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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The gender perspective in transitional justice processes

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, submitted in accordance with Human Rights Council resolution [36/7](#).

* [A/74/150](#).



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

Summary

In present report, multiple aspects of adopting a gender perspective are considered in the conceptualization, design and implementation of national transitional justice strategies and mechanisms (including the processes of truth-seeking, accountability, reparation, guarantees of non-repetition and memorialization), in order to provide an adequate and comprehensive response with respect to women and lesbian, gay, bisexual and transgender persons who were victims of serious human rights violations, and to ensure their effective participation in those processes.

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Introduction

1. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, is submitting the present report to the Human Rights Council in accordance with its resolution 36/7. In the report, the Special Rapporteur analyses multiple aspects of adopting a gender perspective in transitional justice processes. In preparing the report, open consultations were held with States, civil society, victims, experts and relevant stakeholders. The Special Rapporteur is grateful for the responses received.

I. General considerations

2. The Special Rapporteur asserts that, in order to be successful and comply with human rights standards, transitional justice processes require comprehensive work on their five pillars: truth, justice, reparations, guarantees of non-repetition and memorialization. Specific attention has been paid to the issue of women, peace and security by the Security Council since its landmark resolution 1325 (2000) and its subsequent resolutions 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010), in which it called for increased representation of women at all decision-making levels and the establishment of gender-sensitive mechanisms for the prevention, management and resolution of conflict, including in justice and security reform processes.

3. The Special Rapporteur has been tasked with integrating a gender perspective and a victim-centred approach throughout the work of his mandate.¹ This approach was followed in his thematic and visit reports.

4. In the present report, the multiple aspects of a gender perspective are addressed in the different areas of the mandate, since addressing and preventing gender-based abuses requires that due consideration be given to the complexity and intersectionality of the experiences not only of women, but also of men in the face of gender-based violence and of lesbian, gay, bisexual and transgender persons.²

5. 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.³

II. Truth commissions

6. In order to address massive and/or systematic violations of human rights and serious violations of international humanitarian law, truth-seeking processes increasingly pay attention to victims. The Secretary-General recalls that 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.⁴ However, until relatively recently, women were forgotten among the overall victims, and the gender issue was ignored

¹ [A/HRC/RES/18/7](#).

² The situation of intersex persons is not addressed in this report. For this, see www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf.

³ See [A/HRC/29/40/Add.2](#) and [A/HRC/41/33/Add.1](#).

⁴ See [A/67/368](#), para. 32.

or touched upon in only a superficial way by truth commissions. It is also evident that men have been forgotten and rendered invisible in the face of sexual and gender-based violence, especially in the case of lesbian, gay, bisexual and transgender persons. There is also a general lack of focus on sexual orientation and gender identity in the vast majority of truth-seeking processes.

A. Mandate

7. Early truth commissions were gender-blind and ignored gross violations based on gender, sexual orientation and gender identity. Over time, both in design and in practice, they made significant progress in this field as they kept pace with the international community's growing interest in mainstreaming and institutionalizing gender in public agendas.

8. For example, the mandates of the National Commission on the Disappearance of Persons in Argentina (1983) and the National Commission on Truth and Reconciliation in Chile (1990) do not specifically mention sexual or gender-based violence. While the commissions of Guatemala (1994), South Africa (1995) and Peru (2000) do not explicitly refer to gender-based violence in their mandates, they made this issue more visible. This has been an increasing trend,⁵ and subsequent commissions such as those of Sierra Leone (2000), Timor-Leste (2001) or Liberia (2005) have included some form of reference to a gender perspective in their mandates (Gambia) or have clearly indicated one (Colombia).

9. Mandate neutrality, which invariably ends up favouring men's experiences, can be overcome by requiring that mandates pay attention to gender. This is essential because it obligates the commissions legally (and offers victims an enforcement tool) by facilitating a comprehensive approach to gender issues in the design, budget, organization and operation of the commissions.

10. The mandate should comprehensively address the impact of gender, including sexual and other gender-based violence suffered by all persons,⁶ and consider the dimension of sexual orientation and gender identity. It is key to take into account, in all cases, an intersectional perspective that identifies how certain social markers of difference operate in a non-binary vision of gender.⁷ 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.

B. Organizational structure

11. The National Reconciliation Commission of Ghana and the Equity and Reconciliation Commission of Morocco adopted a cross-cutting strategy in which gender is used as an organizing principle, but without establishing a specific body to address these issues. That approach risks diluting the focus.

