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

## **Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo\***

### *Summary*

This is the first thematic report submitted to the Human Rights Council by Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences, since her appointment in June 2009. In addition to providing an overview of the main activities carried out by the Special Rapporteur, the report focuses on the topic of reparations to women who have been subjected to violence in contexts of both peace and post-conflict.

Most human rights and humanitarian law treaties provide for a right to a remedy. In the context of gross and systematic violations of human rights, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious violations of International Humanitarian Law, adopted by the General Assembly in 2005, start with the premise that “the State is responsible for ensuring that victims of human rights violations enjoy an individual right to reparation”.

Both the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women place upon the State the duty to prevent, investigate, punish and provide compensation for all acts of violence wherever they occur. Article 4 of the Declaration states that women who are subjected to violence should be informed about and provided with access to the mechanisms of justice and to just and effective remedies for the harm that they have suffered, as provided by national legislation. The obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence. The notion of reparation may also include elements of restorative justice and the need to address the pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violations to occur, including discrimination

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\* Late submission.

against women and girls.

However, as pointed out by the previous Special Rapporteur, when it comes to the implementation of the due diligence obligation to reparation, “very little information is available regarding State obligations to provide adequate reparations for acts of violence against women ... this aspect of due diligence remains grossly underdeveloped”.<sup>1</sup>

Section II.A of this report looks at conceptual challenges that prevail when placing the question of gender-sensitive reparations on the national and international agendas. Section II.B analyses procedural and substantive considerations emerging in reparations initiatives responding to violence in conflict, post-conflict and authoritarian settings. Section II.C examines reparations to women and girls in contexts of “peace” or consolidated democracies, by looking first at discriminatory practices against certain groups of women, and second by highlighting recent landmark cases in the Inter-American Court of Human Rights and the European Court of Human Rights.

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<sup>1</sup> The Due Diligence Standard as a Tool for the Elimination of Violence against Women: report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk (E/CN.4/2006/61).

## Contents

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1	4
II. Activities .....	2–11	4
A. Country visits.....	2–3	4
B. Communications and press releases.....	4–5	4
C. General Assembly and Commission on the Status of Women.....	6–7	4
D. Joint report on the Democratic Republic of the Congo.....	8	5
E. Regional consultations.....	9	5
F. Other activities.....	10–11	5
III. Reparations for women subjected to violence.....	12–85	5
A. Conceptual challenges .....	12–32	5
B. Reparations for women subjected to violence in countries coming out of widespread conflict or authoritarian repression.....	33–66	11
C. Reparations for women subjected to systemic violations in other contexts....	67–81	18
D. Conclusion and recommendations.....	82–85	21

## **I. Introduction**

1. This is the first thematic report submitted to the Human Rights Council, pursuant to Human Rights Council decision 1/102 and resolution 7/24, by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, since her appointment in June 2009. Chapter I summarizes the Special Rapporteur's activities since her appointment until 20 March 2010. Chapter II discusses the topic of reparations to women that have been subjected to violence in contexts of both peace and post-conflict.

## **II. Activities**

### **A. Country visits**

2. During the period under review, the Special Rapporteur requested invitations to visit Somalia, the United States of America and Zimbabwe. Earlier requests for country visits had also been made to the Governments of Jordan, Turkmenistan and Uzbekistan.

3. The Special Rapporteur visited Kyrgyzstan from 9 to 16 November 2009 (the mission report is contained in A/HRC/14/22/Add.2) and El Salvador from 17 to 19 March 2010 (A/HRC/14/22/Add.3). The Special Rapporteur would like to thank these Governments for having responded positively to her visit requests and urges those Governments that have not yet done so to provide a favourable response.

### **B. Communications and press releases**

4. During the reporting period, the Special Rapporteur sent 37 communications regarding human rights violations and received 17 responses from the concerned Governments (contained in A/HRC/14/22/Add.1).

5. The Special Rapporteur issued press statements, either individually or jointly with other mandate holders, on the occasion of the International Day for the Elimination of Violence against Women on 25 November 2009, prior to the international United Nations Climate Change Conference on 4 December 2009 and on International Women's Day on 8 March 2010.

### **C. General Assembly and Commission on the Status of Women**

6. In her oral statement to the Third Committee of the General Assembly, on 23 October 2009, the Special Rapporteur outlined the thematic priorities for the next years — namely, reparations, prevention strategies, and multiple, intersecting and aggravated forms of discrimination — and expressed interest in strengthening cooperation with other international human rights mechanisms.

7. On 3 March 2010, the Special Rapporteur delivered an oral statement to the Commission on the Status of Women in which she presented the recent activities carried out by the mandate, and called for a new vision of women's rights informed by the lessons learnt from the 15-year review of the implementation of the Beijing Platform for Action.

## **D. Joint report on the Democratic Republic of the Congo**

8. Pursuant to Human Rights Council resolution 10/33, the Special Rapporteur contributed to the second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, which was submitted to the Human Rights Council at its thirteenth session (A/HRC/13/63). The Special Rapporteur noted that limited progress has been made in implementing the recommendations of the previous joint report with regard to the protection of women's human rights and the promotion of gender equality, and that violence against women remains rampant throughout the country, particularly in the East, where brutal sexual violence continues to be used as a weapon of war by all parties to the conflict.

## **E. Regional consultations**

9. The Special Rapporteur actively engaged with civil society organizations through her participation in regional consultations. In November 2009, an Asia-Pacific regional consultation was held in Thailand and, in January 2010, the Special Rapporteur took part in the third African regional consultation in Zambia, which was followed by a national consultation. In March 2010, she attended the first Central American and Caribbean regional consultation, which took place in El Salvador.

## **F. Other activities**

10. The Special Rapporteur participated in several conferences and workshops at the invitation of civil society actors, including the KwaZulu Natal Network on Violence against Women, the African Network of Constitutional Lawyers, Masimanyane Women's Support Centre, the International Center for Transitional Justice, Women Against Violence Europe, Asia Pacific Forum on Women, Law and Development and the Global Campaign to Stop Killing and Stoning Women. She also participated in a number of conferences in Italy, hosted by *Giuristi democratici*, and took part in the international conference on violence against women, an important initiative of the Italian Presidency of the Group of 8. She also gave several speeches on violence against women at different universities in South Africa and the United States.

