

2018-2020

CONTEMPORARY PERSPECTIVES ON TRANSITIONAL JUSTICE ISSUES

USER FRIENDLY VERSION

**SPECIAL RAPPORTEUR ON THE PROMOTION OF
TRUTH, JUSTICE, REPARATION AND GUARANTEES OF
NON-RECURRENCE**



UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

LIST OF ACRONYMS

CBR	CHILDREN BORN OUT OF RAPE
DRP	DOMESTIC REPARATION PROGRAMMES
ECCC	EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
GA	GENERAL ASSEMBLY
HRC	HUMAN RIGHTS COUNCIL
IACtHR	INTER-AMERICAN COURT OF HUMAN RIGHTS
ICC	INTERNATIONAL CRIMINAL COURT
ICTY	INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA
IDP	INTERNALLY DISPLACED PERSONS
IHL	INTERNATIONAL HUMANITARIAN LAW
NRP	NATIONAL REPARATION PROGRAMMES
OHCHR	OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

INTRODUCTION

The mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence was established in September 2011 by the Human Rights Council through [Resolution 18/7](#). The mandate has been extended in three occasions, namely, on 25 September 2014 ([resolution 27/3](#)), on 28 September 2017 ([resolution 36/7](#)) and on 6 October 2020 ([resolution 45/10](#)).

Mr. Fabian Salvioli took up his functions as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on 1 May 2018, succeeding Mr. Pablo de Greiff (2012-2018). Mr. Salvioli is a human rights lawyer and professor of International Law Human Rights Law. He was member of the United Nations Human Rights Committee between 2009 and 2016, and its President between 2015 and 2016.

Resolution 45/10 emphasizes the importance of adopting a comprehensive approach in transitional justice process which incorporates the full range of judicial and non-judicial measures (including, among others, individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials), in order to, *inter alia*, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State, and promote the rule of law in accordance with international human rights law. It also specifically requests to integrate a gender perspective and a victim-centred approach throughout the work of the mandate.

Within the scope of this resolution, the Special Rapporteur has been mandated to “To identify, exchange and promote good practices and lessons learned, and to identify potential additional elements with a view to recommending ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence.” He was also mandate to “To make recommendations concerning, *inter alia*, judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights and serious violations of international humanitarian law”.

In compliance with this mandate, the Special Rapporteur has submitted thematic reports to the Human Rights Council and General Assembly on a wide range of contemporary transitional justice issues and concerns, including most recently on the implementation of national reparation programmes, apologies for human rights and international humanitarian law violations, memorialization processes, and a gender perspective to transitional justice processes.

This publication aims at increasing public awareness and understanding of the findings and recommendations of these four reports and to ensure their wide dissemination among civil society, international policy makers, and other stakeholders.

January 2021

SCOPE OF THE SPECIAL RAPPORTEUR'S MANDATE

The Special Rapporteur is in charge of dealing with situations of transition from conflict or authoritarian rule in which there have been gross violations of human rights and serious violations of international humanitarian law. The Special Rapporteur focuses on the measures adopted by the relevant authorities to guarantee truth, justice, reparation, memory and guarantees of non-recurrence, with the aim to:

TRUTH	Promote truth and memory about past violations.
ACCOUNTABILITY	Ensure accountability and serve justice.
REPARATIONS	Provide remedies to victims.
GUARANTEES OF NON- RECURRENCE	Reform the national institutional and legal framework and promote the rule of law in accordance with international human rights law, and restore confidence in the institutions of the State
MEMORY	Ensure that current and future generations are informed about past human rights violations
PREVENTION	Prevent the recurrence of crises and future violations of human rights.
RECONCILIATION	Ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels; and promote healing and reconciliation.

THE SPECIAL RAPPORTEUR'S THEMATIC REPORTS (2018-2020)

In compliance with his mandate, the Special Rapporteur gathers information on national practices and experiences. He also studies trends, developments and challenges, and commits himself to promote good practices and lessons learned, as well as to integrate a victim-centred approach and a gender-perspective throughout his whole mandate.

Mr. Salvioli has submitted thematic reports to the Human Rights Council and General Assembly on a wide range of contemporary transitional justice issues and concerns, including these four latest reports on:

**A. IMPLEMENTATION OF NATIONAL REPARATION PROGRAMMES
(A/HRC/42/45)**

**B. APOLOGIES FOR HUMAN RIGHTS AND INTERNATIONAL
HUMANITARIAN LAW VIOLATIONS (A/74/147)**

C. MEMORIALIZATION PROCESSES (A/HRC/45/45)

**D. GENDER PERSPECTIVE TO TRANSITIONAL JUSTICE PROCESSES
(A/75/174)**

IMPLEMENTATION OF NATIONAL REPARATION PROGRAMMES

Under international human rights law, there is a solid legal framework establishing the right of victims to reparation for gross human rights violations. Despite the existence of a strong normative framework and international and domestic jurisprudence, and the recognition by States that victims have a right to reparation, victims do not see this right realized. Even in countries where domestic reparation programmes have been set up, many challenges remain to achieve adequate, prompt and full reparation for victims of gross human rights violations and serious violations of humanitarian law

During the forty-second session of the HRC, which took place from 9 to 27 September 2019, the Special Rapporteur submitted a thematic report on the:

“implementation of national reparation programmes”.

What did the rapporteur assess in this report?



**INTERNATIONAL STANDARDS AND JURISPRUDENCE UNDERPINNING
DOMESTIC REPARATION PROGRAMMES**



**LESSONS LEARNED FOR EFFECTIVE DOMESTIC REPARATION
PROGRAMMES**



SELECTED CHALLENGES

What are national reparation programmes?



What are they?

- Reparation programmes are administrative processes set up by States aiming to deal with a large universe of victims, and they identify who can claim to be a victim and what violations are to be redressed, and establish reparation measures (such as, compensation, medical treatment, etc.) for the harm suffered.

What is their purpose?

- They are aimed at realizing the human rights of victims to an adequate and effective remedy.



Where have they been used?

NRP have been implemented on a wide array of countries such as Argentina, Chile, Iraq or Morocco, or during conflict, as in Bosnia Herzegovina, Colombia, Guatemala, Iraq or Sierra Leone.

Domestic reparation programmes are the most effective tool for victims of gross human rights violations and serious violations of humanitarian law to receive reparation.

MINIMUM REQUIREMENTS OF NATIONAL REPARATION PROGRAMMES

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Remedies must be adequate, prompt and effective

Bearing in mind that domestic reparation programmes are set up to provide remedies to redress victims of mass atrocities, it is essential that the remedies are adequate, prompt and effective.

Victim participation is fundamental

Domestic reparation programmes should be designed, implemented and monitored through processes that include consultation with and the participation of victims.

Compensation is not enough

Victims are entitled to be provided with different forms of reparations, and not only with compensation (for instance: medical and/or psychological treatment, the building of a monument in honour of the victims, the establishment of a community center, etc.).

Interconnected

They must relate to other pillars of transitional justice, including justice, truth, and guarantees of non-recurrence

Reasonable and proportional

They must establish clear distribution criteria across victims and provide equitable redress for the violations suffered. Under that analysis, domestic programmes must be complete, comprehensive, complex and coherent.



VICTIM'S REGISTRIES

Registries allow State authorities to decide who is eligible for reparation. Individual and collective registries of victims are crucial in order to have realistic projections of the level of victimhood in States undergoing transitions, since they help in estimating the cost of redressing the potential beneficiaries of the programme and in planning resource allocation.

VICTIM'S REGISTRIES constitute a key measure of:

ACKNOWLEDGMENT

SATISFACTION

MEMORY

UNDER-REGISTRATION is a common challenge.

HOW TO DEAL WITH IT?



AIM: TO REACH ALL VICTIMS

INFORMATION

Information is fundamental. Therefore, States should implement measures so that all victims are **informed** about their right to reparation, available reparation programmes and registration processes.

FLEXIBILITY AND ACCESSIBILITY

They must also include **flexible time frames for registration**. Forms should be confined to **essential information**, such as basic personal information, a statement of facts and of violations suffered, confidentiality issues, harms suffered, and supporting documents. Additionally, States should not put a **heavy burden and standard of proof** on victims.

PROTECTION OF THE MOST VULNERABLE

Special registration measures should be adopted to ensure that those in a **situation of special vulnerability** come forward, such as victims of sexual violence, children, and persons with disabilities.

VICTIM PARTICIPATION

Domestic reparation programmes should include **adequate consultation with and participation of victims** in their design, implementation and monitoring processes. This is of particular importance in relation to satisfaction, symbolic reparation and collective reparation.

CIVIL SOCIETY

Participation of civil society is essential. Civil society organizations have relevant data about victimhood and violations that would be of utmost importance in any mapping exercise. They also have vital links to communities of victims that could help State authorities to build trust with victims and help them come forward.



Domestic reparation programmes are often weak, fragile and highly dependent on political will and on the context in which they are implemented. Institutional security is key to their implementation, continuance and durability.



Legal frameworks establishing and regulating domestic reparation programmes are **crucial**.



National laws on reparations should indicate the State commitment to reparation, including an **acknowledgement of responsibility** and, at the very least, the **violations eligible for reparation** and the applicable time frame in which they must have occurred, a **definition of victim**, the **forms of reparation**, the **timeline for reparation**, the **allocation of funds**, and the **time frame for the programme**. The law should also indicate the institutions responsible for providing reparation as well as for providing oversight.

Purpose of the legal framework

- Provide legal certainty.
- Guarantee sustainability, regardless of political fluctuations.
- Sign of the State's commitment to properly address mass atrocities, leaving behind all political opportunism.



Requirements

- **COORDINATED** Reparation programme should, at least, be coordinated by an entity responsible for its implementation.
- **POLITICAL AND ECONOMIC LEVERAGE** They should enjoy the necessary political and economic leverage, as well as authority, to coordinate and promote action across the different State institutions that are part of the reparation system.