12. 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. This allows for a specific operational focus on gender-

⁵ See [A/HRC/14/22](#), para. 26.

⁶ See International Center for Transitional Justice (ICTJ), "When No One Calls it Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts", New York, ICTJ, December 2016.

⁷ Responses of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and of Women's Link Worldwide.

based patterns of human rights violations but can lead to other work units ignoring the issue.

13. To ensure the implementation of a cross-cutting and systematic approach in all stages of a commission's work, practice suggests the need to adopt 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 the incorporation of specialized members in the other teams. The Truth, Reception and Reconciliation Commission of Timor-Leste largely implemented this strategy, as did the Truth Commission of Colombia, which incorporated a cross-cutting gender approach into all its work and created a gender working group that carries out technical and coordination tasks with women's and lesbian, gay, bisexual and transgender organizations.⁸

C. Operational issues

1. Staff training and profile

14. It is essential to achieve gender parity or balance among commission members. This: (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. All commission staff should have sufficient knowledge of gender issues⁹ 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. Training can be conducted internally by the same gender unit (as in Ghana and Peru), or with the support of external national or international institutions (as with national organizations in Colombia; with international organizations or international cooperation organizations, as in Mali; or with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), as in Sierra Leone and Morocco).

15. This training process is especially necessary for teams that collect statements because they are the first (and sometimes only) point of contact with victims. In Peru, a manual for taking interviews was developed with the participation of the gender unit, and training workshops on gender were held at the commission's regional headquarters.¹⁰ The Truth Commission of Colombia designed a guide for addressing sexual violence with a view to avoiding revictimization.¹¹ 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,¹² and be trained to deal with reluctance, considering the therapeutic value of the interview.

2. Scope of the violations studied

16. The concurrent application of the non-derogable core of human rights, the peremptory norms of general international law, human rights law, humanitarian law

⁸ Responses of the Center for Reproductive Rights and of Women's Link Worldwide.

⁹ Response of the International Commission of Jurists.

¹⁰ Julissa Mantilla Falcón, "La Comisión de la Verdad y Reconciliación en el Perú y la perspectiva de género: principales logros y hallazgo" (The Truth and Reconciliation Commission in Peru and the gender perspective: main achievements and findings), *Revista del Instituto Interamericano de Derechos Humanos (Inter-American Institution of Human Rights Journal)*, vol. 43, 2006, pp. 355 and 356.

¹¹ Response of the Center for Reproductive Rights.

¹² Response of the All Survivor Project Foundation.

and international criminal law and respective case-law makes it possible to include in the list of serious violations of human rights such violations as torture and cruel, inhuman or degrading treatment, sexual violence and violence against children. It also enables the adoption of broad definitions of these violations that cover such gender behaviours 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. 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.

17. It is important to avoid classifying women's experience exclusively as victims of sexual violence and reducing them to sexual beings. The experiences of Peru, Sierra Leone or Timor-Leste show that it is by including the differentiated impact of serious human rights violations and their secondary impacts on women, taking into account the demographic, ethnic, cultural and socioeconomic aspects, that their experiences are captured. This includes various forms of stigmatization, marginalization or ostracism in the marriage, family and/or community from having been raped, tortured or mutilated, for example, or from having lost their partners, and the legal insecurity and loss of social status and livelihood as a consequence.

18. 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 Truth and Reconciliation Commission of Peru designed its tools before the decision was made to mainstream a gender perspective in investigations, which reduced their desired depth and cross-cutting nature.¹³ The Truth Commission of Ecuador said that the underreporting of forms of sexual violence in quantitative and qualitative terms was due to the fact that the category of sexual violence was applied when the testimonies had already begun to be collected.¹⁴

3. Public hearings

19. In order to give due importance to gender in their proceedings, some commissions are holding hearings exclusively for women¹⁵ (for example in Brazil – both in the São Paulo Truth Commission and in the National Truth Commission – and in Gambia, Mali, Morocco, Peru, Sierra Leone and Timor-Leste). Others are also holding hearings on the situation of lesbian, gay, bisexual and transgender persons, such as the São Paulo Truth Commission, which held a public hearing on “The dictatorship and homosexuality: resistance from the lesbian, gay, bisexual and transgender movement”.¹⁶

¹³ Julie Guillerot, “La verdad de las mujeres debe ser escuchada. Retos y logros al incorporar una perspectiva de género en la Comisión de la Verdad y Reconciliación del Perú” (Women's truth must be heard. Challenges and achievements in incorporating a gender perspective in the Truth and Reconciliation Commission of Peru), *Enfoque de género en Comisiones de la Verdad. Experiencias en América Latina y África (Gender Focus in Truth Commissions. Experiences in Latin America and Africa)*, University of the Basque Country-Hego Institute, 2020, unpublished.