11. The Special Rapporteur also participated in the special event "Engaging philanthropy to promote gender equality and women's empowerment" of the Economic and Social Council in February 2010.

# **III. Reparations for women subjected to violence**

## **A. Conceptual challenges**

### **1. Introduction**

12. The notion of a right to reparation is located within the framework of the law of remedies and includes two aspects: procedural and substantive. Procedurally, remedies are the processes by which arguable claims of wrongdoing are heard and decided by competent bodies, whether judicial or administrative. Substantively, remedies consist of the outcomes of the proceedings and, more broadly, the measures of redress granted to victims. The law of remedies can serve both individual and societal goals, the underlying purposes of which include corrective justice, deterrence, retribution and restorative justice. It is the element of

corrective justice focusing on fairness to the victim and redress measures aimed at “repairing” the wrongdoing that victims experience which will be the focus of this report.

13. Although a coherent theory and practice for remedies for victims of human rights violations does not yet exist under international law, the right of individuals to reparation for the violation of their human rights has been increasingly recognized. Affirmed initially as a principle of inter-State responsibility,<sup>2</sup> since the Second World War a shift of focus can be observed to national arenas and away from international disputes. The legal basis for a right to a remedy and, linked to it, a right to reparation has since become firmly enshrined in the corpus of international human rights and humanitarian instruments.<sup>3</sup>

14. The content of the obligation to provide reparations to the individual whose rights have been violated remains, however, far from clear. When referring to the remedies ensuing after a violation of a right, all human rights treaties use rather vague language.<sup>4</sup> International human rights bodies that have jurisdiction to hear complaints often limit themselves to finding facts and issuing declaratory judgements or, at best, recommending that compensation of an unspecified amount be awarded to the claimants. More recently, however, in their observations to periodical country reports, the different human rights bodies have started to insist on the States’ obligation to provide compensation and rehabilitation measures. Also, compensatory damages for both pecuniary and non-pecuniary injury and other non-pecuniary remedies are frequently afforded by regional human rights courts.

15. A significant contribution to the normative framework on the obligation to provide reparations has emanated from the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter, the Basic

<sup>2</sup> See, generally, the Treaty of Westphalia of 1648, which includes references to reparations, in particular restitution, and the conclusions of the wars of 1830 and 1870 and of the First World War. Reparations in the context of inter-State disputes are described in the draft articles of the International Law Commission on responsibility of States for internationally wrongful acts.

<sup>3</sup> See, among international instruments, the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2, para. 3), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14) and the Convention on the Rights of the Child (art. 39). Among regional human rights instruments, see the European Convention on Human Rights (art. 41) and the American Convention on Human Rights (art. 10). In international humanitarian law and international criminal law, see, in particular, the Hague Convention with Respect to the Laws and Customs of War on Land (art. 3), the Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (art. 91) and the Rome Statute of the International Criminal Court (arts. 68 and 75).

<sup>4</sup> For instance, the Universal Declaration of Human Rights refers in its article 8 to the right to “an effective remedy”. The European Convention on Human Rights refers in its article 41 to the right to “just satisfaction” and only “if necessary”. Instruments making explicit reference to a right to compensation, reparation or satisfaction include the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture. The growing importance attached to reparations is best expressed by the Convention on the Rights of Persons with Disabilities, which calls upon States parties to take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs. The American Convention on Human Rights comes closest to the recognition of enforceable individual reparations by enjoining the Inter-American Court of Human Rights to rule that remedies and fair compensation be paid to the injured party.

Principles and Guidelines) adopted in 2005.<sup>5</sup> They present themselves as grounded in the recognition of a right to remedy for victims of violations of international human rights law, as found in numerous international instruments of human rights and humanitarian law. The right to remedy is said to encompass victims' equal and effective access to justice and adequate, effective and prompt reparation for harm suffered. The Basic Principles and Guidelines emphasize that they do not entail new international or domestic legal obligations, but rather identify mechanisms, modalities, procedures and methods for existing legal obligations.

16. The Basic Principles and Guidelines define the contours of State responsibility for providing reparation to victims for acts or omissions which can be attributed to the State. States are responsible for their failures to meet their international obligations even when substantive breaches originate in the conduct of private persons, as States have to exercise due diligence to eliminate, reduce and mitigate the incidence of private discrimination.<sup>6</sup> In cases where a person or other entity is found liable for reparation to a victim, such party should provide reparation. The State should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm are unable or unwilling to meet their obligations. The State shall enforce domestic judgements for reparations against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparations.

17. The Basic Guidelines and Principles affirm that the modality of reparation must be proportional to the gravity of the violation and can include the following forms: restitution, as those measures to restore the victim to his/her original situation before the violation, including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property; compensation for any economically assessable damage, as appropriate and proportional to the gravity of the violation including physical or mental harm, lost opportunities including employment, education and social benefits, and material and moral damages; measures of rehabilitation, including medical and psychological care as well as legal and social services; measures of satisfaction including, among others, the verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and guarantees of non-repetition, including measures which contribute to prevention such as ensuring effective civilian control of military and security forces, protecting human rights defenders, providing human rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law.

18. The quantitative and qualitative differences between individual and gross and systematic violations might affect the scope and nature of remedies that can and should be afforded. For one thing, the idea of full reparation is virtually impossible in contexts of

<sup>5</sup> Human Rights Resolution 2005/35, E/CN.4/2005/L.48.

<sup>6</sup> See E/CN.4/2006/61. See also general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, recalling that the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, and that under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. See also that Committee's *The Vienna Intervention Centre against Domestic Violence et al. v. Austria* (Communication No. 5/2005) and *The Vienna Intervention Centre against Domestic Violence et al. v. Austria*, (Communication No. 6/2005), and the Velasquez Rodriguez Case, Judgment of 29 July, 1988, Inter-American Court of Human Rights (Ser. C) No. 4 (1988).

gross and systematic violations characterized by large numbers of victims and perpetrators, weak Governments, fragile economies, scarce governmental resources and huge reconstruction and development challenges. In such contexts, remedies may have to be adjusted to achieve goals other than that of compensating each individual victim in proportion to harm, including prioritizing the recognition of victims and promoting interpersonal trust and trust in the institutions of the new State order.