GOOD PRACTICES

on institutional security of Domestic Reparation Programmes

Colombia

In Colombia, a reparations system was put in place with responsibilities assigned to various institutions, such as the Victims' Unit, the Centre for Historical Memory and the Land Restitution Unit.

The Philippines

In the Philippines, the Human Rights Victims Reparation and Recognition Act created the Human Rights Victims' Claims Board.

Chile

Chile set up the National Corporation for Reparations and Reconciliation tasked with implementing various pieces of legislation on reparation enacted over time.



Financial resources are key.



Domestic reparation programmes are seriously underfunded, which hampers their ability to redress victims. The availability of financial resources to fund the work of domestic reparation programmes, including the provision of benefits, is essential for the fulfilment of the right to reparation. States must make the necessary budgetary allocations to provide reparation to victims, on the basis of realistic projections of its cost as well as the universe of victims.

How can reparation programmes be funded?

Through a reparation fund

- In **Colombia**, a fund was created under the Justice and Peace Law, in 2005. The fund was to include assets given up by members of paramilitary groups, contributions from the Colombian budget and any national or international donations. The fund was established and maintained under the Victims and Land Restitution Law of 2011.
- The **German** compensation programme for forced labour also established a fund, with a fixed amount of approximately €5.2 billion, which received contributions in equal proportion from the Government of Germany and from various German corporations
- **Sierra Leone** set up a reparation fund a decade after this was envisaged in the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, of 1999.

Inclusion of the programme in the national budget

- In **Guatemala**, the National Compensation Programme was to receive 300 million quetzals on an annual basis (equivalent to about \$40 million). However, the programme has never received the full allocation of funds and year after year its budget has decreased.

With Government bonds

- **Argentina** recognized the debt owed to victims of enforced disappearance, execution and arbitrary detention, and guaranteed the payment through government bonds. The bonds (of \$224,000 per victim) could be exchanged at their market value at any time, or at full value on maturity (16 years later).

Private funding is also a suitable source.



GERMANY	PHILIPPINES	COLOMBIA
The German compensation programme for forced labour was half-financed by corporations.	The Human Rights Victims' Claims Board in the Philippines, established to provide reparation to victims of the regime of Ferdinand Marcos, was financed from funds from Marcos's wealth.	In Colombia, the Revolutionary Armed Forces of Colombia-People's Army (FARC) agreed to contribute to reparation in the peace agreement signed with the Government of Colombia in 2016.



IMMEDIATE AND PROVISIONAL ACTION IS FUNDAMENTAL

While domestic reparation programmes are being designed, States should adopt **emergency reparation programmes or services** to address the urgent needs of victims and avoid exposing them to further harm.

And what about the role of the international community?

The role of the international community in domestic reparation programmes must also be considered. If States acknowledge their responsibility for the violations, there is no reason for other States, international financial institutions or international organizations to abstain from helping to fund reparation programmes.



SELECTED CHALLENGES

1. REHABILITATION
2. REPARATION FOR VICTIMS IN VULNERABLE SITUATIONS

1. REHABILITATION

Rehabilitation is one of the reparation measures where States face serious implementation challenges, which are exacerbated when conflict situations are ongoing, and the required infrastructure and expertise are not available or are insufficient to provide such services. The lack of effective provision of rehabilitation measures for vulnerable victims constitutes inhuman treatment and generates new victimization.

What is rehabilitation?

Rehabilitation is a form of reparation that is aimed at providing victims with physical and mental health services as well as other legal and social services. It has the ability to address the mental and physical harm caused to victims, or community harm, as well as to enable victims to reconstruct their lives, get new life opportunities, fulfil their rights to justice and truth, and contribute to non-recurrence.

- The Special Rapporteur would like to note that rehabilitation goes beyond physical and medical care and includes other social services such as education.
- A problem with the provision of education as a form of reparation in countries devastated by conflict is that not even basic education infrastructure is likely to be in place. Therefore, States have to consider carefully how to combine – in a way that maximizes their potential – development measures such as the construction of schools in areas ravished by conflict, with victims' entitlement to education. For example:
 - ✓ **Access to quality primary education**
 - ✓ **A monthly stipend**



GOOD PRACTICES ON REHABILITATION: THE CASE OF **CHILE**

- Chile set up a **comprehensive rehabilitation system** for physical and mental health was established following the recommendations made by the *Rettig Commission*.
- The programme began its work in 1991 and continues to provide rehabilitation to victims today
- Law 19.123 included **education** for the children of victims who were disappeared or killed, providing them with full scholarships for primary and secondary schooling as well as for technical training until the age of 35. The scholarship included the payment of tuition fees and a monthly stipend. Equally, Law 19.992 included education for survivors of torture.
- It provides **medical and psychosocial services** to parents, children, partners and grandchildren of victims of enforced disappearance, execution and torture, people dismissed from their employment for political reasons, and persons who have provided support to victims of the dictatorship for at least 10 continuous years.
- The programme, administered by the Ministry of Health, provides medical and dental care, diagnostic tests, access to specialists, hospitalization, and emergency services, to approximately 750,000 registered persons. The personnel include physicians, social workers and psychologists, who are also involved in memory and justice initiatives.

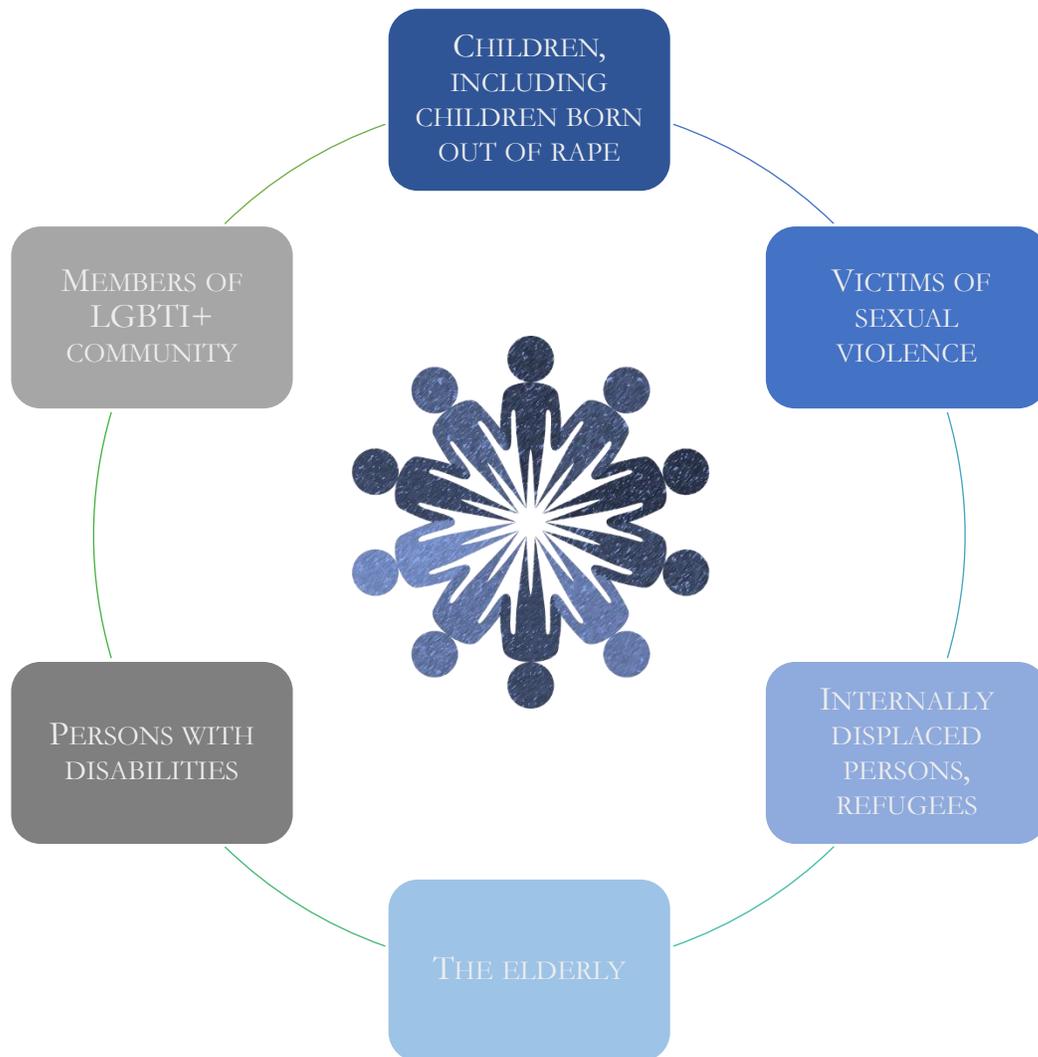
CURRENT CHALLENGE?

The programme falls short of providing medical and psychosocial support to victims in **exile** or who **live abroad** as a result of the harm suffered.

2. VICTIMS IN VULNERABLE SITUATIONS

Reparation programmes should acknowledge that not all victims are in the same situation. They do not experience the same harm and do not face the same consequences.

While domestic reparation programmes are unable to provide reparation according to the harm suffered by each victim, they can take measures to respond adequately to those most in need, such as:





REFUGEES, MIGRANTS AND INTERNALLY DISPLACED PERSONS

Refugees, migrants and internally displaced persons are often found in especially **vulnerable situations** after conflict or repression.

Notwithstanding, domestic reparation programmes have failed to include them as beneficiaries of reparation or to provide them with special measures to ensure that they are able to access reparation benefits.



GOOD PRACTICES



GERMANY

German compensation programme for forced labour represents a successful experience which provided compensation to forced labour victims, many of whom had been refugees.

CHILE

Chile put in place a series of incentives to get refugees to return to Chile (Law 19.074 of 28 August 1991 and Law 19.128 of 7 February 1992), yet they were not conceived of as reparation.