¹⁴ Response of Ecuador.

¹⁵ See [A/HRC/14/22](#), para. 26.

¹⁶ Response of the Centre for Studies on Transitional Justice of the Federal University of Minas Gerais.

20. 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.

4. Dissemination, communication and partnerships

21. In cases of women victims of human rights violations in general, and sexual violence in particular, the problem of their self-identification as victims arises. 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.¹⁷ 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.

22. In the face of this and the risk of a possible distortion of the historical record, 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.

23. Dissemination and communication campaigns developed by truth commissions are crucial, and 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. In Ghana, the media committed themselves to responsible reporting in this regard through a public contract.¹⁸

24. The establishment and maintenance of a close relationship between truth commissions and civil society (human rights organizations, women's organizations, lesbian, gay, bisexual and transgender organizations, feminist organizations and academia) can play a crucial role at the conceptual and operational levels, thanks to their knowledge and their special ties with women victims and witnesses.

5. Final report

25. 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.¹⁹ In Morocco, the Equity and Reconciliation Commission devoted a section of its final report to lessons

¹⁷ Julie Guillerot, "Linking Gender and Reparations in Peru: A Failed Opportunity", in Ruth Rubio-Marín (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*. New York, Social Science Research Council, 2006.

¹⁸ Vasuki Nesiiah and others, *Truth Commissions and Gender: Principles, Policies, and Procedures*, ICTJ, 2006, p. 19. See also [A/HRC/14/22](#).

¹⁹ Vasuki Nesiiah and others, *Truth Commission and Gender*, p. 36; and Sunneva Gilmore and others (eds.), *Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes*, Queen's University of Belfast, 2020.

learned on gender and to serious human rights violations.²⁰ 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. 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.

26. Final reports increasingly seek to understand that human rights violations build on previous situations of inequality, hierarchical relations, discrimination and ethnic, social and gender inequity, which are exacerbated during and after human rights violations. 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.

III. Reparations

27. The first reparations programmes for victims of gross human rights violations did not address the specific forms of victimization that women experience. They also failed to seriously consider what aspects are critical to ensuring that reparation, whether material or symbolic, individual or collective, is not made without regard to women's needs, interests or visions.²¹ Subsequently, developments were limited to expanding the catalogue of violations that were worthy of reparation, so that rape or sexual violence was not systematically relegated. 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.²² Similar perspectives should be adopted in relation to lesbian, gay, bisexual and transgender persons.

A. Definition of the universe of victims eligible for reparations

28. In formulating an administrative reparations programme, the competence *ratione materiae* and *ratione personae* is circumscribed by listing the violations eligible for reparations and establishing the categories of victims intended for reparation measures. These decisions inevitably lead to inclusions and exclusions. These are not merely technical decisions but have a political impact that will affect the scope and credibility of the reparations programme, and by extension the political capital of the transitional justice process.

29. The 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

²⁰ Response of the National Human Rights Council of Morocco.

²¹ Ruth Rubio-Marin, "Mujer y reparación: apuntes para la reflexión" (Women and reparations: notes for reflection), in Julie Guillerot, *Para no olvidarlas más. Mujeres y reparaciones en el Perú (Not to be forgotten. Women and reparations in Peru)*, Lima, APRODEH-DEMUS-PCS, 2007, p. 14.

²² Julie Guillerot, *Reparaciones con perspectiva de género (Gender-responsive reparations)*, Office in Mexico of the United Nations High Commissioner for Human Rights, Mexico Federal District, 2009, p.64.

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;²³

(d) Use a definition of the family that does not restrict the meaning to a rigid or legalistic concept,²⁴ 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.²⁵

30. Similar considerations should be adopted in relation to lesbian, gay, bisexual and transgender persons. Article 13 of the Act No. 1448 of 2011 (Victims and Land Restitution Act of Colombia) established the principle of a differential approach that identified persons with diverse sexual orientation and gender identity as victims in need of special attention and protection, to whom the State must be responsive in view of their particular characteristics, in order to implement measures of humanitarian aid, comprehensive care, assistance and reparations. As at March 2020, the Registry of Victims had identified 481 lesbian, gay, bisexual and transgender victims as suffering from sexual violence since 1985.²⁶

B. Definition of reparation measures

31. In order for reparations not to directly or indirectly reproduce patterns of gender discrimination, it is necessary to understand the complexity of the harm suffered and its consequences on the daily lives of women and lesbian, gay, bisexual and transgender persons, to consider the stigmatizing effect of the violations suffered, to focus on transformative reparations and to rule out stigmatizing ones.²⁷

1. Stigmatizing effect of rape

32. 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.