19. It is important to draw a distinction between reparation measures and other rehabilitation measures. Sometimes, especially when the emphasis is placed on rehabilitation services as measures of redress, the line that divides reparation measures for gross violations from social assistance, humanitarian intervention measures and general development-oriented policies gets blurred.

20. Reparation measures express the obligation of the State to provide redress to victims when, by action or omission, it has infringed against their rights. Social policy and development measures are measures addressed at the entire population to ensure that each and every person can meaningfully enjoy all rights recognized by the State. They are inspired by notions of redistributive justice and should primarily target those sectors of the population which have traditionally been discriminated against and structurally disadvantaged, including women. Humanitarian intervention measures are measures of temporal assistance to victims of natural and human-made disasters, aimed at ensuring their subsistence, alleviating their suffering and protecting their dignity and basic rights during the crisis. They rest on basic notions of solidarity and the obligation of the State to protect rights but, unlike reparations, they are not remedial measures that express State responsibility for the violation of rights.

21. At the level of State practice, national Governments dealing with a legacy of systemic violations have been increasingly prone to supplementing the transitional justice mechanisms they put in place with the adoption of reparation initiatives and comprehensive reparation programmes for victims of human rights violations. Such programmes try to simplify a complex reality by selecting, among the violations that took place during the conflict or the repressive period, those that are considered most serious and distributing a set of benefits among victims and family members. Although they vary significantly, these programmes rarely reproduce the five categories of reparations set forth in the Basic Principles and Guidelines. Instead, they are mainly organized around the distinction between material and symbolic measures and modalities of distribution, including individual and collective distribution. Reparation programmes are also being used in consolidated democracies to try to provide redress for specific and systematic practices perpetrated and/or condoned by the State targeting certain groups of the population.

## **2. Bringing women into the reparations debate**

22. Women are of course addressed in all the human rights and humanitarian law treaties that contemplate a right to a remedy. Unfortunately, the Convention on the Elimination of All Forms of Discrimination against Women is not particularly explicit regarding women's right to remedies, reparation or compensation. Article 2 (c) provides only that States parties undertake to ensure the effective protection of women against any act of discrimination through competent national tribunals and other public institutions. This contrasts with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination which refers to the obligation of States to assure "adequate reparation or satisfaction for any damage suffered as a result of such [racial] discrimination" and article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which requires that States ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

23. The obligation to provide reparations to women subjected to violence is much more clearly spelled out in the Declaration on the Elimination of Violence against Women, which places upon the State the duty to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. The Declaration states that women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered, and that States should inform women of their rights in seeking redress through such mechanisms (art. 4 (d)). In the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, it is envisaged that States must undertake to establish fair and effective legal procedures for women who have been subjected to violence and the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies (art. 7 (f) and (g)). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa expressly states that women who are subjected to violence through violations of their rights to life, integrity and security of person should have access to reparations including rehabilitation (art. 4) and obliges the State to create mechanisms to increase the participation of women in planning, formulation and implementation of post-conflict reconstruction and rehabilitation (art. 10). However, as pointed out by the previous Special Rapporteur, "very little information is available regarding State obligations to provide adequate reparations for acts of violence against women ... this aspect of due diligence remains grossly underdeveloped".<sup>7</sup>

24. The little attention devoted to reparations, both at a substantive and procedural level, for women who suffer violence contrasts with the fact that women are often the target of both sex-specific and other forms of violence, not only in times of conflict but also in ordinary times. Women often bear the brunt of the consequences of violence that targets them, their partners and dependants. Given the disparate and differentiated impact that violence has on women and on different groups of women, there is a need for specific measures of redress in order to meet their specific needs and priorities. Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation. Additionally, women who experience violence have traditionally encountered obstacles to accessing the institutions that award reparations.

25. There are signs that the traditional neglect of women in the reparations domain, best exemplified by the largely unsuccessful movement for reparations for the so-called "comfort women", is ending. The international legal response to violence against women over the past 15 years and the explicit recognition of violence against women as a human rights concern within the United Nations serve as indicators. Furthermore, the inroads of feminism in international criminal law, crystallizing in the inclusion of some forms of gender violence as war crimes and crimes against humanity in the Rome Statute of the International Criminal Court, were accompanied by relevant discussions about how other transitional justice mechanisms, and not just criminal courts, could be rendered more inclusive to women.

26. More recently, there has been increasing progress in State practice in making sure that the mandates of truth and reconciliation commissions include the investigation of

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<sup>7</sup> See E/CN.4/2006/61, para. 55. Previously, the Special Rapporteur on violence against women had already referred to the need for legal remedies for victims in the context of the permanent International Criminal Court, and to national mechanisms to provide redress for victims (E/CN.4/1998/54).

gender violence. To mainstream gender in their way of operating, they are holding thematic hearings devoted to female victims and ensuring that women's experiences of the conflict are made visible in their reports and recommendations.

27. Moreover, the notion of gender-sensitive reparations has finally moved beyond the transitional justice discussions at State level and for the first time made an inroad into the international human rights jurisprudence. The Inter-American Court of Human Rights has recently affirmed the need to craft gender-sensitive reparations in its groundbreaking decision against Mexico.<sup>8</sup>

28. Academic reflection and civil society activism have certainly contributed to placing the question of gender-sensitive reparations on the national and international agenda. In the last few years, the first monographic volumes addressing reparations for women have been seen.<sup>9</sup> Furthermore, feminist transnational movements working on fighting impunity against gender violence in armed conflict are now leading the debate on women and reparations. The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation adopted in 2007 by women's rights advocates and activists and survivors of sexual violence in situations of conflict is the best expression of this transnational growing concern to provide women and girls with adequate reparations.<sup>10</sup> Mobilization concerning reparations at the national level by victims' groups, human rights groups and women's associations has also increased.

29. The importance of women's participation in reparations discussions and processes cannot be overestimated. Without the participation of women and girls from different contexts, initiatives are more likely to reflect men's experience of violence and their concerns, priorities and needs regarding redress. Additionally, without such participation, an opportunity is missed for victims to gain a sense of agency that may in itself be an important form of rehabilitation, especially when victims come to perceive themselves as actors of social change. Finally, such participation is important for women and society in general to draw the links between past and present forms of violence and seize the opportunity provided by reparations discussions to press for more structural reforms.

