitable mechanisms to give effect to the annulment of sentences handed down in violation of the fundamental principles of law and due process during the Civil War and the Franco regime. Comparative studies of other experiences undergone by countries which have faced similar challenges, including many within the European context, may prove extremely useful (para. 104 (p))	Not implemented. However, the bill on democratic memory declares null and illegitimate all of the sentences and penalties that the jurisdictional and administrative bodies created during and after the Civil War imposed on individuals for political or ideological reasons or for exercising freedom of conscience and religious belief. Nonetheless, the bill expressly excludes the patrimonial responsibility of the State or any compensation arising from the nullity of those sentences.
Consider alternatives to and annul the effects of the amnesty act that impede all investigations and access to justice with respect to the serious human rights violations committed during the Civil War and the Franco regime (para. 104 (q))	Not implemented. The bill on democratic memory seeks to provide alternatives to annulling the effects of the amnesty act. The Government's position is that the amnesty act is not an obstacle to investigating past violations, thus the bill provides for the creation of a public prosecutor's office specialized in democratic memory and human rights. It is still unclear how this will remove the obstacles that the amnesty act still poses to effective investigation, prosecution and punishment for those violations.
Promote greater awareness of international obligations in terms of access to justice, the right to truth and guarantees of due process and give suitable institutional expression to such obligations (para. 104 (r))	Partially implemented. The Government notes that it has tried to promote greater awareness through the participatory process adopted for the preparation of the bill on democratic memory.

Recommendations contained in A/HRC/27/56/Add.1	*Status*
Ensure that Spanish justice cooperates with judicial proceedings occurring abroad and combat any weakening of the exercise of universal jurisdiction by Spanish courts (para. 104 (s))	Partially implemented. The lack of collaboration by the Spanish judicial system with the investigation carried out by Federal Criminal and Correctional Court No. 1 of Argentina for crimes against humanity committed in Spain during the Franco dictatorship has continued until recently.[a] However, in an internal note dated 4 August 2020, the current State Attorney General annulled an order dated 30 September 2016 that had instructed the Spanish territorial prosecutors to oppose the completion of investigation requested by the courts of Argentina.

a Related concerns were expressed in communication ESP 6/2015. Available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=17897.

V. Concluding remarks

40. The Special Rapporteur expresses concern about the insufficient progress in the implementation of the recommendations addressed to the reviewed States. He urges the States to accelerate implementation and recalls that many of the recommendations represent the development of treaty obligations assumed by States that require compliance.