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Promotion of truth, justice, reparation and guarantees of non-recurrence

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

Summary

The Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Fabián Salvioli, presents his report on practical experiences of domestic reparation programmes, in which he assesses the conceptual and legal framework, lessons learned and selected challenges on the issue, and provides recommendations for the effective design and implementation of these programmes.

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Contents

I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Council resolution 36/7. In the report, the Special Rapporteur lists key activities undertaken from August 2018 to June 2019 and provides an analysis of practical experiences of domestic reparation programmes.

2. In resolution 36/7, the Special Rapporteur was requested to gather information on national practices and experiences and to study trends, developments and challenges, to promote good practices and lessons learned, and to integrate a victim-centred approach throughout the mandate.[1] The report responds to these requirements.

3. Bearing in mind the work on the right to reparation carried out previously under this mandate, which was focused mostly on key normative issues surrounding the right,[2] and mindful that the great majority of victims around the world continue not to receive any form of reparation, the Special Rapporteur devotes the present report to assessing lessons learned as well as a selection of challenges in implementing domestic reparation programmes.

4. The Special Rapporteur held an online open consultation and an expert meeting to inform the present report.

5. In the present report, the Special Rapporteur does not include two important forms of reparation, namely forms of satisfaction including apologies, and land and property restitution. He will address these issues in his future work. A report on the adoption of apologies for gross human rights violations and serious violations of international humanitarian law will be presented to the General Assembly at its seventy-fourth session, in October 2019.

II. Activities undertaken by the Special Rapporteur

6. Between 1 August 2018 and 1 July 2019, the Special Rapporteur sent visit requests to Colombia, El Salvador, the Gambia and Tunisia, and renewed his request to Nepal. Requests to visit Brazil, Cambodia, Colombia, Côte d'Ivoire, the Democratic Republic of the Congo, Guatemala, Guinea, Indonesia, Japan, Kenya, Nepal and Rwanda were still pending at the time that the present report was being prepared.

7. On 10 September 2018, he participated in an expert consultation on standards and public policies for an effective investigation of enforced disappearances, convened by the Working Group on Enforced or Involuntary Disappearances.

8. On 13 September, he participated in the high-level panel discussion commemorating the seventieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide.

9. On 13 and 14 September, he participated in the Human Rights Council at its thirty-ninth session, presenting his first thematic report on his approach to the mandate and preliminary areas of interest.

10. On 18 September, he participated in a public dialogue in the Congress of Deputies of Spain on the application of international human rights law in the Spanish legal system, specifically in relation to the obligations to investigate and prosecute international crimes committed during the Franco regime. He also met with Members of the Congress of Deputies.

[1] See para. 4.

[2] See A/69/518.

11. On 28 September, he participated in a transitional justice forum organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in El Salvador.

12. On 18 October, he participated in the General Assembly at its seventy-third session, presenting his thematic report on his four main lines of engagement with that body.

13. On 25 October, he participated in a meeting with the Assistant Secretary-General for Peacebuilding Support, Oscar Fernandez-Taranco, to discuss existing and future collaboration, and in a meeting entitled "Responses to situations of high criminal violence: the case of El Salvador", organized by the Conflict Prevention and Peace Forum in New York.

14. From 19 to 22 November, he participated in the induction session for new special procedure mandate holders, convened by OHCHR in Geneva.

15. From 21 November to 15 January, he held an online consultation to inform the present report.

16. On 3 and 4 December, he participated in a seminar entitled "European Union support to transitional justice: a review three years after the adoption of the policy framework", which was convened by the European External Action Service in Brussels, and held bilateral meetings with officials of the Service.

17. On 5 December, he participated in the thirty-third International Conference of Bar Associations, in Lausanne, Switzerland.

18. On 6 and 7 December 2018, he convened an expert meeting to inform the present report.

19. On 20 and 21 February 2019, he participated in the "Gender-sensitive transitional justice process in Syria" conference, organized by the Syrian Feminist Lobby and the EuroMed Feminist Initiative, in Paris.

20. On 19 March, he participated in a symposium entitled "International human rights standards: truth and justice in South Korea", held in Jeju, Republic of Korea.

21. From 17 April to 31 May, he held an online consultation on the adoption of apologies for gross human rights violations and serious violations of international humanitarian law, to inform his report for the General Assembly at its seventy-fourth session.

22. From 24 April to 3 May, he undertook an official country visit to El Salvador.

23. On 4 June, he participated in a conference entitled "Gender dimensions in transitional justice" at the Hebrew University of Jerusalem.

24. From 17 to 21 June, he attended the annual meeting of special procedure mandate holders, in Geneva.

III. General considerations

25. Under international human rights law, there is a solid legal framework establishing the right of victims to reparation for gross human rights violations, as noted by the previous Special Rapporteur, Pablo de Greiff, in his report on the subject.[3]

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

[3] See A/69/518.