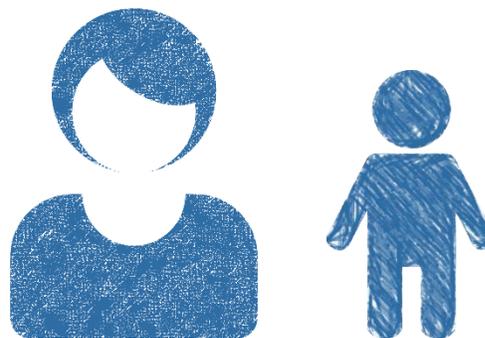
ARGENTINA

The Supreme Court of Justice of Argentina considered in the *Vaca Narvaja* case that reparation given under Law 24.043 to those illegally detained also applied to exiles, as their situation also constituted an infringement on their right to personal liberty. As a result of that judgment, government resolution 670/2016 expressly recognized the application of that law to those in exile.

COLOMBIA

Colombia has included the category of internally displaced persons in their reparation programmes (Law 1448/201).

VICTIMS OF SEXUAL VIOLENCE AND CHILDREN BORN OUT OF RAPE



Sexual violence remains a pervasive crime and its victims remain **invisible** or **ignored** in society.

As a consequence, they have often been **excluded** as beneficiaries in domestic reparation programmes. In other places, legislation on reparation for victims of sexual violence has arrived decades later.

Special measure in the design and implementation of domestic reparation programmes are necessary:



Holistic and gender approach are essential.

Victims should have **priority access** to some **benefits**.

Standard of evidence should be **lower**.

Safety and private spaces are key. This allows victims of sexual violence to come forward and protects them from social exposure, stigma and revictimization.



THE SPECIAL RAPPOREUR RECOMMENDS THAT STATES:

(A) ADEQUATE, PROMPT AND EFFECTIVE	Design and implement adequate, prompt and effective domestic reparation programmes to remedy the harm suffered by victims of mass atrocities, which recognize the responsibility of the State.
(B) DIFFERENT FORMS OF REPARATION	Ensure that such programmes include different forms of reparation beyond compensation, such as measures of satisfaction, restitution and rehabilitation, and guarantees of non-recurrence;
(C) COMPENSATION	Ensure that compensation , including the distribution criteria across victims, the family unit, and those in the most vulnerable situations, is reasonable and proportional ;
(D) DESIGN	Design reparation programmes which are complete, comprehensive, complex, and coherent internally and externally ;
(E) REGISTRY	Develop national registries of victims , which are flexible and reach out widely, to adequately estimate the potential universe of victims and expected costs, prior to the design of reparation programmes;
(F) SOLID LEGAL FRAMEWORKS	Adopt solid legal frameworks to ensure legal certainty and sustainability of reparation programmes;
(G) SOLID INSTITUTIONAL FRAMEWORKS	Adopt solid institutional frameworks that bestow domestic reparation systems with the institutional security, political leverage, financial autonomy and territorial outreach needed to operationalize the reparation policy;
(H) BUDGETARY ALLOCATIONS	Make the necessary budgetary allocations , based on the universe of victims and realistic cost expectations, through the creation of special funds, inclusion in the national budget, or other financing by sustainable means;
(I) PARTICIPATION OF OTHER ACTORS	Where relevant, design financing mechanisms by which other actors responsible for violations contribute towards reparation expenses, through, for example, financial or in-kind contributions;

(J) INTERNATIONAL DONORS	International donors may also play an important role in financially supporting reparation programmes;
(K) EMERGENCY REPARATION PROGRAMMES	Adopt emergency reparation programmes or services , while domestic reparation programmes are being designed, to address the urgent needs of victims and avoid exposing them to further harm;
(L) VICTIMS' PARTICIPATION AND CONSULTATION	Ensure and facilitate effective participation and consultation and a meaningful role for victims in the design, implementation and monitoring of reparation programmes. Also ensure effective participation of and consultation with civil society and victims' organizations in these efforts;
(M) REHABILITATION	Establish effective and timely rehabilitation services to address the physical and mental health and educational needs of victims, as well as other services, and coordinate efforts between State institutions and specialized civil society organizations and victims' organizations in this regard. The international community may support the delivery of such services;
(N) VICTIMS OF SEXUAL VIOLENCE AND CBR	Adopt special measures in the design and implementation of domestic reparation programmes to address the reparation needs and the challenges faced by victims of sexual violence , and by children born out of rape when the woman has decided to continue her pregnancy, including safety and privacy measures to prevent their social exposure and to avoid inflicting further harm on them;
(O) REFUGEES AND IDP	Adopt special measures in the design and implementation of domestic reparation programmes to address the reparation needs of refugees and internally displaced persons .

APOLOGIES FOR HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW VIOLATIONS

(A/74/147)

On 12 July 2019, in the framework of the seventy-fourth session of the General Assembly, the Special Rapporteur submitted a thematic report on the:

“apologies for gross human rights violations and serious violations of international humanitarian law”.

What type of apologies were under assessment?

The apologies under discussion were **PUBLIC APOLOGIES**, rather than private communications between individuals. However, such a focus is not to suggest that private apologies are unimportant and nothing in the report should be interpreted as discouraging private apologies.

What did the rapporteur assess in this report?

1. LEGAL AND CONCEPTUAL FRAMEWORK

2. EXISTING PRACTICES AND LESSONS LEARNED

3. RECOMMENDATIONS FOR THE DESIGN AND IMPLEMENTATION OF APOLOGIES

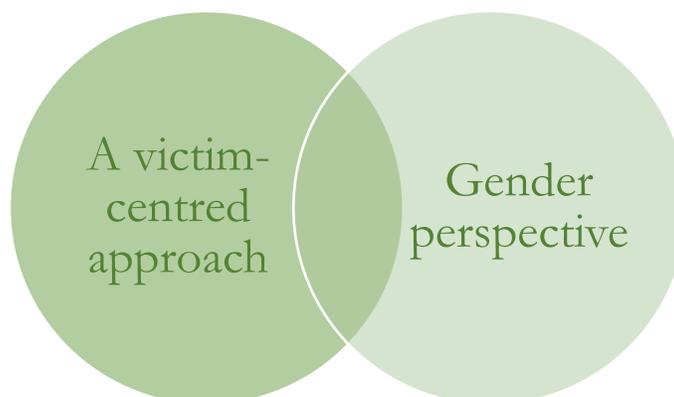


WHAT ARE THE REQUIREMENTS OF A PUBLIC APOLOGY?

Apologies may form an important part of a society's efforts to establish the truth about a violent or abusive past and can bring added value to other truth-seeking transitional justice mechanisms or processes.

ACKNOWLEDGEMENT	TRUTHFUL ADMISSION OF RESPONSIBILITY	STATEMENT OF REMORSE	GUARANTEE OF NON-RECURRENCE
An acknowledgement of a wrong deliberately or negligently inflicted that is named.	A truthful admission of individual, organizational or collective responsibility for that hurt.	A public statement of remorse or regret related to the wrongful act or acts, or omission, that is delivered with due respect, dignity and sensitivity to the victims.	Legal, institutional and cultural measures aimed at preventing the recurrence of past human rights violations.

IT IS **ESSENTIAL** THAT APOLOGIES ARE CARRIED OUT WITH:



INTERNATIONAL LEGAL FRAMEWORK



- 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
- Human Rights Committee, General Comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.
- The International Law Commission's has drafted articles on Responsibility of States for internationally wrongful acts (General Assembly resolution 56/83).
- Various other United Nations reports and commentaries have also considered apologies as a symbolic and collective reparation measure aimed at providing satisfaction to victims, by recognizing their victimhood and the societal norms transgressed (for example, A/69/518; A/HRC/14/22; A/HRC/21/46; and CCPR/C/158).
- Certain special procedures mandate holders have argued that official apologies and official recognition of State responsibility can be more effective than monetary compensation for victims of violent crimes, such as torture or sexual violence (see A/HRC/4/33 and A/HRC/14/22).
- Case-law of international courts
 - ICTY
 - ECCC
 - ICC
 - IACtHR



DID YOU KNOW....?

The most developed jurisprudence on apologies from regional human rights courts has come from the **INTER-AMERICAN COURT OF HUMAN RIGHTS**.

SOME EXAMPLES ARE:

- *Case of the Plan de Sánchez Massacre v. Guatemala (2004)*

Despite a previous State apology, made by the former Vice-President of Guatemala, public acknowledgment of State responsibility and commitment to repairing the harm done, the Court nevertheless held that: **“to be fully effective as reparation to the victims and serve as a guarantee of non-recurrence, ... the State must organize a public act acknowledging its responsibility for the events that occurred”**. The Court also ordered that the memory of those executed should be honoured, that traditions and customs of the indigenous communities concerned should be respected and that the judgment should be translated in their language.

- *Case of the Massacres of El Mozote and nearby places v. El Salvador (2012)*

As in the *Case of the Plan de Sánchez Massacre*, the State had previously apologized for the abuses. On the twentieth anniversary of the peace agreement, then President of El Salvador, Mauricio Funes delivered a **speech** in El Mozote, in which he recognized the State responsibility in the massacre, presented a list of the victims and apologized to victims on behalf of the State. In its judgment, the Court determined the following necessary criteria for the apology:

- (a) it should be agreed upon with the victims;
- (b) it should take place in public;
- (c) it should take place where the crimes were perpetrated;
- (d) it should include an acknowledgment of responsibility for all human rights violations that were committed;
- (e) victims and survivors should be present during the ceremony or participate in it;
- (f) the highest senior officials should make the apology and take part in the ceremony; and
- (g) the ceremony should be recorded and disseminated throughout the country.

FIRST STEPS: CONSULTATION

Apologies are closely associated with notions of honour, national or organizational self-image and reputation. Understanding the variables that may inhibit the offer of apologies or limit them are important for victims or campaigning organizations that are seeking apologies.

WITH WHOM?

With those to whom apology is addressed

Comprehensive and effective consultation with those affected by harms inflicted is key to the delivery of a victim-centred apology. It enables the apologizer to establish what victims want and need to hear and what they do not want to hear.