33. The most obvious example is perhaps rape since, in addition to the immediate physical and moral harm suffered as a result of a rape, there may be a forced

²³ Gilmore and others, *Beyond Silence and Stigma*, p. 38.

²⁴ In Morocco, the legal rules of sharia concerning inheritance – unfavourable to women – were not applied to compensate successors in title (response of the National Human Rights Council of Morocco).

²⁵ Gilmore and others, *Beyond Silence and Stigma*, p. 39.

²⁶ Response of the All Survivor Project Foundation.

²⁷ See Julie Guillerot, *Reparaciones con perspectiva de género (Gender-responsive reparations)*, pp. 105–107.

pregnancy, a sexually transmitted disease and the loss of reproductive capacity, among other consequences. A gender-sensitive approach should take into account the secondary violations and define additional measures to remedy them. In Croatia, the amount of compensation for rape is increased in the event of aggravating circumstances.

34. In turn, some crimes have secondary effects on the relationship of victims to their environments and in terms of their enjoyment of economic, social and cultural rights. For example, rejection by the husband, inability to marry or inherit and stigma within the family or community can lead to difficulties in accessing livelihoods and require effective responses, such as a regular pension.

2. Stigmatizing effect of reparation

35. 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.

36. On the other hand, collective benefits, which may appear to be the best alternative so as to avoid stigmatizing women,²⁸ may cause difficulties in patriarchal societies where women have limited involvement in determining benefits and in effectively accessing reparation. In Peru the collective reparations programme adjusted the consultations procedure for defining collective reparations projects to ensure the participation of women and lesbian, gay, bisexual and transgender persons.²⁹

3. Transformative effect of reparation

37. 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.³⁰

38. When defining reparation measures, ones that can be transformative of the gender exclusion structure should be explored. In other words, measures that:

- (a) Can have a transformative impact on women's lives in practical term and in terms of their self-esteem;
- (b) Facilitate a real narrowing of existing gender gaps;
- (c) Promote a new positioning of women as individuals, in relation to the community and within the family;

²⁸ See http://www.ohchr.org/Documents/Issues/Women/WRGS/PeaceAndSecurity/ReparationsForCRSV_sp.pdf, p. 10.

²⁹ Ministry of Justice and Human Rights, High-level Multisectoral Commission, "Lineamientos para la adopción de acciones diferenciadas en la implementación del plan integral de reparaciones para las mujeres y la población LGTBI" (Guidelines for the adoption of differentiated actions in the implementation of the comprehensive reparations plan for women and the lesbian, gay, bisexual and transgender and intersex population), 2018, available at https://cman.minjus.gob.pe/wp-content/uploads/2019/03/PIR_LineamientosMujeres_PoblacionLGTBI_060319.pdf.

³⁰ See A/HRC/14/22, para. 31.

(d) 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.

39. Developments in programmes recommended by truth commissions, such as those in Peru, Sierra Leone or Timor-Leste, provide enriching examples in this regard (including restitution of the right to an identity and declarations of absence by reason of enforced disappearance, allowing women to formalize new relationships, inherit and dispose of property, among other rights). There are also social packages (for example, literacy or access to higher levels of schooling; physical and mental health care; and training in productive aspects as well as employment, microcredit and other opportunities), which can have a transformative impact.

40. The adoption of reparation measures that take into account gender and its intersectionality – that is, the ethnic, cultural and social origins – can bring about a real narrowing of existing gender gaps and allow women to improve their positions within their own communities and families and also for themselves as individuals.

C. Implementation

41. 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.

1. Rating

42. The evidentiary standard in reparation programmes should not create exclusion or resemble a court case. In Argentina, the experience of a system with too many demands had very restrictive results.³¹ In Guatemala, the National Reparations Programme does not assume institutional responsibility for the “burden of proof”. Consequently, those in the poorest and most marginalized sectors, particularly indigenous women and girls who are victims of sexual violence, are left even further behind.³² In other instances of serious violations, some entities have applied a presumption of related gender-specific violations or a lowered or differentiated evidentiary test.³³ The experience in Peru of the Single Registry of Victims shows a relatively simple process in which the presumption of veracity is applied to what the victims have said.