27. In many countries, victims are stigmatized and are perceived as "taking advantage" of the situation, rather than as individuals who have suffered serious harm and are entitled to reparation.

28. Furthermore, States often act as if reparation were a policy choice, instead of the fulfilment of an obligation owed to victims as a result of an unlawful breach of international and domestic law.

29. The Special Rapporteur would like to note the importance of the right to reparation for victims of mass atrocities. As an entitlement, it serves a fundamental purpose of responding to the harm suffered by victims through the provision of direct benefits that go beyond compensation, and include restitution (if possible), satisfaction, rehabilitation and guarantees of non-recurrence. The right to reparation is also important as a guarantee of non-recurrence, as it helps perpetrators to understand that what they did was wrong and that societies must undertake to dignify the victims. It will also allow victims to gain trust in the State, to be acknowledged as rights holders, and, potentially, to be empowered. This will, in turn, provide benefits to society.

30. For the right to reparation to be fulfilled, it is essential that the State and any other actors involved in the violations acknowledge their responsibility.

IV. Domestic reparation programmes

31. Reparation programmes are aimed at realizing the human right of victims to an adequate and effective remedy. They are administrative processes set up by States aiming to deal with a large universe of victims, and they identify who can claim to be a victim and what violations are to be redressed, and establish reparation measures (benefits) for the harm suffered.[4] They are aimed at ensuring that victims are treated equally and in a consistent manner, as victims who have suffered the same type of violation would benefit from the same forms of reparation.

32. Domestic reparation programmes are the most effective tool for victims of gross human rights violations and serious violations of humanitarian law to receive reparation. Without them, victims would have to prove their status in a court of law, including by providing all the necessary evidence, pay the expensive costs of litigation, and wait several years before their claim is, if at all, successful.[5]

33. Such programmes have been used in various parts of the world. They have dealt with atrocities committed during repression, as in Argentina, Chile, Iraq or Morocco, or during conflict, as in Bosnia Herzegovina, Colombia, Guatemala, Iraq or Sierra Leone. Other reparation programmes (not really domestic in nature) have been set up to deal with the harm caused as a result of conflict situations or occupation, such as the United Nations Compensation Commission set up by the Security Council to deal with reparations to victims of the Iraqi invasion of Kuwait.

34. Domestic programmes could be adequate and effective remedies to provide reparation to victims of mass atrocities, but they face enormous challenges. Institutionally, they are fragile and weak, and depend on the political context of the country, the political will of the relevant authorities, the availability of resources, and practical and institutional concerns about how best to provide and implement reparation.

35. The challenges are even greater in countries emerging from or still in the midst of conflict. In such situations, setting up domestic reparation programmes implies dealing with a significantly bigger pool of victims. If, during repressive regimes, victims represent about 1 per cent of the population, after conflicts there can be at least twice that number of

[4] *Rule-of-Law Tools for Post-Conflict States: Reparation Programmes* (United Nations publication, Sales No. E.08.XIV.3), pp. 9–10.

[5] A/69/518, para. 4.

victims. In situations of mass displacement, such as in Colombia or the Syrian Arab Republic, the number of victims can equate to 12 to 15 per cent of the total population.[6]

36. States dealing with the consequences of conflict have inadequate or fragile State institutions to implement reparation programmes,[7] and their finances are often devastated. Furthermore, attributing responsibility for violations is more complex given that non-State actors have also committed atrocities. In such situations, corruption is often rampant and the distinction between victims and perpetrators can be blurred, as in the case of child soldiers. Furthermore, many of these States face poverty, discrimination and structural inequalities, which make it harder to deal with reparation for mass atrocities. Research indicates that weaker States are less likely to establish domestic reparation programmes.[8] Equally, if such programmes are ever set up, their implementation rate is low.

37. States transitioning from repression to democracy, such as Argentina or Chile, have been more successful in implementing domestic reparation programmes,[9] but as already indicated, the infrastructural and political conditions there were significantly different from those in States moving away from conflict, such as Liberia or Sierra Leone, or even in certain States moving away from repression, such as Iraq.

A. International standards and jurisprudence underpinning domestic reparation programmes

38. The right to a remedy is an essential right in all human rights treaties. Remedies include the right of victims to claim that violations of their rights have taken place and to request reparation for the harm suffered. 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[10] and the updated Set of Principles for the protection and promotion of human rights through action to combat impunity, refer to domestic reparation programmes as effective remedies to provide reparation for mass atrocities.[11]

39. Under international human rights law, remedies must be adequate and effective to address the potential violations of the rights at stake.[12] Their content must be framed within the principle of "full reparation". The Basic Principles and Guidelines reinforce this idea, indicating that the right to remedy should include "adequate, effective and prompt reparation".[13] However, they do not define these three terms in relation to reparation or domestic reparation programmes.