Within the apologizing constituency

Apologizers should consult widely within their own constituencies. If there are limits to what the apologizer can say, the apology should at least be communicated clearly to victims and their representatives as part of the consultation process, in order to manage the expectations of victims.



Victims should ideally be afforded the opportunity to read draft apologies and to offer feedback on the appropriateness of the language used and on the setting and context of the delivery of the apology

Those seeking apologies must understand the **motivation** of the apologizing States, non-State groups or other organizations and the **variables** working against fulsome public apologies. Such an understanding should inform any negotiations or discussions about the nature, content and delivery of apologies.

HOW SHOULD A PUBLIC APOLOGY COMMENCE AND WHAT SHOULD BE ITS CONTENT?

Motivation for issuing a public apology in a transitional justice context is often **crucial** to determining the **effectiveness** or **legitimacy** of the public apology. It can stem from several **reasons:**

TURN THE PAGE OF THE PAST

- The desire on the part of a State, armed group or organization to make a clean break with the past and herald a new era.

MORAL REASONS

- The need of an individual or the collective leadership to exercise moral authority and “do the right thing” in addressing past human rights violations.

VICTIMS’ PRESSURE

- Pressure from direct victims or victims’ representative bodies or the media.

LEGAL OR POLITICAL PRESSURE

- Legal or political pressure associated with either a criminal investigation or truth and recovery process.
-

Apologies should **NOT** serve:

- to evade blame and responsibility.
- to obfuscate, to minimize legal culpability.
- to close down a conversation that may lead to more fulsome truth recovery.

States, armed groups, corporations or organizations can sometimes use apologies as a **TECHNIQUE OF DENIAL** whereby past abuses and their responsibility for same are minimized, obscured or reinterpreted.



GOOD PRACTICE: THE CASE OF CHILE

Following 17 years of rule by the military regime headed by General Augusto Pinochet, marked by brutalities, persecution, murder and repression, Mr. Aylwin authorized the Rettig Commission to **document abuses and provide recommendations of reparations and legislative measures to ensure non-recurrence.**

When the Commission had concluded its work, Mr. Aylwin delivered an emotional, televised address in which **he fully acknowledged the abuses that took place and apologized on behalf of the State to victims and their families.**

Commentators have argued that that represented a “turning point in **gaining respect for victims and advancing public understanding of the country’s past**”.



The transitional apology made by former President of Chile, Patricio Aylwin, is often cited as an example of how an apology can aid in the reparative process.

WHAT ARE THE REQUIREMENTS OF A PUBLIC APOLOGY?



1. NAMING AND ACKNOWLEDGING OF HARM DELIBERATELY OR NEGLIGENTLY INFLICTED

- **Acknowledgment of the truth** of past wrongdoing is a fundamental prerequisite for an effective apology, for they validate the experience of victims and restore their dignity:
 - ✓ **Clear acknowledgment of the nature, scale and duration of the harm inflicted.**
 - ✓ The **direct and indirect impacts** of the harm on different categories of victim should be acknowledged.
 - ✓ The **gender dimensions** of the harm should be clearly articulated.
 - ✓ It should specify clearly whether the harm was inflicted **deliberately, with intent, or negligently.**

2. TRUTHFUL ADMISSION OF INDIVIDUAL, ORGANIZATIONAL OR COLLECTIVE RESPONSIBILITY

- Truthful apologies are necessary in order to validate the experience of victims and to restore their dignity. In the light of the truth, the apology should **clearly admit responsibility** – individual, organizational and/or collective – and **blame should be accepted** for the infliction of the harm.

3. STATEMENT OF REMORSE AND REGRET RELATED TO THE WRONGFUL ACTS OR OMISSIONS

- The apology should include a **clear statement of regret for the named harms.** The language used should be **carefully chosen** to communicate sincere remorse. It must be **unqualified** and **unreserved.**

The truth-telling function of public apology is required in order to:



- ✓ ESTABLISH AN ACCURATE PUBLIC RECORD OF THE PAST

- ✓ EDUCATING THE WIDER COMMUNITY ON THE NATURE AND EXTENT OF PAST INJUSTICES



- ✓ CONTRIBUTING TOWARDS RECONCILIATION

Truthful apologies are a fundamental part of humanizing – or “rehumanizing” – those who have suffered past abuses and re-establishing their human worth, dignity and self-respect.

There should be no attempt to justify, explain, rationalize or contextualize the harm done.

Two key truth-telling parts of an effective apology:

“reckoning”

“naming”

Reckoning involves the unequivocal acknowledgement of events, without justification or explanation, in order to demonstrate awareness of each injustice committed.

Naming specifies who the victims of injustices were and to whom the apology is addressed.

1. CREDIBLE PROMISE OF NON-RECURRENCE

Apologies on their own are unlikely to be effective, unless they are underpinned by a **credible promise of non-recurrence**. The apology should clearly indicate the practical steps that have been taken to ensure that the apologizing individual, organization or institution **will not inflict the same harms again**. There must be no sense of entitlement to or expectation of forgiveness, acceptance or reconciliation on the part of the apologizer.

2. APPROPRIATE COMPENSATION OR REPARATIONS

Apologies should be accompanied, as appropriate, by **reparative measures designed to assist those who have been affected by past harms**. They may include:



- ✓ accepting legal liability.
- ✓ commitment to provide monetary compensation.
- ✓ restoration of the rights and dignity of victims and appropriate commemorations or acts of memorialization.
- ✓ commitment to fulsomely and effectively pursue justice, truth and information recovery.

The HOW matters.

Properly crafted and delivered public apologies may contribute to reconciliation processes, when accompanied by a comprehensive transitional justice strategy. Reconciliation and apologies adopted in that context should not be used as a substitute for criminal justice or other transitional justice measures.

Reconciliation is understood as the restoration of victims' trust in the State and its institutions and conditions under which individuals can trust one another as equal rights holders

Public apologies should be delivered in a context designed to maximize the potential of the apology, its impact and effectiveness.



TIMING OF AN APOLOGY IS KEY.

Timing of an apology can have a significant bearing on its reception. Victims will often want evidence that the apology has been given appropriate, careful and sincere consideration by the apologizing State or organization.

CONSULTATION WITH THE VICTIMS IS KEY.

The timing and context for the delivery of the apology should be carefully considered, ideally in consultation with the victims and, when appropriate, arranged with other events.





HOW SHOULD APOLOGIES TAKE PLACE?

Delivered by those with the credibility to speak for the organization or institution	The individual chosen should have the authority to speak on behalf of the State, institution or organization responsible for the harm with the necessary leadership and credibility to effectively represent those who inflicted the harms. It is important that both the victims and the apologizing organization or institution recognize the authority of the apologizer – an essential element for avoiding the subsequent diminution, rejection or undermining of an apology.
Delivered with due respect, dignity and sensitivity to the victimized	The apologizer should speak clearly, using terms that are clear and unambiguous. Insensitive terminology and language should be avoided at all costs. Honesty, sincerity and humility are essential components of their effective delivery.
Non-regression	Apologies should be part of a State policy, which is sustained and reaffirmed over time, under which regressions or actions that counter the effect of the original apology are not permitted.

AND WHEN?



- In some cases, it may be appropriate for the apology to coincide with an anniversary or other date deemed significant by the victims.
- In others, it would be most appropriate for an apology to be issued at the conclusion of an investigation designed to establish the truth of what occurred, such as internal organizational review, a criminal trial, a truth recovery process or a public inquiry.
- It may also be symbolically important for apologies to be offered in such a way that they coincide with the anniversary or other important dates set aside to commemorate the memory of victims of past abuses.



GOOD PRACTICES ON TIMING

NORWAY

- In January 2012, which marked 70 years since the largest deportation of Norwegian Jews from Oslo, the Prime Minister of Norway, Jens Stoltenberg, apologized for the participation of the Norwegian police force in the deportation and for the fact that the event had occurred on Norwegian soil. In 1997, the King of Norway used the opening of the Sami Parliament as an opportunity to apologize for the Government's "Norwegianization" policy towards the Sami people.

UNITED KINGDOM

- In a similar vein, in 2002, marking thirty years since a series of bomb explosions throughout Belfast, in which nine people were killed (5 of whom were civilians) and 130 people were injured, the Irish Republican Army issued a statement in which they offered its "sincere apologies and condolences" to the families of those killed.

SIERRA LEONE

- Following repeated calls from the Human Rights Commission and women's groups for a State apology for the sexual violence during the conflict, the Government chose to issue an apology to the women of Sierra Leone on International Women's Day, in front of a diverse group of women, civil society actors, representatives of the international community and the media.





THE SPECIAL RAPPORTEUR CONCLUDES:

(A) CONSULTATION WITH THOSE TO WHOM APOLOGY IS ADDRESSED

Comprehensive and effective **consultation** with those affected by harms inflicted is key to the delivery of a victim-centred apology. It enables the apologizer to establish what victims want and need to hear and what they do not want to hear. Victims should ideally be afforded the **opportunity to read draft apologies and to offer feedback** on the appropriateness of the language used and on the setting and context of the delivery of the apology, which helps to avoid unnecessary pitfalls and the possibility of an apology causing more harm than good. In situations in which collective apologies are being issued, it is important that victims groups consult internally and agree, insofar as possible, upon the parameters of what they would like the apology to include.

(B) CONSULTATION WITHIN THE APOLOGIZING CONSTITUENCY

In order to deliver a meaningful apology that is not subsequently qualified, rescinded or undermined, apologizers should **consult widely within their own constituencies**. If there are limits to what the apologizer can say, the apology should at least be communicated clearly to victims and their representatives as part of the consultation process, in order to manage the expectations of victims.