43. The challenge is to accelerate and facilitate the procedures for these sectors and to place the burden of proof on the rating agency, as the Moroccan Equity and Reconciliation Commission did.³⁴

44. There are also risks that sexual and gender-based violence cases are underrepresented to rating agencies. It is essential to create the conditions for women to come forward and to design decentralized and open processes over time, as was done in Peru or Timor-Leste, to facilitate the submission of applications and the identification of more victims; and to ensure confidentiality and the creation of a safe

³¹ Maria José Guembe, “La experiencia argentina de reparación económica de graves violaciones a los derechos humanos” (The Argentine experience of economic reparation for serious violations of human right), in Catalina Díaz (ed.) *Reparaciones: Estudios de caso, conceptos y propuestas* (*Reparations: cases studies, concepts and proposals*), Bogotá, ICTJ, 2008, pp 19–70.

³² Claudiz Paz and Paz Bailey, “Guatemala: Gender and Reparations for Human Rights Violations”, in Ruth Rubio-Marin (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, New York, Social Science Research Council, 2006, p. 110.

³³ See A/69/518, para. 71.

³⁴ Response of the National Human Rights Council of Morocco.

environment that prevents revictimization, stigma or reprisals.³⁵ Procedural and evidentiary rules often constitute sources of exclusion. In Kosovo, some non-governmental organizations have the right to assist victims in filling out application forms and obtaining evidence, which builds their confidence during the registration process.³⁶

45. 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, as was done in Morocco.³⁷

2. Access

46. There are several barriers to women's effective access to reparation programmes: a higher rate of illiteracy and difficulties in directly accessing information; a higher poverty rate; a lack of legal and economic autonomy; exclusion from public and political life; pejorative attitudes towards women and practices that affect them in the public and private spheres; the mistrust of State institutions or lack of knowledge and understanding about the institutional structure of the State; and the fear and inhibitions from which women suffer in making their claims and, in the specific case of sexual violence, the fear of ostracism and stigma, shame and guilt. For lesbian, gay, bisexual and transgender persons, there may be legal barriers (including the criminalization of sexual or gender diversity, which still exists in at least 69 countries, or limits to the legal recognition of gender identity), or social barriers (fear of stigma and prejudice leading to social exclusion). These barriers must be taken into account when designing implementation processes that are appropriate, understandable and accessible to victims.

47. The process of implementing restorative or compensatory reparations should be designed to examine whether the legal system provides women with full legal or de facto capacity to become, for example, property rights holders or bank account holders.³⁸

3. Prioritization

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

IV. Criminal prosecution

49. 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

³⁵ See A/69/518, para. 71.

³⁶ Gilmore and others, *Beyond silence and stigma*, p. 43.

³⁷ ICTJ, *Morocco: Gender and the Transitional Justice Process*, ICTJ, 2001, p. 27.

³⁸ Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa", in Ruth Rubio-Marín (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, New York, Social Science Research Council, 2006, p. 77.

and gender-based violence. The statutes of those courts recognized rape as a crime against humanity and a war crime, and recognized other gender-based crimes such as sexual slavery, forced pregnancy, forced prostitution and enforced sterilization.³⁹ This development was accompanied by innovative jurisprudence, the adoption of procedural guarantees for victims and witnesses, and gender-sensitive evidentiary principles.⁴⁰

50. 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.

51. 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; bureaucratization in the complaint process; insufficient completion of the investigation and pretrial proceedings; deficient interpretations in the evaluation of the evidence and the failure to file criminal charges; inadequate legislation; deficiencies in addressing the needs of victims and witnesses; and deficiencies in the assessment of threat situations. General recommendation No. 33 (2015) on women's access to justice of the Committee on the Elimination of Discrimination against Women provides specific standards in this area.

A. Training of justice officials

52. Training for investigation teams, prosecutors, judges and administrative, medical and social workers is essential in order to overcome the naturalization of sexual violence and crimes based on sexual orientation, gender identity or expression and the reproduction of sexist and discriminatory stereotypes. The National School of Judges of Ukraine developed training courses on gender-specific crime procedures.⁴¹

53. 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.

54. This practice is observed in different countries. For example, 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",⁴² 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.