40. The updated Set of Principles stipulate that victims shall have access to a "readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings", that reparation can be provided through domestic reparation programmes, and that such programmes can be funded by national or international sources.

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[6] Kathryn Sikkink et al., "Evaluation of integral reparations measures in Colombia: executive summary", Carr Centre for Human Rights Policy and Harvard Humanitarian Initiative (October 2015), p. 3.

[7] Roger Duthie, "Introduction" in Roger Duthie and Paul Seils (eds.), *Justice Mosaics*: *How Context Shapes Transitional Justice in Fractured Societies*, International Center for Transitional Justice (2017), p. 11.

[8] Matiangai Sirleaf, "The truth about truth commissions: why they do not function optimally in post-conflict societies", *Cardozo Law Review*, vol. 35 (August 2014), pp. 2325–2328.

[9] Lars Waldorf, "Institutional gardening in unsettled times: transitional justice and institutional contexts", in Roger Duthie and Paul Seils (eds.), *Justice Mosaics*: *How Context Shapes Transitional Justice in Fractured Societies*, International Center for Transitional Justice (2017), pp. 40–83.

[10] See General Assembly resolution 60/147, annex, para. 16.

[11] See E/CN.4/2005/102/Add.1, principle 32.

[12] Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 25 of the American Convention on Human Rights, and art. 2 (3) of the International Covenant on Civil and Political Rights.

[13] See para. 11.

41. They further indicate that "victims and other sectors of civil society should play a meaningful role in the design and implementation of such programmes", and that victims, particularly women and minorities, should be consulted and participate in such processes.[14] There is a dearth of significant practice to shed light on how best to carry out such participation and consultation.[15]

42. International tribunals such as the Inter-American Court of Human Rights have crafted significant jurisprudence on reparation for victims of mass atrocities through the adjudication of individual cases.[16] In that context, the Court has indicated that victims should get full and adequate reparation for the harm suffered, which includes "the need to grant different measures of reparation, in order to redress the damage fully; thus in addition to pecuniary compensation, measures of satisfaction, restitution and rehabilitation, and guarantees of non-repetition have special relevance owing to the severity of the effects and the collective nature of the damage suffered".[17]

43. The Court has also identified some criteria that domestic reparation programmes must fulfil to be in accordance with international law and with its own jurisprudence.[18] Such criteria include consultation with and participation of victims, reasonable and proportional compensation awards, reasons given for providing reparations by family group and not individually, distribution criteria among members of the family, and gender approaches to reparation.[19]

44. While international law is yet to fully settle the question about the reach and scope of the right to reparation of victims of mass atrocities through domestic reparation programmes, the Special Rapporteur would like to note some minimum requirements that such programmes ought to fulfil:

(a) Domestic reparation programmes are remedies to redress victims of mass atrocities; they must be adequate, prompt and effective;

(b) They should be designed, implemented and monitored through processes that include consultation with and the participation of victims, particularly those in the most vulnerable situations, such as women, members of minority groups, victims of sexual violence, displaced persons and persons with disabilities;

(c) They should provide victims with different forms of reparation and not only with compensation;

(d) Their adequacy and effectiveness also depend on to the way in which they relate to other pillars of transitional justice, including justice, truth, and guarantees of non-recurrence;

(e) Compensation, including the distribution criteria across victims, families and those in the most vulnerable situations, should be reasonable and proportional.

45. This approach is in harmony with more conceptual analyses about the adequacy of the institutional design of domestic reparation programmes. Under that analysis, domestic programmes must be complete, whereby "every victim actually receives the benefits,

[14] See E/CN.4/2005/102/Add.1, principle 32.

[15] A/69/518, paras. 74–80.

[16] The European Court of Human Rights also has important precedents on guarantees of non-recurrence, otherwise called general measures. See, for example, *Broniowski v. Poland* (application No. 31443/96), judgment of 22 June 2004, para. 193; and *Aslakhanova and others v. Russia*, (applications Nos. 2944/06, 8300/07, 50184/07, 332/08, 42509/10), judgment of 18 December 2012, paras. 212–240.

[17] Inter-American Court of Human Rights, *Massacres of El Mozote and Nearby Places v. El Salvador*, judgment of 25 October 2012 (merits, reparations and costs), para. 305.

[18] Clara Sandoval, "Two steps forward, one step back: reflections on the jurisprudential turn of the Inter-American Court of Human Rights on domestic reparation programmes", *The International Journal of Human Rights*, vol. 22, No. 9 (2017), pp. 1192–1208.