### 3. Engendering reparations: the conceptual framework

30. As traditionally conceived, the remedy of reparation for the violation of a certain right required investigating certain facts to determine whether the violation had taken place; determining the harm ensuing from the violation; identifying responsibility for the violation; and determining measures of redress aimed at returning the victims to where they were before the violation took place.

31. With this scheme in mind and thinking about women as potential beneficiaries of reparations, the first hurdle relates to the fact that much of the violence that women and girls experience predates the conflict and only continues to aggravate the discrimination to

<sup>8</sup> United Nations soft law instruments have also started to reflect the urgency of the matter. See *Rule-of-Law Tools for Post-Conflict States on Reparations programmes* (United Nations publication, Sales No. E.08.XIV.3).

<sup>9</sup> See Ruth Rubio-Marín (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (New York, Social Science Research Council, 2006), and Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge, Cambridge University Press, 2009).

<sup>10</sup> Available from [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php). Also, in the Democratic Republic of the Congo, several civil society actors adopted the Declaration of the Goma Forum on the Rights of Victims of Sexual Violence in December of 2009 asking the State to create an urgent reparations fund to face its co-responsibility together with perpetrators.

which they are subjected in the post-conflict scenario. Even in non-conflict scenarios, acts of violence against women are part of a larger system of gender hierarchy that can only be fully grasped when seen in the broader structural context. Therefore, adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential. Reparations should aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence the women experience before, during and after the conflict.

32. Women-centred processes of reparations require participation of women in the process of shaping, implementing, monitoring and evaluating reparations programmes; design of a reparations procedure that renders it accessible to all women and girls; investigation of facts to determine whether certain violations of rights have taken place and making sure that those violations that target women and girls have been duly included; determination of harms, including those which are gender-specific or have a differential impact on women and girls; identification of responsibility for the violation, including by omission, and by those perpetrators that target women and girls; and determination of measures of redress aimed at returning the victim to where she was before the violation took place, except for when those measures may in themselves be discriminatory or fail to address the structural roots underlying the violence.

## **B. Reparations for women subjected to violence in countries coming out of widespread conflict or authoritarian repression**

33. Women and girls are victimized under authoritarian regimes and during violent conflict in multiple ways. They suffer from operations randomly or strategically targeting and terrorizing the civilian population, but also from summary and extrajudicial executions, imprisonment, torture, rape and sexual mutilations for fighting in resistance movements, engaging in the search for and defence of their loved ones or for coming from communities suspected of collaboration. Women and children represent the majority of the forcefully displaced in internal and international armed conflicts. Women can suffer the consequences of violent actions that target “their” men (husbands, sons, brothers, etc.), for example, when they become the sole breadwinners and protectors of their families. Some forms of violence that women are subject to are similar to those suffered by men; others are more specific to women and girls, subjecting them to systematic patterns of sexual or reproductive violence or to different forms of domestic enslavement. In some settings, certain crimes tend to be perpetrated mostly by State forces while others are used mostly by non-State armed groups or self-defence groups as tools to recruit and instrumentalize women. More importantly, even when women are subjected to the same violations as men, their pre-existing socio-economic and legal status and the cultural meanings surrounding the construction of the male and the female in patriarchal societies may cause different ensuing harms for men and women.

### **1. Procedural considerations: reaching women**

34. Women’s access to meaningful reparations may depend more on the procedural hurdles they may encounter than on the content of reparation measures. National and international judicial institutions constitute the standard arena for remedial claims in societies dealing with both past and present violations. Such judicial institutions are normally motivated by the goal of providing victims with compensation in proportion to harm and are important because they can also catalyse the willingness of otherwise reticent Governments to establish massive reparations programmes.

35. Judicial arenas for obtaining reparations are, however, riddled with difficulties. Procedural obstacles that victims of sexual violence have traditionally encountered in the judicial arena can amount to an experience of re-victimization, exposing women not only to psychological harm but also to reprisal, stigma and communal and family ostracism. Crucial here are both the evidentiary standards relied upon and the degree of confidentiality upheld during the reparations process.

36. Furthermore, a judicial approach does not endorse forms of reparations that have the potential to challenge pre-existing gender hierarchies, including those that result in women holding less property than men, having lesser educational opportunities and, hence, less income-generating potential. While criminal and tort procedures may seek to apportion individual responsibility for moral and material harm and grant reparations to victims, they do not provide the proper framework for rehabilitation and guarantees of non-repetition, which may have the greatest transformative potential. Nevertheless, judicial institutions remain important arenas.

37. Therefore, in the context of mass violations, reparations are better located in administrative reparations schemes than by case-by-case judicial adjudications that seek compensation in proportion to harm. Administrative reparations programmes can obviate some of the difficulties and costs associated with litigation, including high expenses, the need to gather evidence which may sometimes be unavailable, the pain associated with cross-examination and the lack of trust in the judicial system. This may be particularly relevant for women in general and for victims of sexual violence in particular.

38. The administrative arena also enables a proactive approach to reaching victims and may provide a satisfactory platform for focusing on information about victims including their number, socio-economic profile, age, gender breakdown, family structures, the violations they have suffered or an account of the effects of the violations on their lives. This information is all relevant to understanding the structural component of the violations, the share of State responsibility by either action or omission and the gender-specific impact of the violence on women's and girls' lives.

39. Another advantage of reparations programmes crafted through legislative or administrative schemes is that victims, victims' groups and civil society in general can be involved in the process in more proactive ways than judicial proceedings allow for. This not only facilitates access to the information needed for the proper design of a programme, but has in and of itself a reparative effect, by conveying a sense of agency. While this is true for all victims in general, it may be even more so for women, given that they ordinarily face more difficulties reaching the public sphere and interacting with the State.

40. The question of timing is also important in determining women's access to reparations, especially for crimes of a sexual nature. Since the preconditions for reporting and testifying on sexual abuse are not always present in the aftermath of conflict or repression — especially in poverty-ridden scenarios where women's health conditions are extremely poor — reparations programmes should not sacrifice adequate accessibility to the otherwise legitimately felt urgency of society to move forward. Narrow applications deadlines or a closed-list system may not allow different victims to come forward and claim reparations when they feel physically and psychologically prepared to do so.