³⁹ Rome Statute of the International Criminal Court, articles 7 and 8.

⁴⁰ See, for example, International Criminal Tribunal for Rwanda, *Akayesu*, ICTR-96-4-T, Trial Chamber, judgment of 2 September 1998; International Tribunal for the Former Yugoslavia, *Furundžija*, IT-95-17/1-T, judgment of 10 December 1998, and *Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Appeals Chamber, judgment of 12 June 2002.

⁴¹ Response of Ukraine.

⁴² See www.fiscales.gob.ar/wp-content/uploads/2012/11/Informe.pdf. Response of the Ombudperson's Office of Argentina.

B. Specialization and prioritization for proper assessment

55. Strengthening national capacity to prosecute crimes of sexual and gender-based violence also involves promoting specialization, and thus the prioritization of such cases. Examples of good practices in this regard are the creation of specialized chambers or courts, as well as prosecutors' offices and investigation teams specifically dedicated to the issue of sexual and gender-based violence,⁴³

56. 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.

57. 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 Commission⁴⁴ and included gender identity and sexual orientation in its criteria for prioritizing cases. This facilitated the accreditation of women victims of sexual violence and lesbian, gay, bisexual and transgender persons as victims of gender-based violence.

C. Safeguards and protection

58. The effective participation of women and lesbian, gay, bisexual and transgender persons who are victims of sexual violence or violence based on sexual orientation or gender identity will depend largely on the capacity of the State to fulfil its duty to ensure the safety and security of victims and all other participants in court proceedings.

59. General victim and witness protection programmes often do not provide efficient coverage for victims of sexual violence or offer gender-responsive 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.

60. It is also essential to adopt regulatory provisions and specific measures that provide safe and private environments and protect the identity of victims.

61. All these measures should be accompanied by mechanisms to fully inform victims and witnesses about threats against them and the safeguards for their protection at all stages of the process, and by follow-up mechanisms to locate victims and witnesses after the conclusion of the trial. Ongoing medical assistance with a psychosocial approach should also be provided during all judicial proceedings.

V. Guarantees of non-repetition

62. In fulfilling a preventive function, guarantees of non-repetition 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.

⁴³ Such as in Croatia, the Democratic Republic of the Congo, Liberia, Serbia and Uganda.

⁴⁴ Response of Women's Link Worldwide.

A. Gender-responsive policy reforms and institutional reforms

63. Guarantees of non-repetition must be based on a diagnosis of the relationship between pre-existing gender inequality and sexual and gender-based violence, with a view to their eradication.

64. 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. For example, the adoption of reforms that decriminalize homosexuality; that criminalize all forms of sexual and gender-based violence, including marital rape and domestic violence; and that strengthen equal rights (with regard to identity and identity change, marriage, including between people of the same sex, divorce, reproductive rights, abortion, adoption, including by same-sex couples, land tenure and inheritance), can contribute to eliminating the invisibility and legal insecurity of women and lesbian, gay, bisexual and transgender persons and their economic dependence.

65. The National Truth Commission of Brazil recommended amending legislation that contains discriminatory references to homosexuality, which resulted in a decision of the Supreme Federal Court that revoked article 235 of the Military Penal Code that criminalized homosexual practices under a military administration.⁴⁵ In Argentina, the Criminal Code was amended to allow ex officio intervention in sexual offences when the victim is under 18 years of age or has been declared incapable.⁴⁶ In Ecuador, the Truth Commission recommended that the State use laws and regulations to develop the constitutional norms that establish non-discrimination on the basis of sexual orientation and gender identity and guarantee the participation of lesbian, gay, bisexual and transgender persons and women in the Equality Councils.⁴⁷ In Colombia, a series of regulatory advances are intended to help overcome the social isolation of lesbian, gay, bisexual and transgender persons.⁴⁸

66. Special attention should be paid to reforming the justice and security sectors, cleaning up those sectors and excluding any person who has committed acts of sexual and gender-based violence from their posts; and to institutionalizing background checks on persons seeking to fill such posts. Gender representation should also be improved in law enforcement, especially in positions of authority, as was done in Kosovo, Liberia and Sierra Leone. It is essential that training and capacity-building activities for justice officials and police and military officers be gender-sensitive. Lastly, the establishment of specialized sexual and gender-based violence units in police departments, in the army and in prosecutors' departments or courts, as in Sierra Leone, increases the legitimacy and effectiveness of these sectors in combating such violence.