[19] Inter-American Court of Human Rights, *Case of the Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, judgment of 20 November 2013 (preliminary objections, merits, reparations and costs), para. 470.

although not necessarily at the same level or of the same kind".[20] They should also be comprehensive, in terms of the types of violations that are selected for reparation,[21] and complex, in terms of the forms of reparation used to redress victims.[22] A programme should also be coherent internally, in the relationship between the different forms of reparation received by victims, and externally, in the relationship between these programmes and other transitional justice measures.[23] Domestic programmes should aim at finality, addressing the question of the potential coexistence of judicial reparation and domestic reparation programmes.[24] Finally, munificence, which looks at how dignifying the benefits are, is also important.[25]

B. Lessons learned for effective domestic reparation programmes

46. Besides the legal and normative framework that could facilitate the design and implementation of domestic reparation programmes, their architecture is of crucial importance.[26] There is no single way to design such programmes. However, in practice, some have proven better than others.

Setting up victims' registries

47. Individual and collective registries of victims are crucial in order to have realistic projections of the level of victimhood in States undergoing transitions. Adequate registries also help in estimating the cost of redressing the potential beneficiaries of the programme and in planning resource allocation. Registries could also facilitate reparation for victims in urgent need of attention, through urgent reparation programmes. They also constitute a key measure of acknowledgment, satisfaction and memory.

48. Even if registries are created, the number of victims registered at any given point in time cannot be taken to be the whole universe of victims, as underregistration is a common challenge. It is important that registration processes include flexible time frames for registration, and that they truly reach out to all victims.

49. Experience indicates that registries are not always set up as part of domestic reparation programmes, which is regrettable. So are the cases, for example in Guatemala or Iraq, where despite tireless work by civil society to this end, the government has failed to establish them.[27] In other cases, registries were set up after domestic reparation programmes had been designed and established, as in the case of Peru where the Unique Registry of Victims was created as part of the Comprehensive Reparations Plan.

50. In Argentina, for example, registration began with the registration of persons who had been disappeared and killed during the dictatorship, through the work of the National Commission on the Disappearance of Persons. The Commission was crucial in facilitating later work identifying other victims. As a result, the Unified Registry of Victims of State Terrorism was established in 2013 within the Secretariat of Human Rights.

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[20] *Rule-of-Law Tools for Post-Conflict States: Reparation Programmes* (United Nations publication, Sales No. E.08.XIV.3), p. 15.

[21] Ibid., p. 19; and A/69/518, para. 26.

[22] A/69/518, para. 30.

[23] Pablo De Greiff (ed.), *The Handbook of Reparations* (Oxford, Oxford University Press, 2006), pp. 10–11.

[24] Ibid., p. 12; and *Rule-of-Law Tools for Post-Conflict States: Reparation Programmes*, p. 35.

[25] Pablo De Greiff (ed.), *The Handbook of Reparations*, p. 12.

[26] Alexander Segovia, "The reparations proposals of the truth commissions in El Salvador and Haiti: a history of noncompliance", in Pablo De Greiff (ed.), *The Handbook of Reparations*, pp. 154–176, at p. 157.

[27] Procurador de los Derechos Humanos (Guatemala), "Informe de monitoreo realizado a las sedes regionales del Programa Nacional de Resarcimiento" (May 2018), p. 3; and Clara Sandoval and Miriam Puttick, *Reparations for the Victims of Conflict in Iraq: Lessons Learned from Comparative Practice* (Ceasefire and Minority Rights Group International, 2017), p. 26.

51. Calculating the number of victims eligible for reparation is particularly challenging in conflict situations with great numbers of internally displaced persons or of refugees. In Colombia, for example, the estimate of the number of victims was about 4.5 million in 2012 after the adoption of the Victims and Land Restitution Law, but the actual number was almost twice that projection given the country's growing internally displaced population. There are more than 8.7 million victims registered in Colombia in 2019.[28]

52. Building strong registries of victims requires reaching out to civil society organizations. They have relevant data about victimhood and violations that would be of utmost importance in any mapping exercise. They also have vital links to communities of victims that could help State authorities to build trust with victims and help them come forward.

53. Effective registration also requires reaching out to inform all victims about their right to reparation, available reparation programmes and registration processes. In El Salvador, information was not disseminated to all victims, leading to a very small number of registrations in proportion to the number of victims.

Evidence and special measures in registration processes

54. Special registration measures should be adopted to ensure that those in a situation of special vulnerability come forward, such as victims of sexual violence, children, and persons with disabilities. They should not be exposed through registration processes to further victimization or stigma. Measures should also be adopted for victims who are illiterate.

55. Special security conditions should be put in place for victims to register, particularly in countries that are still in the midst of conflict or where violence and insecurity is generalized.