## **2. Substantive considerations: understanding harm to women**

41. Reparations programmes allow for the simplification, in a consistent manner, of a complex reality of mass and gross violations of human rights by relying more or less explicitly on a set of common elements, including: the definition of "victims" or the selection of the list of violations or crimes for which there will be reparations; the definition of "beneficiaries" as the group of persons who are eligible for the benefits to be distributed;

and the definition of benefits of both material and symbolic, individual and collective nature.

(a) *Gender violence and the definition of victims*

42. According to the Basic Principles and Guidelines, “victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization ... A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim”.<sup>11</sup>

43. In contexts of mass atrocity and multiple gross violations, the real challenge of reparations programmes is how to select the rights whose violation will trigger access to benefits and how to confine the circle of those who will qualify as beneficiaries. No programme to date has articulated the reasons to consider some violations worse than others, thus very rarely rendering reparations benefits to predominantly marginalized groups. The fairly limited but also traditionally conceived catalogue of violations of civil and political rights on which reparations programmes in the past have concentrated covers mostly those violations which are taken as paradigmatic expressions of political violence. Not surprisingly, these are the violations that in many scenarios target men disproportionately. Women have thus been excluded from reparations programmes, despite the terrible impact of violence on women, leaving them in a precarious position, with the responsibility for children and other dependants, without income-generating skills and subjected to stigma and poverty.

44. The current explicit inclusion of sexual violence in many reparations programmes is a victory against a tradition that minimizes its importance as collateral, private or non-political damage. Nevertheless, the forms of sexual violence that are included are often limited in range and other forms of victimization with a disparate gender impact are also not included. Often excluded have been forms of reproductive violence (including forced abortions, sterilization or impregnations), domestic enslavement, forced “marital” unions, forced displacement, abduction and forced recruitment. Gross violations of social, economic and cultural rights have also been excluded, even when they result in the loss of health, life and death of culture, or when such violations are specifically related to systematic forms of discrimination, including based on sex, ethnicity or sexual orientation. Forced domestic labour, often taking the form of forced conscription or forced marriages, has also traditionally been left out. This tendency to include a narrow range of forms of sexual violence in such programmes runs the risk of sexualizing women, if it is not accompanied by a serious effort to encompass a broader notion of harm.

45. The inclusion of gross violations against women in the list of wrongdoings that will trigger reparations has to be underpinned by the notion that the same violations may entail different harms for men and women, but also for women and girls from cultural minorities. For instance, harms emanating from sexual violence — including the contraction of AIDS and other sexually transmitted diseases, undesired pregnancies, complications due to often unsafe abortions, unwanted children, loss of reproductive capacity, fistulas and vaginal injuries, and multiple psychological disorders — are always compounded with social

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<sup>11</sup> General Assembly resolution 60/147.

stigmatization and ostracism by the family and/or community, subsequent emotional distress, loss of status and the possibility to marry or have a male protector, and access communal resources. None of the reparations programmes in the post-conflict or post-authoritarian scenario has explicitly referred to forms of reproductive violence (such as forced impregnation, forced abortion or forced sterilization) as separate categories. Explicit recognition and visibility of various forms of violence and the ensuing harm is required for responsive reparation programmes.

46. Under many authoritarian regimes, and more so in situations of large-scale civil strife, violence is often perpetrated with the complicity of non-State actors, including foreign States, members of guerrillas, self-defence groups, corporations and ordinary citizens. Whereas some reparations programmes are embracing these forms of violence, the record of such programmes overall is still quite patchy.

*(b) Gender violence and the identification of beneficiaries*

47. The definition of “victim” endorsed by the Basic Principles and Guidelines assumes that, although the violation of a right is a precondition for the right to reparation, the relationship between the right and the violation, for purposes of reparation, is mediated by the notion of harm. As a result, the potential rights holders include not only victims, but also others, such as close family members and dependants, who are affected or harmed as a consequence of the violation. This notion of victim that links rights and harms allows for the reflection that every gross violation generates a “community of harm” which impacts others to be reflected. Bringing the notion of harm to the fore can also allow victims to be prioritized according to the severity of the harm endured. Both expanding beneficiaries and prioritizing victims and beneficiaries according to harm can have important consequences for women.

48. There is a broader question regarding the concept of family that is embraced in reparations programmes. In this regard, polygamous unions, de facto unions, same-sex unions and more extensive culturally contingent support mechanisms, should be adequately represented to reflect the real web of dependencies and the harms entailed by their disruption.

*(c) Gender violence and reparation measures*

49. Official apologies, pensions, educational opportunities, access to health and psychological rehabilitation services, individual payments and measures of collective reparations, including specific infrastructure reconstruction measures, are some ways in which reparations programmes attempt to help victims move forward. While some programmes may prioritize individual and material compensation through individual payments, others may place a greater emphasis on access to services and rehabilitation of both individuals and affected communities. Various programmes may rely more or less on symbolic and/or collective forms of reparations. Political priorities, but also the number of victims, the resources available and the existence of competing needs of the overall population will inevitably shape reparation policies. The following paragraphs will address various modalities of reparations.

*Restitution and compensation*

50. Since women and girls who are subjected to gender violence, including sexual violence and forced unions, are often re-victimized in their families and communities, restitution of identity, family life and citizenship for them may require measures that target their wider communities – including attempts to subvert cultural understandings around the value of women’s purity and sexuality. Although some of the intangible assets that are often taken from victims of sexual violence, such as virginity or social standing, cannot be returned, all the tangible assets of which victims of sexual violence are commonly stripped

should be borne in mind. Communal and family ostracism, abandonment by spouses and partners and becoming unmarriageable or sick are all too commonly synonyms of material destitution, and the costs of ongoing medical treatment, pregnancy, abortions, and raising children resulting from rape, are all too real to deny. To date, no reparations programme has succeeded in fully reflecting the economic impact of raising children born of rape.

51. Restitution also covers restoration of employment. While several reparations programmes address the problem of civil servants who were deprived of their position because of their political views, no programme to date has adequately reflected on the fact that some dictatorships enacted legislation enforcing patriarchy, including rules that requested that women give up their employment at marriage.

52. Restitution measures may also encompass the recovery of lost property and place of residence. However, a broader problem related to gender and restitution of land and property lies in the fact that women are often discriminated against in ownership of land and property titles.

53. Often, when restitution of the infringed rights or lost good is not possible, reparations will try to compensate victims. Besides avoiding outright discrimination, reparations programmes that provide economic compensation to women should consider the formal and informal obstacles that different groups of women face in accessing and keeping money. These include difficulties in having a bank account and formal and informal pressure, including security threats, reprisal or ostracism by the family and the community.

