ARKADIUSZ
MULARCZYK
Member of the European Parliament

European Parliament

Dear Sir/Madam,

In response to the UN's Call for Input,[1] I submit the following information for consideration.
As a Member of the European Parliament[2] holding the position of Coordinator for the European Conservatives and Reformists Group in the European Union's Sub-Committee on Human Rights, and as the former Plenipotentiary for the Compensation of Damages Caused by German Aggression and Occupation in 1939-1945 for the Polish government[3] who was tasked, i.a. with seeking compensation for Polish victims of the Second World War still alive today, I am a stakeholder in the area of human rights and transitional justice.
While the questionnaire for the call to input considers good practices, bad practices that deny victims access to the court and seek redress continue. Without identifying these bad practices that:

- stop victims who have suffered loss or harm due to illegal wars or conflicts from having a path to court, and
- deny victims the right to justice and compensation,

it is not possible to develop good practices effectively. The UN community must recognise and learn from these bad practices, to inform better practices and allow current and future victims or human rights violations an opportunity to exercise their human rights.
As such, my comments and my recommendations that based on my experience in the field of helping victims of human rights violations are admissible under the 4th point of the call for information:

> *Lessons learned from transitional justice measures, initiatives, processes and experiences in order to enhance and maximize their contribution to sustaining peace and sustainable development, notably Sustainable Development Goal 16.*

The need for reparation in transitional justice
Victims of historical conflict are still alive today. According to Statistics Poland, the Polish government's agency for collecting statistics, as of the end of 2022, over 2 million Poles were alive who may have direct claims against the German state for suffering loss and harm during the Second World War.[4] Those same victims may be able to evidence their loss and meet court tests for claiming reparation.
International law is clear in allowing claims for human rights violations due to illegal conflict. Further, international law clearly states there is no statute of limitations for war crimes and that war crimes can be tried retrospectively.[5] States and victims of historical conflict that can evidence they have suffered loss or harm directly resulting from an illegal conflict or war should be able to raise claims against the aggressor state.

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[1] https://www.ohchr.org/en/calls-for-input/2024/call-inputs-ohchr-report-lessons-learned-and-good-practices-transitional
[2] https://www.europarl.europa.eu/meps/en/257060/ARKADIUSZ_MULARCZYK/home
[3] https://www.gov.pl/web/diplomacy/statement-by-government-plenipotentiary-for-compensation-for-damage-caused-by-german-aggression-and-occupation-in-19391945-and-mfa-secretary-of-state-arkadiusz-mularczyk
[4] Based on the data taken from the table "POPULATION BY SEX AND AGE IN 2022" on p.142 of the Demographic Yearbook of Poland 2023 published by Statistics Poland found here: https://stat.gov.pl/en/topics/statistical-yearbooks/statistical-yearbooks/demographic-yearbook-of-poland-2023,3,17.html
[5] The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Article 1: "No statutory limitation shall apply to the following crimes, irrespective of the date of their

The UN supports the right to make claims for suffering loss, i.a. because of suffering human rights violations. Both:

- the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[6] and
- the UN's 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[7]

state those who claim to be victims of a human rights or humanitarian law violation must have equal and effective access to justice.

A victim's right to make claims for their loss is also supported by concept of transitional justice. Indeed, the Secretary-General's Report[8] on transitional justice in conflict and post-conflict societies devotes a section on delivering reparations to victims. Section XVI states:

> "*States have the obligation to act not only against perpetrators, but also on behalf of victims - including through the provision of reparations*"

and

> " … *both the demands of justice and the dictates of peace require that something be done to compensate victims.*"

Reparation also fulfils the role of helping the process of reconciliation, moving on after a conflict ends, and preventing future conflict. The report of the UN Special Rapporteur "International legal standards underpinning the pillars of transitional justice"[9] states:

> *"It is important that reparations be linked to the provision of truth, justice and guarantees of non-recurrence"*

The doctrine on transitional justice and reparation is therefore clear. But, importantly, the first step must be to support a victim whose human rights have been violated and provide them with access to the court to seek reparation as a first step.

However, current legal doctrine and jurisdictional problems prevent victims from making claims or receiving reparation.

No access to the courts – no way for a victim to defend their human rights

Despite international law and the doctrine of transitional justice supporting the need to hear violations of human rights, the legal process has repeatedly stopped WW2 victims from raising their claims of human rights violations.

Individuals are prevented from making claims against foreign aggressor states due to the legal doctrine of state immunity. This has been criticised by human rights organisations, i.a. Amnesty International.[10]

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commission …" https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf

[6] https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

[7] https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation

[8] The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616*) found here: https://undocs.org/en/S/2004/616

[9] https://documents.un.org/doc/undoc/gen/g23/126/71/pdf/g2312671.pdf

[10] https://www.amnesty.org/en/latest/news/2012/02/un-court-ruling-nazi-war-crime-victims-deplorable/

States such as Poland cannot make claims in existing legal fora due to a lack of jurisdiction. The ICJ cannot hear cases due to Germany excluding "the deployment of armed forces abroad, involvement in such deployments or decisions thereon"[11], i.e. WW2, from the ICJ's jurisdiction.
The ICC, ECHR and ECJ cannot hear historical cases due to limitations in temporal jurisdiction, i.e. they are not able to hear cases from before those courts were formed. This is particularly disappointing as WW2 led to the creation of the ECHR and later, the ECJ.
As regards fora that exist concerning arbitration, Germany is unwilling to take part.
The above context means that WW2 victims who have claims of human rights violations have no access to courts.
The fact that there are victims alive today who have evidence to support their claims of human rights violations but have no legal avenue to court is a clear breach of their human rights, is legally inequitable, and is morally regrettable.

Call to action

All victims of human rights violations must be treated equally, irrespective of their age or the age of their claim. All victims of human rights violations must have access to court to hear their claims.
However, WW2 victims alive today have their claims dismissed as being "historic" or based on there being no legal road to make a claim.
Binding international legislation can be used to sanction an aggressor but no legislation exists to allow a victim to enforce their claim for reparation. The doctrine of transitional justice must be developed to ensure that work is done on:

- creating a clear, internationally recognised legal path for all victims of human rights abuses to make a claim,
- preventing delays to the process to ensure claims are heard in a timely fashion,
- creating a mechanism to bring an aggressor and victim together in negotiations to begin the process of reconciliation, and
- creating an enforceable legislative tool to allow a victim or state to claim reparation.

Sustainable Development Goal 16 states that access to justice should be provided to all and highlights the importance of accountability. The experiences faced by many WW2 victims in Poland and other countries, of dealing with a legal system that effectively defends an aggressor by stopping claims being raised against them and holding the victim helpless, is a lesson that must be analysed and learnt from as these victims of human rights abuses cannot rely on justice to protect their human rights. Shortly, the number of Polish WW2 victims who can make claims will diminish entirely. Their experience so far is that of the antithesis of justice.
The legal absurdity that defends the aggressor instead of the victim is inequitable and immoral. A new enforceable legal doctrine of transitional justice that focuses on defending human rights must replace the current harmful legal doctrines.

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[11] https://www.icj-cij.org/declarations/de