56. Most registration processes require filling forms and providing some evidence of victimhood and harm. Forms should be confined to essential information, such as basic personal information, a statement of facts and of violations suffered, confidentiality issues, harms suffered, and supporting documents.[29] Specific forms might also be designed to clarify the universe of collective victims and provide them with collective reparation. Such forms would include the name of the community, the facts, and the violations suffered by it.[30] Some forms are complemented with interviews undertaken by government officials.

57. Registries allow State authorities to decide who is eligible for reparation. However, the object of a registration process is not to challenge the veracity of the claims made by the victims or the evidence they have provided, rather to assume in good faith that what has been said is a statement of truth. The Special Rapporteur notes with appreciation that many States place the burden of proving the damage on State institutions rather than on victims, or that they apply lower standards of evidence. In Morocco, for example, the Equity and Reconciliation Commission accepted the testimonies of victims as evidence.[31] In Peru, victims were not required to provide documents that had been lost during their displacement or documentation from registries that had been destroyed during the armed conflict.[32] In Colombia, the standard of evidence required is lower, too. The law indicates that authorities should always presume the good faith of victims and their ability to corroborate the harm by any means legally acceptable, and specifies the requirements in greater detail.[33]

[28] Registro Único de Victimas, available at www.unidadvictimas.gov.co.

[29] Ruben Carranza, Cristián Correa and Elena Naughton, *Forms of Justice: A Guide to Designing Reparations Applications Forms and Registration Processes for Victims of Human Rights Violations*, International Center for Transitional Justice (2017), p. 22.

[30] Ibid., pp. 33–36.

[31] *Rule-of-Law Tools for Post-Conflict States: Reparation Programmes*, p. 18.

[32] See www.gob.pe/790-inscripcion-en-el-registro-unico-de-victimas.

[33] Victims and Land Restitution Law, Law 1448/2011, art. 5.

58. However, other States still put a heavy burden and standard of proof on victims. In the Philippines, for example, the evidentiary requirements to obtain reparation included a request for corroboration by others, through sworn statements by two co-detainees or persons with personal knowledge of the violations suffered by the victim. Since many victims had died, it was not always possible to provide corroborating evidence. Indeed, out of 75,000 claims for reparation, only approximately 11,100 were eligible for compensation.[34]

59. The Special Rapporteur notes the importance of planning the registration process with great flexibility so that relevant adjustments can be made over time. A typical adjustment is the need to extend the registration period to allow all victims to register, as has happened in Argentina and Chile.[35]

60. Processing the information gathered though a registration process allows the content of the programme to be adjusted when new relevant information comes to light. In Nepal, for example, the registration process for the Interim Relief Programme allowed orphans and widows of the disappeared to be eligible to obtain benefits.[36]

Consultation with and participation of victims

61. Domestic reparation programmes should include adequate consultation with and participation of victims in their design, implementation and monitoring processes. Consultation with and participation of victims has solid recognition under international law, particularly human rights law.[37] It is not only essential for victims to be empowered, but also crucial as a mechanism to reduce the implementation gap.[38] Victim participation and/or consultation also provide legitimacy to these programmes.

62. Consultations are "a form of vigorous and respectful dialogue whereby the consulted parties are given the space to express themselves freely, in a secure environment, with a view to shaping or enhancing the design of transitional justice programmes".[39] Victims can provide contextual meaning to reparatory practices. This is of particular importance in relation to satisfaction, symbolic reparation and collective reparation.[40] Participation permits victims to be informed and take part in decision-making processes that could affect them.

63. Despite its importance, there is a dearth of examples of consultation with and/or participation of victims in domestic reparation programmes. Furthermore, few impact studies have been carried out to assess the outcomes of such processes where they have taken place.

64. Some of the first domestic reparation initiatives to be established, such as in Argentina, did not involve sustained participation of or consultation with victims.[41] In Chile, some consultations have taken place. For example, the next of kin of detained and disappeared persons were consulted on whether they preferred to receive a pension or a lump sum.[42]

65. In Peru, consultation with victims on the design of domestic reparation programmes has been documented. Nineteen workshops were organized in six different departments and

[34] Commission on Human Rights (Philippines) press statement of 18 May 2018, p. 1.

[35] Submission of Argentina, point 5; and submission of the Chilean national human rights institution, point 5.

[36] Ruben Carranza, Cristián Correa and Elena Naughton, *Forms of Justice: A Guide to Designing Reparations Applications Forms and Registration Processes for Victims of Human Rights Violations*, International Center for Transitional Justice (2017), p. 59.

[37] A/HRC/34/62, pp. 7–9. See also the *Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice* (United Nations publication, Sales No. 09.XIV.2).