(C) NAMING AND ACKNOWLEDGING OF HARM DELIBERATELY OR NEGLIGENTLY INFLICTED

A public apology should commence with a **clear acknowledgment** of the **nature, scale and duration** of the **harm** inflicted. It should specify clearly whether the harm was inflicted deliberately, with intent, or negligently. The direct and indirect impacts of the harm on different categories of victim should be acknowledged. The gender dimensions of the harm should be clearly articulated. **Under no circumstances should the apology be used as a platform to minimize or obfuscate culpability.**

(D) TRUTHFUL ADMISSION OF INDIVIDUAL, ORGANIZATIONAL OR COLLECTIVE RESPONSIBILITY

Truthful apologies are necessary in order to validate the experience of victims and to restore their dignity. Establishing the truth of what occurred is almost always a prerequisite, but in some instances, an apology can effectively provoke a truth recovery process. In the light of the truth, the **apology should clearly admit responsibility** – individual, organizational and/or collective – and blame should be accepted for the infliction of the harm. There should be **no attempt to justify, explain, rationalize or contextualize the harm**. In circumstances in which the apologizer believes that some elements of

past harms or human rights violations were justifiable, the public apology is not the time or place to restate that belief.

(E) STATEMENT OF REMORSE AND REGRET RELATED TO THE WRONGFUL ACTS OR OMISSIONS

The apology should include a **clear statement of regret** for the named harms. The language used should be carefully chosen to communicate sincere remorse. It must be **unqualified** and **unreserved**.

(F) DELIVERED IN A CONTEXT DESIGNED TO MAXIMIZE THE POTENTIAL OF THE APOLOGY

The **timing** and **context** for the delivery of the apology should be carefully considered, ideally in consultation with the victims and, when appropriate, arranged with other events. In some cases, it may be appropriate for the apology to coincide with an anniversary or other date deemed significant by the victims. In others, it would be most appropriate for an apology to be issued at the conclusion of an investigation designed to establish the truth of what occurred, such as internal organizational review, a criminal trial, a truth recovery process or a public inquiry. The **setting** for the apology should also be designed to maximize its impact and effectiveness.

(G) DELIVERED BY THOSE WITH THE CREDIBILITY TO SPEAK FOR THE ORGANIZATION OR INSTITUTION

The person or persons selected to deliver the apology must have the necessary **leadership** and **credibility** to effectively represent those who inflicted the harms. The individual chosen should have the **authority to speak on behalf of the State**, institution or organization responsible for the harm. It is important that both the victims and the apologizing organization or institution recognize the authority of the apologizer – an essential element for avoiding the subsequent diminution, rejection or undermining of an apology.

(H) DELIVERED WITH DUE RESPECT, DIGNITY AND SENSITIVITY TO THE VICTIMIZED

The **manner** in which an apology is delivered is centrally important. The apologizer should speak clearly, using terms that are clear and unambiguous. Insensitive terminology and language should be avoided at all costs. Victims are highly alert to overly staged or hollow apologies. **Honesty**, **sincerity** and **humility** are essential components of their effective delivery. In some instances, it may be appropriate for the public apology to be linked to broader political, societal, religious or communal events or rituals, to maximize the symbolic power of the public apology.

(I) CREDIBLE PROMISE OF NON-RECURRENCE

Apologies on their own are unlikely to be effective, unless they are underpinned by a **credible promise of non-recurrence**. The apology should clearly indicate the practical steps that have been taken to ensure that the apologizing individual, organization or institution will not inflict the same harms again. There must be no sense of entitlement to or expectation of forgiveness, acceptance or reconciliation on the part of the apologizer.

**(J) APPROPRIATE
COMPENSATION OR
REPARATIONS**

Apologies should be accompanied, as **appropriate**, by reparative measures designed to assist those who have been affected by past harms. They may include accepting legal liability, commitment to provide monetary compensation, restoration of the rights of victims and/or appropriate commemorations or acts of memorialization. Reparative measures may also include a commitment to fulsomely and effectively pursue justice, truth and information recovery.

(K) NON-REGRESSION

Apologies should be part of a **State policy**, which is sustained and reaffirmed over time, under which regressions or actions that counter the effect of the original apology are not permitted.

**(L) APOLOGIES AND
RECONCILIATION**

Properly crafted and delivered public apologies may contribute to **reconciliation processes**, when **accompanied** by a comprehensive **transitional justice strategy**. Reconciliation, understood as the restoration of victims' trust in the State and its institutions and conditions under which individuals can trust one another as equal rights holders, and apologies adopted in that context should not be used as a substitute for criminal justice or other transitional justice measures.

MEMORIALIZATION PROCESSES: the fifth pillar of transitional justice

(A/HRC/45/45)

Memorialization processes in the context of transitional justice, are fully recognized by the rules and standards of contemporary international law. The role of memory is understood as a tool for combating injustice and promoting peace. 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.

During the forty-fifth session of the HRC, which took place from 14 September to 2 October 2020, the Special Rapporteur submitted a thematic report on the:

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

The report 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.



What did the rapporteur assess in this report?

**1. OBJECTIVES AND REGULATORY
FRAMEWORK OF MEMORIALIZATION
PROCESSES**

2. MEMORY AS A BATTLEFIELD

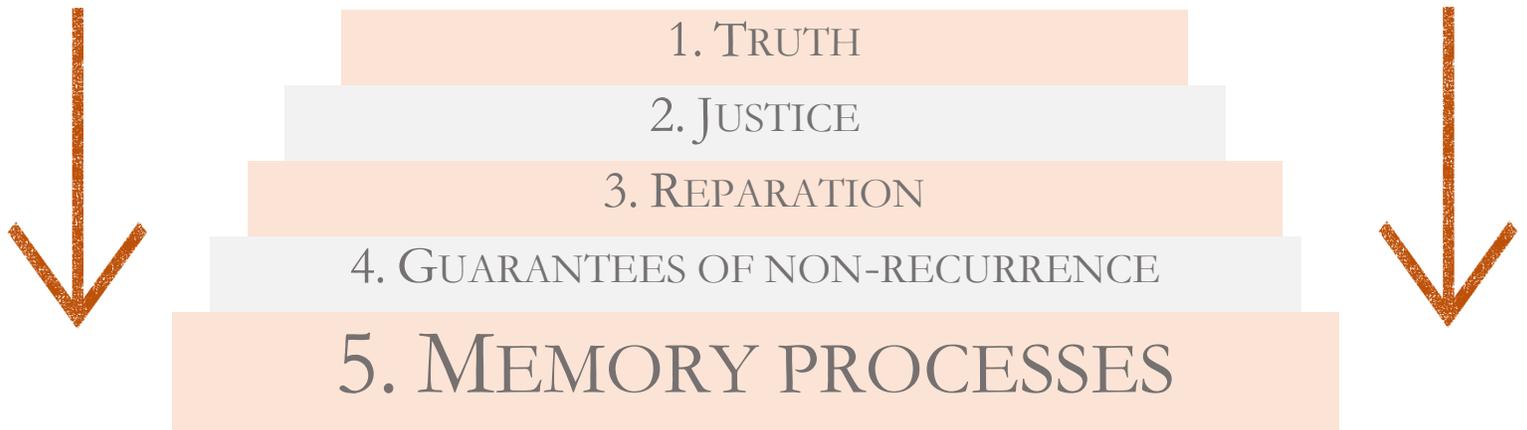
**3. MEMORY WORK IN SITUATIONS OF
TRANSITION**

**4. WEAPONIZATION OF MEMORY THROUGH
SOCIAL NETWORKS**

**5. PROGRESSIVE DEVELOPMENT OF
MEMORY AND NON-REGRESSION**

Without the **memory of the past**, there can be no right to truth, justice, reparation, or guarantees of non-recurrence.

The five PILLARS of transitional justice:



Memory processes contribute 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**.

INTERNATIONAL LEGAL FRAMEWORK



The duty to carry out memory processes derives from primary (covenants and conventions) and secondary (principles and guidelines) sources of international human rights law.

INTERNATIONAL TREATIES

- [Convention on the Prevention and Punishment of the Crime of Genocide.](#)
- [International Covenant on Civil and Political Rights.](#)
- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.](#)
- [International Convention for the Protection of All Persons from Enforced Disappearance.](#)

SOFT LAW INSTRUMENTS

- Note prepared by the former Special Rapporteur of the Subcommission Mr. Theo van Boven ([E/CN.4/1997/104](#)).
- Final report submitted by the Special Rapporteur of the Commission on Human Rights, Cherif Bassiouni ([E/CN.4/2000/62](#)).
- Updated set of principles for the protection and promotion of human rights through action to combat impunity, report by Diane Orentlicher, building on work previously carried out by Louis Joinet ([E/CN.4/2005/102/Add.1](#)).
- [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.](#)

Memory as a battlefield.

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. 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.

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. 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.

*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.***



As a part of transitional justice, memory must take and be consistent with a **human rights approach.**

Three particular **scenarios** where memorialization may face challenges:

1 Memorialization in times of conflict.



2 Memorialization in post-conflict situations (situations of transition).

3 Weaponization of memory in connection with the politicization of social networks.



Memorialization in times of conflict



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.

CHALLENGES

- 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.
- 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
- Investigation and documentation processes that take place **during conflicts**, while extremely important, 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.

MANAGING VICTIMS' EXPECTATIONS

- 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.

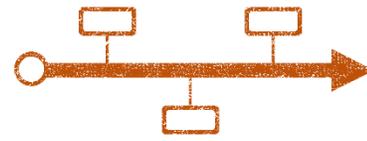


GOOD PRACTICES:

An example of innovation managing victims' expectations 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:**

- ✓ It has taken a number of measures to respond adequately to victims' needs.
- ✓ Has cooperated with national jurisdictions prosecuting the perpetrators of international crimes
- ✓ Has established procedures for regularly informing victims' representatives about investigations.
- ✓ Has conducted studies on expectations and how best to meet them
- ✓ Has ensured that victims who testify have given their prior consent and agreement and that precautions are taken to guarantee their safety.

Memorialization in post-conflict situations (or situations of transition)



When peace and/or democracy are finally restored, the educational goal of memorialization is not always achieved through transitional justice mechanisms. For instance, 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

JUSTICE IS NOT ENOUGH: THE CASE OF THE ICTY.