⁴⁵ Response of the Centre for Studies on Transitional Justice of the Federal University of Minas Gerais.

⁴⁶ Contribution of Defensoría del Pueblo de la Nación Argentina.

⁴⁷ Response of Ecuador.

⁴⁸ Act No. 1482 of 2011 modified by Act No. 1752 of 2015, Decree No. 2340 of 2015, Decree No. 410 of 2018, Decree No. 762 of 2018, response of the Minister for Foreign Affairs of Colombia.

B. Education

67. 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. Harmful educational content (conveying stereotypes, inaccuracies and negative representations of certain groups) and pedagogy (with authoritarian or threatening school settings that contribute to or create vulnerabilities, particularly for girls and lesbian, gay, bisexual and transgender youth), instil intolerance and strengthen gender gaps and social divisions. The education systems of Liberia, Sierra Leona and South Africa were examples of this.⁴⁹

68. It is important to comprehensively review existing standards and policies in the education system to identify the role played by education in fuelling 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. The Truth and Reconciliation Commission of Peru carried out this work.⁵⁰

69. Reforming the education system involves designing structural changes to overcome the levels of marginalization and exclusion of the past by universalizing access to a quality education system: guaranteeing de jure and de facto the right to education for all, including those who have been discriminated against on the basis of their actual or perceived ethnic origin, religion, culture, sexual orientation or gender identity. In this regard, the Truth and Reconciliation Commission of Liberia recommended establishing measures to make secondary school free of charge and accessible to all children in the country while focusing on addressing the existing gender gap.⁵¹

70. The school environment (culture, governance) and pedagogical methods must also be taken into account so that the change is global and achieves its objective, promotes good governance and active citizenship, and moves away from educational cultures characterized by school authorities that are despotic, violent and/or reproduce patterns of patriarchal and male domination. The commissions of Kenya and Peru made recommendations in this regard and the commission of Liberia specifically recommended establishing measures to make schools safe environments for girls in relation to physical and sexual abuse.⁵²

VI. Memorialization

71. Memorialization is the fifth pillar of transitional justice. Memorialization processes complement truth, justice, reparations and non-repetition 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. Memorialization programmes at a formal educational level and other mechanisms, such as memorials, documentation centres and archives, cannot be omitted from these processes.

⁴⁹ See Clara Ramírez-Barat and Roger Duthie, *Education and Transitional Justice. Opportunities and Challenges for Peacebuilding*, New York, ICTJ, 2015.

⁵⁰ See Final Report of the Truth and Reconciliation Commission of Peru, "Actors in the conflict", volume I, section 2, chapter 3 and "Recommendations", volume IX, section 2, chapter 1, 2003.

⁵¹ Ramírez-Barat and Duthie, *Education and Transitional Justice*.

⁵² Ibid.

72. At the educational level, 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. Such reviews, which include new ways of dealing with the violent past in national educational materials based on the results of the truth-seeking process, help to incorporate recognition of the victims as a whole and their stories, which are often distorted by intersectional prejudices and stereotypes. They also promote critical thinking and encourage young people to discuss the emergence of certain practices and devise the changes needed to prevent violence from recurring. While history is the subject most likely to include the work and findings of truth commissions and elements of the recent past, other subjects in the primary and secondary school curricula can also benefit from these materials; for example, literature, art, religious or sex education classes, and, of course, civic education.

73. Through school textbooks and curricula, truth commission reports can be made more accessible and disseminated to children, teachers and their families.

74. 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.⁵³ Teachers can also propose innovative and participatory memory-based research projects, visits to remembrance sites and the collection of testimonies and oral histories, which are extremely useful in teaching children and young people about the legacy of the past, developing their creativity and promoting intergenerational and intersectional dialogue.

75. The evolution of memorialization exercises from a static approach (almost always statues to heroes and monuments to the dead, representing men and soldiers), to a much more dynamic approach, whether through authentic sites, symbolic sites or cultural activities and expressions, has been nurtured by partnerships and interaction with civil society organizations, cultural actors and artists and educational institutions.

76. 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.⁵⁴ 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.⁵⁵ 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.⁵⁶

77. The field of memorialization must deepen its gender approach and focus beyond making women's memories visible or thinking about women's own ways of transmitting memories. A conscious, focused and intersectional effort is required to

⁵³ Julia Paulson, "The educational recommendations of truth and reconciliation commissions: potentials and practice in Sierra Leone", *Research in Comparative and International Education* 1(4), 2006, pp. 335–350.