54. Providing some form of material reparation to help victims rebuild their lives is of great importance, as the disruption of normalcy by large-scale violence or repression has especially deleterious effects on women's material well-being. The reconstruction challenge entails special economic hardships for them, including providing for those survivors in need of care. In many societies, under either national or customary law, discrimination against women in the inheritance system increases significantly the difficulty for wives and daughters of victims receiving reparations. The discussion around women-centred economic compensation should also look into types of material benefits that, in certain settings, may help women pursue what they perceive to be autonomy-enhancing life-projects, and may therefore be more transformative.

#### *Rehabilitation and reintegration*

55. Because reparations are often discussed in situations of scarce resources, placing the emphasis on rehabilitation services rather than compensation payments may seem a tempting alternative, as it combines development and reparations concerns. In the aftermath of violence, women often think of material assistance in terms of rehabilitation and reintegration, thus prioritizing their basic needs and those of their family members. The kinds of basic goods and services that women ask for are typically those that they are disparately deprived of ordinarily and that they need most in situations where their family responsibilities increase. This poses an interesting dilemma, as it creates a risk of blurring the conceptual distinction between reparations benefits and social rights, services and development measures to which the general population is entitled. At the same time, however, in many real-case scenarios, the dire poverty and destitution of victims implies that those basic services are what victims will inevitably prioritize, especially when they have no good reason — judging by their experience — to expect that they will be able to access them on any other grounds.

56. Rehabilitation measures need to be tailored to respond to women's specific needs. This may require an effort to overcome gender biases that might be entrenched in the existing national service system. One way to overcome such biases is to be as explicit and

specific as possible in terms of the services to be provided. For instance, instead of recommending that victims of sexual violence have free or privileged access to medical and psychological assistance, reparations programmes should spell out which treatment victims of sexual violence need most. Rendering rehabilitation and reintegration meaningful to women to ensure that they can recover a sense of normalcy or functional life is both a gendered and a context-sensitive enterprise, as the notion of “psychosocial” rehabilitation suggests.

57. Reintegration and rehabilitation may also require adopting women-friendly forms of distribution of services and creating opportunities that were previously denied to victims, often on the grounds of sex, including through meaningful employment, education, skill training, access to land titles and initiatives such as microcredit to motivate economic entrepreneurship. Because the experience of conflict or political repression leads many women to become publicly and politically active for the first time in their lives, encouraging this agency, including by promoting women’s associations or political parties, could also be a way of rehabilitating women in a way that does not return them exclusively to their homes and family lives.

#### *Symbolic recognition*

58. Symbolic reparation measures are designed as measures offering satisfaction that, by giving victims due recognition, can also facilitate a process of moral and social rehabilitation on an individual and collective level. Official apologies, commemorative events, renaming of streets and public facilities, establishing remembrance days, building monuments, museums and memorials may all help victims feel duly recognized.

59. Who apologizes, what for, where and how can all be relevant considerations in assessing whether women will get adequate symbolic redress. Given women’s predisposition to focus on the pain of their loved ones, it would be interesting to devise ways to duly recognize the individual dimension of such suffering and resilience. Personal letters of apology can be the best way of recognizing women when accompanied by public gestures of recognition. However, it is important not to forget that women and girls who carry the stigma of their victimization, such as victims of sexual violence, might have much to lose from public recognition of their victimization if they are named.

60. An increasing number of countries have adopted a variety of traditional/religious or community-based approaches for symbolic reparation and community reconciliation. They typically include community-level ceremonies and processes that “reconcile” or “cleanse” the perpetrator and victim and endeavour to restore collective harmony and rebuild broken relationships. These proceedings also often include some form of redress that the perpetrator agrees to give to the victim. However, there is a need to guard against assumptions about the inherent value of such procedures as, despite often being more accessible, they carry the risk of recreating the structures of control and prejudice that women, girls and other exploited groups are struggling to eliminate.

61. In addition to public apologies, public gestures of recognition often consist of measures to mark the conflict, the violence or the notion of reconstruction that accompanies a reparations and a reconstruction project. Such measures can be the shaping or reshaping of public space, building of monuments and museums, the changing of street names and other public spaces, etc. Little reflection has been given to exploring whether women are duly recognized through such measures or whether they might prefer different forms of representation and commemoration than those traditionally favoured by men.

*Guarantees of non-repetition*

62. Guarantees of non-repetition offer the greatest potential for transforming gender relations. In promising to ensure non-recurrence, such guarantees trigger a discussion about the underlying structural causes of the violence and their gendered manifestations and a discussion about the broader institutional or legal reforms that might be called for to ensure non-repetition. A gender-sensitive reparations programme should seize this opportunity to advance, as part of the venture of constructing a new and more inclusive democratic order, a society that overcomes the systemic subordination of women.

63. In the aftermath of violent conflict, when “normalcy” is restored, women are subject to new and sometimes higher levels of violence from men whom they know in the family and the community. Internalization of violent mechanisms of conflict resolution, accumulated and unresolved feelings of male impotence and frustration, male anxiety around the empowerment of women who have become politically visible during the conflict or simply the increased vulnerability of women may be some of the reasons that make women the targets of rising levels of violence after official peace or democracy has been declared. Reparations programmes that take place at one given point in time and inevitably look to the past have inherent limitations to address future violations. However, the type of guarantees of non-repetition can ground practical obligations on the part of the State to take into account the foreseeable short- and medium-term legacies of its violent past for women and, more specifically, adopt measures to avoid the exploitation of new forms of vulnerability.

64. Guarantees of non-repetition, if duly implemented, have the potential to detect the enabling conditions and long-term legacies of gender violence, and can therefore be a suitable platform for broader structural reforms for all women, not just victims, and hence for the construction of a more inclusive and gender-just political order. Furthermore, guarantees of non-repetition can help victims in the rehabilitation process, especially when they are involved and consulted in the process of formulating those guarantees.