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.



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.”

...NONETHELESS, JUSTICE IS FUNDAMENTAL: THE CASE OF SOUTH AFRICA

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, which 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 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.



Justice alone, like the absence of justice, is not sufficient for the requirements of memory: **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.



GOOD PRACTICES



- The Truth and Reconciliation Commission of **CANADA**, 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 **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 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. 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.
- 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. Examples: a
 - ✓ A textbook on **Franco-German** history by authors from both States was published under the title *Histoire/Geschichte* at the start of the 2006/07 school year.
 - ✓ The **Israeli-Palestinian** work *Histoire de l'autre*, produced by the Peace Research Institute in the Middle East.
 - ✓ 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.
- 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.
- 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 **ARGENTINA**, the work of 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.

The importance of culture



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.



Key factors of memorialization:

IMPLEMENTATION AND DISSEMINATION OF RECOMMENDATIONS

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.

ACCESS TO ARCHIVES

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.

The Special Rapporteur considers the protection of archives to be essential for enabling societies to learn the truth and regain ownership of their history.

And what about the role of the United Nations?

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.

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 because of technical and budgetary reasons and because the resources required to process and digitize them are lacking.

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.

Weaponization of memory in connection with the politicization of social networks.



How to find a balance between the **right to information** and the **prohibition of incitement to hatred**?

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 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.

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.



Specific State actions are needed to respond to these challenges.

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.**

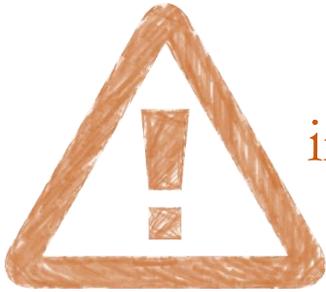
The Rabat Plan of Action.



The *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* identifies six criteria for defining acts that constitute incitement to hatred and are therefore offences that must be prohibited.

1. The context, which has a direct bearing on causation or intent.
2. The speaker's position.
3. 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.
4. The content of the speech act.
5. The extent of the speech act, such as its public or non-public nature and the media used to disseminate it.
6. The likelihood, including the imminence, of a direct causal link between the hate speech and specific acts of violence.

The Rabat Plan of Action provides guidance on how to ensure the right to freedom of expression and States' duty to prohibit any expression that constitutes hate speech or incitement to discrimination, hostility or violence.



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

<p>CRIMINAL RESPONSIBILITY OF IDEOLOGUES AND PROPAGANDISTS</p>	<p>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.</p>
<p>RESPONSIBILITY OF THE MEDIA AND THE NEED TO ADAPT LAWS</p>	<p>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.</p> <p>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.</p>

FAKE NEWS: How memory and information can easily be weaponized.



The mass dissemination of fake news can create an atmosphere in which people are at risk of becoming dangerously radicalized, making coexistence difficult. 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.

FAKE NEWS CONSTITUTE AN ATTACK ON DEMOCRACY

False information reveals and exacerbates the collapse of values and the dissolution of societies.

FAKE NEWS CAN EXACERBATE VIOLENCE

False information must be treated with concern because, as history shows, it has previously been a harbinger of tragedies, bloodshed and pogroms.

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.



Media and information education in schools is essential to counteract the harm caused by fake news.



PROGRESSIVITY IS KEY.



PRO PERSONA PRINCIPLE

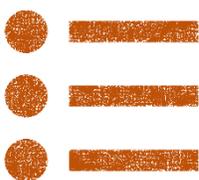
Progressivity is a principle that informs international human rights law from a *pro personae perspective* (or *Pro Homine*), a core element of international human rights law, which prohibits the interpretation of a provision as permitting the suppression or restriction of the enjoyment or exercise of any right or freedom.

PRINCIPLE OF NON-REGRESSION

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. 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.

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**,
- ✓ considering **different groups of victims**, and
- ✓ duly reflecting a **gender perspective**.



THE SPECIAL RAPPORTEUR

CONCLUDES:

(A) OBLIGATIONS STEM FROM LAW

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.

(B) HUMAN RIGHTS APPROACH

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.

(C) FIFTH PILLAR

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

(D) FUNCTION

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.

(E) PROGRESSIVITY

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.

(F) STATE'S ROLE

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.

(G) PUBLIC POLICY

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.

(H) TRANSVERALITY

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.

(I) REFLECTION

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**.

(J) DIALOGIC TRUTH

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.

(K) VICTIMS’ VOICES

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.

(L) AIMS

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.

(M) VICTIM’S TREATMENT

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.

(N) DEMOCRACY AND CULTURE OF PEACE

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.

(R) ARCHIVES

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.

(S) UNITED NATION'S ROLE

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.

(T) FREEDOM OF EXPRESSION VS. HATE SPEECH

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.

GENDER PERSPECTIVE IN TRANSITIONAL JUSTICE PROCESSES

(A/75/174)

Systemic and structural discrimination against women, fostered by patriarchy and the allocation of roles based on gender stereotypes, has impacts on all areas of life and affects all women, particularly women living in poverty in rural areas, women from ethnic minorities, women with disabilities and lesbian, gay, bisexual and transgender persons, among others.

The Special Rapporteur has been tasked with integrating a gender perspective and a victim-centred approach throughout the work of his mandate. Therefore, on 17 July 2020, in the framework of the seventy-fifth session of the General Assembly, the Special Rapporteur submitted a thematic report on:

“The gender perspective in transitional justice processes”.

What did the rapporteur assess in this report?

1. TRUTH COMMISSIONS

2. REPARATIONS

3. CRIMINAL PROSECUTION

4. GUARANTEES OF NON-RECURRENCE

5. MEMORIALIZATION

6. PARTICIPATION IN TRANSITIONAL JUSTICE PROCESSES

1. TRUTH COMMISSIONS



Truth commissions are a tool to give visibility to and facilitate the participation of victims, and places emphasis on the individuals, communities or populations historically subject to discrimination, including women.

Early truth commissions were **gender-blind** and **ignored gross violations based on gender, sexual orientation and gender identity**.

Until relatively recently:

-  Women were **forgotten** among the overall victims, and the gender issue was ignored or touched upon in only a superficial way by truth commissions.
-  Women, men and LGBT persons who were victims of sexual and gender based violence, were also **forgotten** and rendered invisible.
-  There has been also a general lack of focus on sexual orientation and gender identity in the vast majority of truth-seeking processes.



Intersectional perspective is key.

Truth commissions should comprehensively address the impact of gender, including sexual and other gender-based violence suffered by all persons, and consider the dimension of sexual orientation and gender identity.

Need to implement a cross-cutting and systemic approach in all stages of a commission's work, including through the adoption of a combined organic strategy that includes a special gender unit (with consultants and experts of different sexual orientations and gender identities specialized in gender analysis) and specialized members in other teams.

GOOD PRACTICES ON INTERSECTIONAL PERSPECTIVE:

COLOMBIA

The mandate of the Truth Commission of Colombia explicitly includes lesbian, gay, bisexual and transgender persons among the categories to be addressed in order to clarify the impact of the conflict.



PERU AND ECUADOR

The Truth and Reconciliation Commission of Peru and the Truth Commission of Ecuador established a special unit in their organizational structure dedicated exclusively to gender issues, which allowed for a specific operational focus on gender based patterns of human rights violations.

Which criteria should truth commissions meet?



KNOWLEDGE

All commission staff should have sufficient knowledge of gender issues and receive ongoing training to raise awareness about gender, sexual violence (including against men, boys and lesbian, gay, bisexual and transgender persons) and overcoming biases.

Gender parity or balance among commission members is fundamental since:

- a) brings greater visibility to the political decision to include a gender perspective in commission work,
- b) ensures the presence of women at the highest decision-making levels of commissions; and
- c) brings commissions closer to women victims.

TRAININGS

Interviewers should be trained in techniques to safely, confidentially and sensitively identify and record the experience of both male and female victims or survivors of sexual violence, or those who have been subjected to violence because of their actual or perceived sexual orientation or gender identity

It is important to avoid classifying women's experience exclusively as victims of sexual violence and reducing them to sexual beings.



- Duly interpreting the scope of the violations studied, from an individual person's perspective, is key to homogenizing the joint work of the teams that comprise truth commissions.
- It is necessary to adopt a broad definitions of human rights violations covering gender behaviours such as forced nudity, inappropriate touching, genital mutilation and beating, forced prostitution, sexual slavery, rape, forced abortion, forced pregnancy intentionally or unintentionally resulting from rape, forced fertilization, forced sterilization, forced incest, malicious or unintentional transmission of a sexual disease resulting from rape, loss of reproductive capacity intentionally or unintentionally resulting from torture or sexual violence, labour in captivity, baby theft, among other violations.
- The format for taking statements and the design of the database should allow for the recording of primary and secondary violations and their impacts on primary and secondary victims, while the narrative and the recommendations should appropriately cover the gender impact.

The importance of conducting proceedings with a victim centered approach.

HEARINGS

The risks of revictimization are high and must be taken into account when designing hearings. The informed consent of those who testify is essential. Psychosocial support must be guaranteed before, during and after the hearing. Those who testify must be in a decent and safe environment, have support to prepare their testimonies and anticipate questions, and have protection and security measures in place to prevent the social exposure of victims and avoid inflicting further damage on them once they return to their communities.

VICTIMS' SILENCE

Many women do not perceive the crimes committed against them as violations of their human rights or they diminish them by prioritizing the telling of the experiences of others, which entails making their own suffering invisible. In particular, in the case of sexual violence, silence prevails, not only because of feelings of guilt, shame or fear of being stigmatized or ostracized by the community, but also because of the conviction that any complaint would be futile owing to the lack of institutional protection, which highlights the extent of sexist cultural patterns. The silence can be even greater when the victims of sexual violence are men, boys and lesbian, gay, bisexual and transgender persons, especially if they have been attacked because of their actual or perceived sexual orientation or gender identity

KEY:

- A proactive strategy of support and confidence-building is required to motivate women, lesbian, gay, bisexual and transgender persons and victims of sexual violence in general to provide statements.
- The dissemination and communication campaigns developed by truth commissions are crucial: the development of dissemination materials should take special care to make non-sexist use of language and image, convey a message of gender equity and sensitivity, and expressly include gender-based violence in the list of violations to be investigated.