[38] A/69/518, para. 80.

[39] *Rule-of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice*, p. 3.

[40] A/69/518, para. 34.

[41] Submission of the Argentine national human rights institution, point 3.

[42] Elizabeth Lira, "Reflections on rehabilitation as a form of reparation in Chile after Pinochet's dictatorship", *International Human Rights Law Review*, vol. 5 (2016), pp. 194–216.

846 victims participated, which allowed the Truth and Reconciliation Commission to put forward recommendations on reparation that had greater consensus among victims.[43] Equally, an initiative called the Working Group on Reparations was established, allowing civil society organizations to coordinate their work on reparation issues. Consultations also took place to provide collective reparation. For example, 444 consultations on collective reparations were held in 2017.[44] However, technical information has not always been available to communities to inform their views on collective reparation.[45]

66. In Colombia, consultation with and participation of victims has taken place at different times. During the negotiation of the Victims and Land Restitution Law, 11 regional dialogues were held to gather victims' views. Something similar happened with the three decree-laws on reparation for indigenous groups, for Afrodescendants, Raizal and Palenqueros, and for Roma.[46]

67. The Colombian Victims and Land Restitution Law also creates participation mechanisms for its implementation through victims' participation tables established at the national, departmental and municipal levels.[47] This led to the establishment of 865 municipal tables, 32 departmental tables, a table in Bogota, and a national table.[48] Communities are also consulted concerning collective reparations.

68. In Morocco, the Equity and Reconciliation Commission carried out consultations with victims and civil society organizations in various parts of the country to design its reparations approach. The consultations involved different stakeholders, including victims as well as development agencies. This was particularly important for the design of collective reparations.[49] An illustration of this process was the 2005 National Forum on Reparation, in which more than 200 civil society organizations participated.

69. The German compensation programme for forced labour that took place during the national-socialist regime also included consultation. The process was challenging, since victims were old and spread across 89 States. Nevertheless, victims took part in the negotiations leading to the establishment of the programme, and continued to participate afterwards. The approach was to establish small groups of victims affected, who would identify a representative to take part in the consultation. The programme distributed individual payments to 1.66 million victims in 89 States.[50]

70. In some countries, consultations took place without all the victims concerned being included. In Sierra Leone, for example, victims of sexual violence were stigmatized and discriminated against. As a result, they were unable to participate in the design of the

[43] Julie Guillerot and Lisa Magarrell, *Memorias de un Proceso Inacabado: Reparaciones en la Transición Peruana* (Lima, Asociación Pro Derechos Humanos, International Center for Transitional Justice and Oxfam, 2006), pp. 102–106; and submission of the Peruvian human rights commission, point 3.

[44] Comisión Multisectorial de Alto Nivel encargada de las Acciones y políticas del Estado en los ámbitos de la paz, la reparación colectiva y la reconciliación nacional, *Balance de Acciones 2017*, (Lima, 2018), p. 2.

[45] Cristián Correa, *Reparaciones en Perú: El Largo Camino entre las Recomendaciones y la Implementación* (New York, International Center for Transitional Justice, 2013), pp. 12–14.

[46] Submission of Paula Gaviria and Iris Marín, point 3; submission of the Unidad de Víctimas, Colombia, point 3; and submission of Dejusticia, point 3.

[47] Law 1448/2011, art. 193.

[48] Universidad del Rosario, Bogotá, Encuentro de experiencias: participación efectiva de las víctimas y mesas de participación, Federación Nacional de Personeros and United Nations Development Programme, 2015.

[49] See www.ier.ma/article.php3?id_article=1496.

[50] Roland Bank, "Establishing the programme", Günter Saathoff et al. (eds.), *The German Compensation Programme for Forced Labour: Practice and Experiences* (Stiftung Erinnerung Verantwortung und Zukunft, 2017), pp. 12–25, at p. 23.

domestic reparation programme.[51] In Peru, women were not always included in consultations about collective reparation.[52]

71. The Special Rapporteur considers that consultation with and participation of victims is essential in order to fulfil their right to reparation. More sustained work is required to ensure that consultation and participation take place in the design, implementation and monitoring of domestic reparation programmes.

72. The consultation process should not force victims to renounce, or to choose from among, reparations owed to them pursuant to the criterion of full reparation.

Institutional security of domestic reparation programmes

73. Domestic reparation programmes are weak, fragile and highly dependent on political will and on the context in which they are implemented. They are rarely prioritized as a transitional justice measure or given the importance they should receive. Victims are seen as "weak agents", which makes "their plight largely invisible to decision makers".[53] Therefore, it is essential to protect domestic reparation programmes from those shortcomings through different means.