*Women and collective reparations*

65. Recently, the notion that reparations benefits can be distributed to collectivities has garnered interest and support. Both the Basic Principles and Guidelines and the updated set of principles for the protection and promotion of human rights through action to combat impunity<sup>12</sup> endorse the idea of collective reparations. However, the term “collective reparations” is ambiguous; “collective” is both used to qualify the “reparations”, i.e., the types of goods distributed or the mode of distributing them, and the “subject” who receives them, namely, collectivities, including ethnic or racial groups who might have been particularly targeted. Despite an increased interest in exploring collective forms of reparation, virtually no discussion is taking place on how this interest may intersect with interest in doing justice to women through reparations programmes.

66. A form of collective harm that deserves particular attention is group-based harm as a result of group-based affiliation. Collective measures of redress may be thought of as particularly apposite to address the legacy of violence on the identity or status of groups such as indigenous peoples. Women or children, however, are rarely thought of in collective terms, even though gender-specific and age-specific forms of violence happen to women and children precisely because they are women and children. Women and girls should not be rendered invisible under the notion of the collective and should be consulted at all stages of discussions.

<sup>12</sup> E/CN.4/2005/102/Add.1.

## **C. Reparations for women subjected to systemic violations in other contexts**

### **1. Looking to the past**

67. In consolidated democracies, Governments are increasingly called upon to examine certain discriminatory practices perpetrated and/or condoned by the State which target certain groups of the population and to study the need for relevant reparations.

68. One example relates to forced sterilization programmes and the emergence of judicial awards of compensation. Many such sterilization policies were instituted in countries around the world, usually as part of eugenics programmes to prevent the reproduction of members of the population considered to be carriers of “defective genetic or social traits”. Women were sterilized without informed consent: several died from post-surgery complications, while others faced health problems, psychological complications, unemployment and family isolation. More recently in certain countries, abusive practices in the implementation of sexual and reproductive health programmes as part of population control policies have led to systemic violations.

69. Despite a number of courts having ruled that such practices were a violation of both physical integrity and privacy of the women, judicial arenas for contesting forced sterilization and receiving compensation are fraught with difficulties. Women confronted with the traditional structural and administrative limitations in accessing justice, especially if they are poor or belong to minority or excluded groups, need to overcome specific obstacles when making claims to redress historical injustices. Often, financial compensation has been denied by ordinary courts because of such legal barriers as the statute of limitations. Furthermore, the focus has mostly been restricted to insufficient monetary compensation.

70. Another instance of discriminatory practices, resulting in historical injustices, is that of assimilation policies instituted in countries, which led to many aboriginal or indigenous children being taken away from their families, communities and cultures and placed in foster care or residential schools. There have been some initiatives to provide compensation to survivors, including monetary compensation, truth-telling, therapeutic services and acts of commemoration and reconciliation. However, gender differences have generally not been taken into account and, as a consequence, there has not been special recognition of or compensation for girls for consequences of sexual abuse, such as pregnancy resulting from rape or forced abortion.

71. The single most organized and well-documented movement for reparations for women is that for the so-called “comfort women”. Since the late 1980s, survivors have come forward to bear witness and mobilize international public opinion, asking for an official apology and reparation. Survivors have rejected financial aid gestures as inadequate and reiterated their desire for a formal apology and individual compensation through public funds rather than a welfare- or benevolence-type of assistance based on socio-economic needs. As victims of sexual crimes, they do not want to receive economic compensation without an official apology and official recognition of State responsibility.

### **2. Looking to the present**

72. Women are subjected to grave forms of violence today, including in all democratic societies at the hands of both State and non-State actors: the large numbers of victims of sexual and domestic violence and exploitation in virtually every country demonstrate that this is still the case. States should reflect upon effective ways to compensate victims for harms suffered, including tort law, insurance, trust funds for victims and public compensation schemes.

73. In many settings, for a tort claim to be initiated, financial means and a defendant who has money to pay for the damage are necessary. Other obstacles that women encounter when trying to obtain damages against perpetrators through courts include: statutes of limitations; inter-spousal and intrafamilial tort immunity rules; overly strict or inadequate rules and interpretations of the causality link in the assessment of harms; and inadequate evidence standards and procedures for quantifying damages which may have a negative disparate impact on women (such as limiting compensation to economic loss, setting caps on non-economic loss or measuring loss solely or primarily based on the loss of future earning capacity measured through statistical evaluation). Insurance schemes may not be effective either because basic coverage is usually restricted to compensatory damages — which often do not cover intentional torts or exempt claims against spouses — or because claims have to be brought during the term of the policy.

74. In Europe, States that have ratified the European Convention on the Compensation of Victims of Violent Crimes are obliged to provide compensation for victims and their dependants when such compensation cannot be fully obtained by other means and when the offender cannot be prosecuted or punished. The Convention does not include a specific gendered perspective of the crimes considered and only covers material damages and not non-economic loss. Since loss of earnings for women tends to be lower, leaving out non-economic loss might affect women more negatively than men.

75. Some States, in their legislation and jurisprudence, and some regional human rights courts have started to recognize State responsibility for providing reparation to victims in cases of lack of due diligence, while other States have begun to endorse the categories of reparations of international human rights law. Others are compelling public officials to do more systematic research on the effects of violence against women and the efficiency of the measures to prevent and repair them.

76. At the international level, a groundbreaking development is introduced in the Statute of the International Criminal Court, in which it is provided that the Court may award reparations other than restitution to victims, namely, restitution, compensation and rehabilitation. In addition, the Rome Statute provides for the establishment of a trust fund for the benefit of victims of crimes and their families, within the jurisdiction of the Court. The Trust Fund provides for the possibility for victims and their families to receive assistance separate and prior to a conviction from the Court, through the use of resources raised through voluntary contributions. Since the Court has not awarded any reparations as yet, it is too early to assess the degree to which it has protected women's right to reparations.

(a) *The Inter-American Court of Human Rights*

77. In November 2009 the Inter-American Court ruled in what will undoubtedly become a landmark case in the field of reparations for women: *Cotton Field v. Mexico*.<sup>13</sup> This case concerns the abduction, killing and sexual violence of two minors and a young woman by non-State actors in 2003, and the subsequent failure of the State to diligently investigate, prosecute and punish the perpetrators and to treat the relatives of the deceased in a dignified way. The Court found that the State of Mexico violated the rights to life, freedom, personal integrity, access to justice and legal remedies and the right not to be discriminated against on the grounds of sex under the American Convention. It also considered that Mexico had infringed its obligations by failing to apply due diligence to prevent, investigate and impose penalties for violence against women or its duty to provide adequate responses in the legal system to punish and eradicate violence against women, thereby infringing the Inter-

<sup>13</sup> Inter-American Court of Human Rights, *Cotton Field v. Mexico*, 16 November 2009.