Final reports of truth commissions.

Final reports have gradually moved from scant mention of women to attention to rape or sexual and gender-based violence, and to a more comprehensive analysis of such issues as the role of women in the history of conflict, the conditions that facilitated the abuse of women and the situation of women victims.

DISSEMINATION AND FEEDBACK.

In order to achieve gender mainstreaming in final reports and ensure that recommendations respond adequately to the causes and consequences of violence, it is key to circulate the findings of the work teams and their feedback, both internally and horizontally.

GOOD PRACTICES

Morocco

In Morocco, the Equity and Reconciliation Commission devoted a section of its final report to lessons learned on gender and to serious human rights violations



Peru

In Peru, the final report contains a chapter on sexual violence against women and another on the differentiated impact of human rights violations on men and women.

Brazil

The final report of the National Truth Commission of Brazil goes further. In addition to a special chapter on sexual violence, gender violence and violence against children and adolescents, the report includes a section on the dictatorship and homosexuality that seeks to examine the ways in which the dictatorship's systematic and widespread violence affected the lesbian, gay, bisexual and transgender population





2. REPARATIONS

The first reparations programmes for victims of gross human rights violations did **not** address the specific forms of victimization that **women experience**. Currently, the explicit incorporation of a gender perspective in reparations programmes is aimed at providing reparations for sexual crimes committed and identifying any reparation decisions that may have a differential impact between the sexes. Similar perspectives should be adopted in relation to lesbian, gay, bisexual and transgender persons

A. DEFINITION OF THE UNIVERSE OF VICTIMS

Reparation programmes should not reproduce patterns of gender discrimination. Currently, in order to define the notion of a victim eligible for reparations and the list of violations to be remedied through a gender sensitive lens, the programmes usually:

- a) Use a progressive typology with a gender focus to analyse the different violations of human rights, specifically including sexual violence and violations of sexual and reproductive rights, as well as the gender impact of forced displacement and violations of economic and social rights.
- (b) Classify the relatives of deceased or disappeared persons as victims and provide them with full reparation as successors and direct victims.
- (c) Include the relatives of surviving victims in that classification; allow children born of rape to be recognized as autonomous victims of a sexual violations; and recognize as autonomous violations, for example, the interruption of the life plan of persons who sought the release of a relative, or of persons caring for a relative with disabilities due to torture, which are experiences often faced by women.
- (d) Use a definition of the family that does not restrict the meaning to a rigid or legalistic concept or to dominant cultural views, and that includes people who are emotionally attached to or in a dependent relationship with the primary victims.
- (e) Include complex victims, that is victims who were themselves perpetrators since, in the context of their imprisonment or within their own non-State armed group, they may have been victims of sexual and gender-based violence.

B. DEFINITION OF REPARATION MEASURES

STIGMATIZING EFFECT OF RAPE

Beyond the physical and moral harm suffered, certain crimes have secondary effects on the social and economic status of the victim. Steps should be taken to ensure that the standards and parameters used in identifying and quantifying such factors as actual damage, lost profits, lost opportunities and disruption to the life plan are not based on sexist preconceptions, and that the secondary effects are duly assessed in the reparation measures.

STIGMATIZING EFFECT OF REPARATION

Careful assessment must be made of which reparation measures are most appropriate, particularly in cultural and social contexts where the community usually takes precedence. Individual reparation in principle forces the victim to become visible, which may make him or her vulnerable to revictimization.

TRANSFORMATIVE EFFECT OF REPARATION

The traditional restitutive approach to reparations is insufficient for women, who traditionally find themselves in conditions of exclusion, inequality and discrimination.

A return to the situation before the violation is insufficient as it does not imply the effective enjoyment of their rights. Reparations should aspire to subvert the pre-existing structural inequality that may have engendered the violence suffered by women.

EXAMPLES

- (a) Measures which can have a transformative impact on women's lives in practical term and in terms of their self-esteem;
- (b) Measures which facilitate a real narrowing of existing gender gaps;
- (c) Measures which promote a new positioning of women as individuals, in relation to the community and within the family;
- (d) Measures which encourage their incorporation in other spaces or some level of economic or other autonomy, and allow the new positions assumed by women **during crises and conflicts to be reflected.**

Implementation of domestic reparation programmes

Maintaining a gender focus at the time of implementation requires a review of gender inequalities and discrimination and also a comprehensive understanding of the gender structure of society and how that affects the socioeconomic and political status of women in everyday life and their access to social programmes.

EVIDENTIARY STANDARD

The evidentiary standard in reparation programmes should not create exclusion or resemble a court case. The challenge is to accelerate and facilitate the procedures for these sectors and to place the burden of proof on the rating agency.

ACCESS

There are several barriers to women's effective access to reparation (a higher rate of illiteracy, lack of legal and economic autonomy, for example.), as well as for lesbian, gay, bisexual and transgender persons (criminalization of sexual or gender diversity or limits to the legal recognition of gender identity, for example). These barriers must be taken into account when designing implementation processes that are appropriate, understandable and accessible to victims.

PRIORITIZATION

The implementation of reparation programmes should:

(a) identify which groups of victims will be addressed first and prioritized according to their situations of vulnerability, including vulnerability due to victimization, whose analysis should cover secondary harm inflicted by the community.

(b) avoid gender bias and avoid reproducing patterns of discrimination.

GOOD PRACTICES:



RATING:

One identification and rating strategy that can overcome both the obstacle of proof and the challenge of getting women to talk is **to have recourse to reconstructing patterns of behaviour in the commission of certain violations**, in order to establish an appropriate system of presumptions and positive discrimination.

PRIORITIZATION:

The experience of **Timor-Leste** shows instructive elements in how to prioritize implementation in a gender-sensitive way that includes victims of torture, persons with physical or mental disabilities, victims of sexual violence, children, widows and single mothers.

3. Criminal prosecution



The establishment of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the International Criminal Court contributed significantly to the visibility of sexual and gender-based violence. These advances have raised the standards for the prosecution of sexual and gender-based crimes in national courts, positively guiding representatives of the civil party, the prosecution and/or the judiciary.

However, impunity for sexual and gender-based crimes continues to prevail and there are barriers to women and lesbian, gay, bisexual and transgender persons accessing justice, mainly owing to negligent and prejudiced attitudes of justice officials.

TRAINING OF JUSTICE OFFICIALS

It is necessary to provide justice officials with sufficient tools to be able to identify prejudices and carry out comprehensive gender analysis of the cases they are addressing through the implementation of special protocols for the investigation and prosecution of sexual and gender-based crimes, which can draw on the best practice manuals of the special international tribunals.

SPECIALIZATION AND PRIORITIZATION FOR PROPER ASSESSMENT

Strengthening national capacity to prosecute crimes of sexual and gender-based violence also involves promoting specialization, and thus the prioritization of such cases.

SAFEGUARDS AND PROTECTION

It is essential to design special programmes based on an appropriate gender-sensitive assessment of the specific threat situations that victims of sexual and gender-based violence may face in the investigation phase, during the court proceedings and after sentencing. It is also essential to adopt regulatory provisions and specific measures that provide safe and private environments and protect the identity of victims.

GOOD PRACTICES:



TRAINING OF JUSTICE OFFICIALS

- ✓ In **MEXICO**, the Supreme Court of Justice of the Nation has a protocol for judging with a gender perspective, and the Attorney General's Office has a national protocol of action for personnel of the country's judicial bodies in cases involving sexual orientation or gender identity.
- ✓ In **ARGENTINA**, the Public Prosecutor's unit for coordination and follow-up in cases involving human rights violations during the period of State terrorism prepared a document entitled "Considerations on the prosecution of sexual abuse committed as part of State terrorism and a provincial court prepared a protocol for taking statements from persons who have been victims of sexual crimes in the context of crimes against humanity.

SPECIALIZATION AND PRIORITIZATION FOR PROPER ASSESSMENT

- ✓ The adoption of a special inter-agency model for investigation and prosecution with simplified procedures, a mobile design and legal staff who speak local languages – such as the mobile courts in the **DEMOCRATIC REPUBLIC OF THE CONGO** – makes it possible to overcome difficulties of geographical access.
- ✓ In **COLOMBIA**, the investigation and prosecution unit of the Special Jurisdiction for Peace has a specialized group investigating cases of sexual violence. Colombia also created the Gender Commission and included gender identity and sexual orientation in its criteria for prioritizing cases.

4. Guarantees of non-recurrence



In fulfilling a preventive function, guarantees of non-recurrence must be rooted in a gender-responsive analysis of the structural causes of violations and the factors that encourage them, in order to design legal and institutional changes with **transformative potential**.

GENDER-RESPONSIVE POLICY REFORMS AND INSTITUTIONAL REFORMS

A comprehensive review of all regulatory provisions (constitutional, civil and criminal or administrative in nature, and the provisions of traditional regulatory systems) should be undertaken in order to identify and amend provisions that are discriminatory against women and lesbian, gay, bisexual and transgender persons; to ensure the effective exercise of their rights; and to review the ways in which issues of sexual and gender-based violence and violence based on sexual orientation and gender identity are addressed

EDUCATION

An education system that is deficient in its interaction with wider social, cultural, political and economic processes can become an underlying element in the political momentum that leads a country to embark on the path of armed conflict, to undermine peace and/or to fuel violence.

It is important to comprehensively review existing standards and policies in the education system to identify the role played by education in fueling or sustaining discrimination and conflict; and to correct the system by guiding it towards education for peace, based on respect for and guarantee of human rights without discrimination.

5. Memorialization



Memorialization processes complement truth, justice, reparations and non-recurrence mechanisms and can play a key role in duly addressing the gender dimension of violations of human rights and international humanitarian law.