⁵⁴ See: www.constitutionhill.org.za/pages/school-programmes and www.constitutionhill.org.za/pages/alignment-to-the-national-curriculum.

⁵⁵ See www.montesole.org/en/education/schools-and-youth-groups/.

⁵⁶ Response of Cambodia.

ask analytical questions from a gender perspective, including to lesbian, gay, bisexual and transgender populations, without running the risk of referring to a stereotypical and hegemonic view.

VII. Participation in transitional justice processes

78. This section focuses on participatory processes with a consultative dimension, involving individual or collective subjects. It deals with issues related to the design, content, implementation and evaluation of transitional justice mechanisms and processes.

A. Objectives and benefits

79. The Secretary-General considered that “the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out.”⁵⁷ In any case, consultative processes help to enhance the social and political legitimacy of transitional justice mechanisms and restore confidence in State institutions.⁵⁸

80. 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. Consultative processes with these individuals should encompass the entire transitional justice process, from design to implementation. In its 2019 resolution on women, peace and security, the Security Council explicitly encouraged States to ensure the opportunity for full and meaningful participation of survivors of sexual and gender-based violence at all stages of transitional justice processes.⁵⁹

B. Mitigating risks and challenges: elements for gender-sensitive consultative processes

81. Two of the reports issued under the mandate of the Special Rapporteur extensively explored the intrinsic difficulties and general requirements for successful consultative processes on transitional justice mechanisms.⁶⁰ The Special Rapporteur takes up these guidelines by providing elements to help design and implement them from a gender perspective.

1. Inclusion

82. 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.

83. 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.

⁵⁷ See [S/2004/616](#), para. 16.

⁵⁸ See [A/HRC/31/43](#), paras. 25 and 26, and [A/71/567](#), paras. 5 and 6.

⁵⁹ Security Council resolution [2467 \(2019\)](#).

⁶⁰ [A/HRC/34/62](#) and [A/71/567](#).

84. 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.⁶¹

85. 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.⁶²

2. Security and protection

86. Participation in consultative processes implies a certain degree of visibility that entails security, social and revictimization risks. The active presence and/or control of certain areas by armed actors should be mapped in advance to determine safe consultation sites.

87. The risks of criminal prosecution, stigmatization or social isolation associated with sexual and gender-based violence, whether against women, men, children or lesbian, gay, bisexual and transgender persons, are factors that hinders their active participation in consultation processes. 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.

88. In addition, protection is essential, in particular strict safeguards for confidentiality and anonymity, data encryption and encoding, or even the implementation of protective measures based on camouflage.

3. Accessibility

89. 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).

90. 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

91. 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.⁶³ The flow of information must be constant and appropriate means used to reach these

⁶¹ Response of Chile. Other examples can be found in Colombia and Mexico.

⁶² Response of the Federal Department of Foreign Affairs of Switzerland.

⁶³ Cristián Correa, Julie Guillerot and Lisa Magarrell, “Reparations and victim participation: a look at the truth commission experience”, in Carla Ferstman, Mariana Goetz and Alan Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, Brill, 2009.

participants, taking into account local, cultural, religious, ethnic and other particularities, as well as vernacular languages and dialects.

VIII. Conclusions and recommendations

92. **The obligation of States to adopt gender-responsive transitional justice mechanisms in societies that have suffered serious and gross violations of human rights and international humanitarian law derives from primary and secondary sources of international human rights law and, as such, cannot be avoided by Governments using political, structural or budgetary arguments.**

93. **A gender perspective requires the complex experiences of sexual and gender-based violence, not only of women, but also of men and of lesbian, gay, bisexual and transgender persons, be consciously and duly recognized and captured by any transitional justice measures that have been designed and implemented, taking into account the criterion of intersectionality. Otherwise the processes of truth-seeking, justice, comprehensive reparation, guarantees of non-repetition and memorialization would be incomplete.**

94. **The Special Rapporteur shares the following recommendations to Governments for the implementation of gender-responsive transitional justice mechanisms.**

Truth commissions

95. **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;**

96. **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.**

97. **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.**

98. **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.**

99. **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.**

100. **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.**

Reparations

101. 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.

102. 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.

103. 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.

104. 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.

105. 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.

Prosecutions

106. 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.

107. 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.

108. 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.

Guarantees of non-repetition

109. 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.

110. 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.

111. 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.

Memorialization

112. 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.

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

Participation

114. 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.

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

116. 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.