American Convention on the Prevention, Punishment, and Eradication of Violence against Women. This decision is seminal in that it is the first time that the Court has embraced the concept of gender-sensitive reparations with a transformative aspiration. The State of Mexico has been mandated to provide a variety of reparation measures to the victims, including monetary compensation, symbolic redress, and a wide set of future looking guarantees of non-repetition. Family members and closely affiliated persons of the deceased who can be considered as having been harmed and hence deserving of reparations (who in this case included all those who had self-identified as injured parties including the mothers, sisters-in-laws and nieces of the deceased) received reparations.

78. The Court's sensitivity in capturing the systemic nature of the problem of violence against women is also reflected in its reparations approach. It recognized for the first time that in a situation of structural discrimination reparations should aim at transforming such situation, thus aspiring not only to restitution but also to correction. The Court spelled out the criteria to be applied for the assessment of reparations, which include the following: (i) reparations should have a direct connection with the violations found by the Court; (ii) they should repair in a proportional manner pecuniary and non-pecuniary damages; (iii) they cannot be a source of enrichment or impoverishment; (iv) restitution is an aim but without breaching the principle of non-discrimination; (v) reparations should be "oriented to identify and eliminate the structural factors of discrimination"; (vi) they should take into account a gender perspective; and (vii) take into account all the measures alleged by the State to have been taken to repair the harm. Rather than remaining open-ended and with a view to ensuring the implementation of the decision, Mexico was ordered to report to the Court on the implementation of these guarantees of non-repetition for a period of three years on an annual basis. The Court also distinguished between the concepts of reparations, humanitarian assistance and social services by addressing and rejecting the claim of Mexico, which attempted to deduct from the reparations granted any monetary and housing assistance already provided to the family members.

(b) *The European Court of Human Rights*

79. The European Court's case law has proven increasingly sensitive to the seriousness of violence against women, the importance of due diligence standards when it comes to framing State responsibility and the challenges surrounding evidence. The reparations framework traditionally embraced by the Court is rather narrow and has not allowed full recognition of the moral and material harm that women subjected to violence experience. No measures of satisfaction, symbolic recognition, rehabilitation or guarantees of non-repetition have been granted and the treatment of pecuniary damages has been very narrow, as it requires high standards of proof and fails to include future expenses, even in cases where they are foreseeable. This approach does not reflect an understanding of either the true material harm following a violation, or its sex-specific dimension.

80. In the 2009 case of *Opuz v. Turkey*,<sup>14</sup> the Court found Turkey in violation of its due diligence obligations to protect women from domestic violence and — for the first time — held that gender-based violence is a form of discrimination under the European Convention. The case was brought by Ms. Opuz who, along with her mother, suffered years of brutal violence at the hands of her husband. Despite their complaints, the police and prosecuting authorities did not adequately protect the women and, ultimately, Ms. Opuz's mother was killed by the former husband. The Court found that there had been a violation of right to life with respect to the applicant's mother, a violation of the prohibition of torture and of inhuman and degrading treatment on account of the authorities' failure to protect the

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<sup>14</sup> European Court of Human Rights, *Opuz v. Turkey*, 9 June 2009.

applicant against her ex-husband's violent and abusive behaviour and a violation of the prohibition of discrimination.

81. In *Opuz v. Turkey*, the Court awarded the applicant non-pecuniary damages for the anguish and distress suffered on account of the killing of her mother and the authorities' failure to undertake sufficient measures to prevent the domestic violence perpetrated by her husband and to give him deterrent punishment. It also awarded costs and expenses for the proceedings before the court, less the amount received by way of legal aid from the Council of Europe. The weaknesses in relation to reparations include: the Court's dismissal of the claim of pecuniary damages which was based on the deprivation of economic support from her mother; the failure to treat the applicant as her mother's successor; the failure to compensate the applicant for material harm ensuing from the violation of her right not to be subject to inhuman or degrading treatment by her husband; and the non-recognition of other forms of reparation and the lack of guarantees of non-repetition and forward-looking recommendations. By not linking the reforms required to avoid the broad problem of impunity with the concept of reparation, the Court missed the opportunity to suggest a broader agenda to deal with the structural problem of domestic violence. Because the Council of Europe's Committee of Ministers plays a crucial role guaranteeing the implementation of the judgments and, as such, is the body mandated to address structural problems (such as impunity or lack of effective investigations) in member States of the Council of Europe, it too can play an essential role in ensuring adequate reparations.

#### **D. Conclusion and recommendations**

82. This report shows how the legal bases for a right to a remedy have been increasingly recognized in the corpus of international human rights and humanitarian instruments. Although among victims of violence, women have been especially neglected, the report examines significant substantive and procedural trends to reverse this, both in the discussion and in the practice of reparations, at national and international levels.

83. Reparation measures should not concentrate on the fairly limited and traditionally conceived catalogue of violations of civil and political rights, but instead should include the worst forms of crimes or violations targeting women and girls. It must additionally be acknowledged that the same violations may entail different harms for men and women, but also for women and girls and women from specific groups, and that violations may be perpetrated with the complicity of non-State actors.

84. The limits of ordinary and extraordinary judicial proceedings to achieve the full and comprehensive realization of women's right to reparations are also examined in the report. Against this backdrop, it is argued that gender-responsive administrative reparations schemes can obviate some of the difficulties and costs associated with litigation. The administrative arena also enables a more proactive approach to the involvement of a larger group of people, including victims, at all levels — from conceptualization of reparation schemes, to reaching victims, to understanding the structural component of the violations — including the share of State responsibility by either action or omission, and the gender-specific impact of the violence on women's and girls' lives.

85. Reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and

structural inequalities that may be at the root cause of the violence that women experience before, during and after the conflict. Complex schemes of reparations, such as those that provide a variety of types of benefits, can better address the needs of female beneficiaries in terms of transformative potential, both on a practical material level and in terms of their self-confidence and esteem. Measures of symbolic recognition can also be crucial. They can simultaneously address both the recognition of victims and the dismantling of patriarchal understandings that give meaning to the violations.

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