The very culmination of the work of a truth commission, with its final report, is the development of a new story about the recent past, with a critical approach and recognition of the rights of victims.

Education is crucial

- A process of reviewing school textbooks and curricula must be undertaken in order to have a common memory and rebuild healthy and equitable relations between individuals and groups as well as trust in the State.
 - Through school textbooks and curricula, truth commission reports can be made more accessible and disseminated to children, teachers and their families.
- A wide range of educational tools and resources can be designed using paper, audiovisual media and other means to directly represent memory, such as artefacts, celebrations, testimonies and newspapers

GOOD PRACTICES ON EDUCATION



In **SOUTH AFRICA**, the former prison of Johannesburg, Old Fort Prison, now converted into Constitution Hill complex which houses four museums and the Constitutional Court, is a good example of these synergies. One of the museums is the Women's Prison, which provides an insight into the gender-based violations suffered by common and political prisoners and the stories of prominent anti-apartheid women activists

The Peace School in Monte Sole, **ITALY**, an area razed to the ground by Nazi troops, is another example of a site of awareness that serves as a basis for educational programmes in which young people from affected societies are invited to reflect together on the past, with a focus on gender, stereotypes and prejudices

With the cooperation of a non-governmental organization, the Government of **CAMBODIA** opened a museum to the public in a pagoda complex in Battambang to disseminate information on gender-based violence, and the Ministry of Religion supported the construction of memorials throughout the country to remember gender-based violence and as a lesson for the future



6. Participation in transitional justice processes



Consultative processes with these individuals should encompass the entire transitional justice process, from design to implementation. Without the participation of women, girls and boys, lesbian, gay, bisexual and transgender persons and victims of sexual and gender-based violence in consultative processes, transitional justice mechanisms are likely to reflect biased concerns, priorities, interests and experiences, and ignore sexual and gender-based violence.

Elements for gender - sensitive consultative processes

1. INCLUSION

The determination in advance of the persons who will be consulted must be inclusive and overcome gender bias, whether conscious or unconscious, formal or informal, so as to avoid undermining the credibility of the consultative process.

The identification of the categories should take into account intersectional criteria and include:

- ✓ women,
- ✓ children and youth;
- ✓ lesbian, gay, bisexual and transgender persons;
- ✓ members of indigenous communities;
- ✓ people of African descent;
- ✓ persons in situations of poverty and displacement;
- ✓ religious, linguistic and ethnic minorities; and people from rural and urban areas

2. SECURITY AND PROTECTION

Participation in consultative processes implies a certain degree of visibility that entails security, social and revictimization risks. Security conditions must be safeguarded to allow their participation free of coercion, with separate consultations in neutral locations by peers qualified to deal with victims of sexual and gender-based violence.

3. ACCESSIBILITY

There are several objective practical obstacles that make participation difficult – if not impossible – especially for women and girls (even more so if they are indigenous, of African descent, belong to an ethnic minority, are peasants farmers or in situations of illiteracy and/or poverty).

Consultations should be conducted in the local dialect or vernacular language of the place where they are being held, and should be organized in a decentralized manner in proximity to the places of residence or displacement of the marginalized persons and groups identified.

4. TRAINING, COMMUNICATION AND AWARENESS-RAISING, AND TIME FRAME

The capacity of women, girls and boys, lesbian, gay, bisexual and transgender persons and victims of sexual and gender-based violence who participate in the consultations should be strengthened through prior training to ensure that the purposes, principles, procedures and actual scope of the processes are understood. Communication strategies, risk awareness and transparency initiatives, risk mitigation measures and time limits are among the essential requirements. The flow of information must be constant and appropriate means used to reach these participants, taking into account local, cultural, religious, ethnic and other particularities, as well as vernacular languages and dialects.

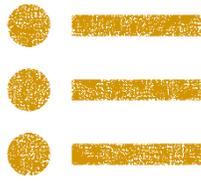
ELEMENTS FOR GENDER- SENSITIVE CONSULTATIVE PROCESSES: **GOOD PRACTICES**

In **CHILE**, the regional intercultural dialogues held with society civil organizations served as a basis for the elaboration of the first national human rights plan, in which consultations with and the participation of women and lesbian, gay, bisexual and transgender persons were encouraged.

The use of techniques for the comprehensive mapping of groups and organizations, and the use of sampling (as in **BURUNDI**), quotas (as in **BOSNIA**), or parity, are powerful tools for equalizing the possibilities of participation and ensuring the implementation of such criteria.

In **SWITZERLAND**, the Federal Department of Justice and Police established a round table of equal composition to carry out an in-depth memorialization work and establish recommendations for victims regarding coercive measures for assistance and extra-family placements.





THE SPECIAL RAPPORTEUR RECOMMENDS THAT STATES:

(A) TRUTH COMMISSIONS

Ensure that truth-seeking initiatives contain an explicit reference to examining the causes and consequences of sexual and gender-based violence, and to the comprehensive implementation of their work from a gender perspective; and that the selection and appointment of commissioners is gender balanced and include the participation of the communities and populations concerned;

Establish a combined organizational structure that allows for mainstreaming and specialization, and adopt a process of continuous training for the commission's staff in order to ensure awareness-raising and overcome biases, with special attention given to the teams responsible for collecting statements and in charge of analysis and investigation.

Ensure that the typology of serious human rights violations includes gender behaviours; broad definitions that are not limited to physical injuries; a differentiated impact of violations; and a record of primary and secondary violations and their effects on the primary and secondary victims.

Include thematic public hearings on women, gender, homosexuality or the lesbian, gay, bisexual and transgender population with safe, dignified and informed procedures and spaces that avoid revictimization.

Adopt a proactive dissemination and communication strategy to motivate women, lesbian, gay, bisexual and transgender persons and victims of sexual violence in general to provide their statements; and encourage strategic partnerships with specialized civil society to strengthen the gender perspective, and build a coalition of social actors who advocate for the process.

Ensure that final reports address the gender perspective in relation to the causes, consequences and contextualization of past violence, building on the findings of the gender and research teams and their feedback, circulated both internally and horizontally.

(B) REPARATIONS

Ensure that reparation programmes incorporate a gender perspective by identifying measures with differential impact between the sexes and in relation to lesbian, gay, bisexual and transgender persons.

Ensure that the list of violations and categories of victims eligible for reparations do not reproduce patterns of gender discrimination; and include the relatives of victims and surviving primary victims, without restricting the meaning to a rigid or legalistic concept of the term or to dominant cultural views on the notion of the family.

Ensure that reparation measures consider gender and its intersectionality; the complexity of the damage suffered and its consequences on the daily lives of women and lesbian, gay, bisexual and transgender persons; the potential stigmatizing effect of crimes and reparations; and the potential transformative effect of certain measures on the structure of gender exclusion.

Adopt a presumption of related gender-specific violations or a lowered or differentiated evidentiary test in which the burden of proof is placed on the rating agency or in which there is recourse to reconstructing patterns of conduct in the commission of certain violations, in order to establish an adequate system of presumptions and positive discrimination.

Ensure that reparation programmes are creative and flexible to overcome sociocultural and administrative barriers; take into account the de jure and de facto ownership of property and the right to identity of women and lesbian, gay, bisexual and transgender persons, as well as measures of satisfaction and apologies; and ensure that they are understandable and accessible to victims.

(C) PROSECUTIONS

Promote the capacity-building of justice officials and administrative, medical and social workers to overcome negligent and prejudiced attitudes; and adopt special protocols for the investigation and criminal prosecution of sexual and gender-based crimes, as well as protocols for gender-sensitive medical care in the law enforcement, judicial and forensic fields.

Assess the creation of specialized chambers or courts, and prosecutors' offices and investigation teams specifically dedicated to the issue of sexual and gender-based violence; and adopt a special inter-institutional model of investigation and prosecution with simplified procedures, a mobile design and legal staff who speak the regional languages to facilitate access for victims.

Adopt victim and witness protection programmes that ensure security, discretion and confidentiality, with a gender-sensitive assessment of the specific risk situations faced by victims of sexual and gender-based violence in the investigative, procedural and post-conviction phases.

(D) GUARANTEES OF NON-RECURRENCE

Conduct a comprehensive review of all legal provisions to identify and modify provisions that are discriminatory towards women and lesbian, gay, bisexual and transgender persons and pay inadequate attention to sexual and gender-based violence and violence based on sexual orientation and gender identity.

Reform the justice, security and armed forces sectors by adopting fair and transparent vetting processes, where appropriate; improving gender representation, especially in positions of authority; developing training programmes with and on the gender perspective; and establishing specialized sexual and gender-based violence units.

Review textbooks and programmes at all educational levels in order to include critical accounts of the violent past provided by truth-seeking and move away from educational cultural structures that are despotic and/or violent and/or reproduce patterns of patriarchal and male domination; and reform education systems that perpetuate marginalization and discrimination based on ethnicity, religion, culture, gender and actual or perceived sexual orientation or gender identity.

(E) MEMORIALIZATION

Ensure that critical analysis is adopted in past violence memorialization processes of hegemonic patriarchal cultures and that the design of these processes fully incorporates a gender perspective in relation to the rights of women and lesbian, gay, bisexual and transgender populations and that it applies intersectionality.

Memorialization policies should avoid resulting in a stereotypical view of historical memory.

(F) PARTICIPATION

Organize consultative processes with women, girls and boys, lesbian, gay, bisexual and transgender communities and victims of sexual and gender-based violence on transitional justice policy formulation, including: the design and implementation of mechanisms, the composition and selection of members of truth commissions and other relevant bodies, and the formulation and implementation of recommendations, particularly in relation to reparations.

The identification of the categories of persons and actors to be consulted should take into account intersectional gender criteria.

Ensure that the consultation processes are held in safe and secure conditions for these persons; that linguistic, geographical and compensatory measures are made accessible to them; and that there are training, communication and awareness-raising strategies on the topics to be consulted and on the actual procedures and scope of the consultations.

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