74. Legal frameworks establishing and regulating domestic reparation programmes are essential. Such framing provides legal certainty to the programme and sustainability regardless of political fluctuations. It is also a sign of State commitment to address mass atrocities rather than the decision being rooted in political opportunism.

75. Various States have adopted legislation underpinning their domestic reparation programmes, such as Iraq with Law 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, the Philippines with the Human Rights Victims Reparation and Recognition Act,[54] Peru with the Comprehensive Reparations Plan,[55] and Colombia with the Victims and Land Restitution Law.[56] In Argentina, various laws have been enacted to provide reparation to victims.[57]

76. In Guatemala, the National Reparations Plan was established by a government agreement and not by law.[58] It is therefore seen as another programme to be implemented by the executive branch, but with no primacy or political relevance. Efforts in Guatemala to enact a law for the National Reparations Programme have faced multiple obstacles in Congress.

77. In El Salvador, Presidential Executive Decree 204/2013 created the Reparation Programme for Victims of Serious Human Rights Violations that Took Place during the Internal Armed Conflict. While this constitutes a valuable step forward, the scope of the programme has been limited, and its legal framing is pending.

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

[51] Kelli Muddell, "Limitations and opportunities of reparations for women's empowerment" (International Center for Transitional Justice briefing, 2009), 6 July 2011, p. 1.

[52] International Center for Transitional Justice, "The concept and challenges of collective reparation" (2010), pp. 26–27.

[53] A/69/518, para. 49.

[54] Philippines, Human Rights Victims Reparation and Recognition Act (No. 10368/2013).

[55] Law No. 28592 of 29 July 2005.

[56] Law No. 1448 of 10 June 2011.

[57] Such as Law No. 24.043/91 on reparation for those who were detained before 10 December 1983 and were in the custody of the executive, and Law No. 24.411/94 granting compensation for victims of enforced disappearance or descendants of those killed by the military or security forces.

[58] Acuerdo Gubernativo 258-2003.

should further develop some of these key provisions, such as how to apply for reparation, and regulate issues related to consultation with and/or participation of victims.

79. The reparation programme should, at least, be coordinated by an entity responsible for its implementation, with the necessary political and economic leverage to coordinate and promote action across the different State institutions that are part of the reparation system.

80. Chile set up the National Corporation for Reparations and Reconciliation tasked with implementing various pieces of legislation on reparation enacted over time.[59] Other systems, such as the Programme for Reparation and Comprehensive Health Care, were established subsequently to provide rehabilitation to victims.[60] In the Philippines, the Human Rights Victims Reparation and Recognition Act created the Human Rights Victims' Claims Board.[61] In Colombia, a reparations system was put in place with responsibilities assigned to various institutions, such as the Victims' Unit, the Centre for Historical Memory and the Land Restitution Unit.[62]

81. Other States, such as Argentina, have not set up specific institutions to implement reparation frameworks. However, the secretary responsible for human rights in Argentina is responsible for implementing all the laws that regulate reparations in the country.[63]

82. The Special Rapporteur stresses the need to bestow these institutions or systems with political leverage and authority to carry out their work. For example, in Colombia, despite the importance of the Victims' Unit, it lacks political leverage as it is not placed above ministries and therefore cannot always coordinate the reparation policy in the most effective manner. Something similar happens in Guatemala, where the responsibility for reparations lies with a programme which is affiliated to the Secretary for Peace and comes under the authority of the national commission on reparations.

83. The Special Rapporteur also underscores that such entities must include territorial reach and presence, particularly in the areas where victims reside, and where conflict or repression was concentrated, to facilitate consultation with and the participation of victims in the reparation process as well as to facilitate their access to benefits. Institutions should also be available to victims who are refugees or live in exile. Consulates and diplomatic missions could undertake this task.

Financial resources

84. The availability of financial resources to fund the work of domestic reparation programmes, including the provision of benefits, is essential for the fulfilment of the right to reparation. The Special Rapporteur urges States to make the necessary budgetary allocations to provide reparation to victims, on the basis of realistic projections of its cost as well as the universe of victims.

85. There are different ways of funding reparation programmes. Some States opt for the establishment of a reparation fund. Such funds can be the result of one-time financial contributions, or could be replenished as required.

86. In Colombia, a fund was created under the Justice and Peace Law, in 2005.[64] The fund was to include assets given up by members of paramilitary groups, contributions from the Colombian budget and any national or international donations. The fund was established and maintained under the Victims and Land Restitution Law of 2011.[65] The latter law included new sources for financing reparations, such as fines obtained by the

[59] Law No. 19.123 of 8 February 1992.
[60] Law No. 19.980 of 9 November 2004.
[61] Submission of the Commission on Human Rights (Philippines), 14 January 2018.
[62] In the case of Colombia, the Sistema Nacional de Atención y Reparación Integral a las Víctimas is the system of public institutions both at the national and the local level responsible for establishing and implementing reparations in the country.
[63] Submission of the Argentine national human rights institution, point 2.
[64] Law No. 975/2005 of 25 July 2005, art. 54.
[65] Law No. 1448/2011, art. 177.

State from persons or armed groups in judicial or administrative processes, and voluntary donations made by people in supermarkets or at cash machines.[66]

87. The United Nations Compensation Commission had the United Nations Compensation Fund, which had 5 per cent of the annual proceeds from Iraqi oil exports to redress victims.[67]

88. The German compensation programme for forced labour also established a fund, with a fixed amount of approximately €5.2 billion, which received contributions in equal proportion from the Government of Germany and from various German corporations. While funds with fixed amounts can potentially be problematic as they do not allow the amount available for reparation to be adjusted to changing circumstances, they provide political independence to the institutions managing the fund and they accrue interest over time.[68]

89. Sierra Leone set up a reparation fund a decade after this was envisaged in the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, of 1999. Contributions from the Government to this fund have been minimal, with the majority of proceeds coming from international cooperation, particularly the United Nations Peacebuilding Fund.[69]

90. The alternative to a special fund is the inclusion of the programme in the national budget. In Guatemala, the National Compensation Programme was to receive 300 million quetzals on an annual basis (equivalent to about $40 million). The programme has never received the full allocation of funds and year after year its budget has decreased.[70]

91. In other countries, such as Argentina, some forms of reparation were funded with government bonds. Through these bonds, the Government recognized the debt owed to victims of enforced disappearance, execution and arbitrary detention, and guaranteed the payment. The bonds (of $224,000 per victim) could be exchanged at their market value at any time, or at full value on maturity (16 years later). The mechanism ran into trouble for those who had not exchanged their bonds when an economic crisis hit Argentina in 2001 and payments of all government bonds were ceased.[71] Payments to victims were exempted from this freeze, but bonds were automatically converted to a highly depreciated Argentine peso.

92. The Special Rapporteur notes that, with notable exceptions, domestic reparation programmes are seriously underfunded, which hampers their ability to redress victims. In Colombia, under the Victims and Land Restitution Law, the State has provided compensation to less than 10 per cent of the 8 million victims registered to obtain reparation.[72] In 2016, the Government of Colombia calculated that its deficit to fund the law was of approximately 115.58 billion pesos (approximately $34 million).[73]

[66] Ibid.

[67] Security Council resolutions 1483 (2003) and 1956 (2010).

[68] Susanne Sehlbach, “Funding of the programme”, Günter Saathoff et al. (eds.), *The German Compensation Programme for Forced Labour: Practice and Experiences* (Stiftung Erinnerung Verantwortung und Zukunft, 2017), pp. 27–39.

[69] International Center for Transitional Justice, “Report and proposals for the implementation of reparations in Sierra Leone” (2009), p. 14.

[70] Procurador de los Derechos Humanos, “Informe de monitoreo realizado a las sedes regionales del Programa Nacional de Resarcimiento” (2018), p. 5.

[71] José María Guembe, “Economic reparations for grave human rights violations: the Argentinean experience”, in Pablo De Greiff (ed.), *The Handbook of Reparations* (Oxford, Oxford University Press, 2005), pp. 21–54, at p. 41.

[72] Comisión de Seguimiento y Monitoreo a la Implementación de la Ley 1448 de 2011, quinto informe de seguimiento al Congreso de la República 2017–2018, p. 193.

[73] Colombia, Informe al Auto No. 373 de 2016, orden tercera, 31 October 2016, p. 4.

93. In the case of Guatemala, of the approximately 200,000 victims,[74] only 32,802 have been compensated.[75]

94. In Sierra Leone, very few victims, including some victims of sexual violence, have received some reparation.[76] Between 2008 and 2013, for example, the United Nations Peacebuilding Fund, the Government of Germany, the International Organization for Migration, the United Nations multi-partner trust fund and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) provided about $8.5 million to the National Commission for Social Action, the body responsible for victims' reparation.[77] In particular, some victims in Sierra Leone benefited from interim relief. For example, interim payments of $100 were granted, predominantly to amputees and victims of sexual violence, benefiting approximately 21,700 victims. A few victims benefited from urgent medical care.[78]

95. In such circumstances, identifying suitable sources of funding without diluting the responsibility of the State becomes crucial. In many contexts, State and non-State actors, including armed groups, are responsible for the atrocities and should contribute to reparation.[79] Important precedents already exist in this direction. The German compensation programme for forced labour was half-financed by corporations. Similarly, the Human Rights Victims' Claims Board in the Philippines, established to provide reparation to victims of the regime of Ferdinand Marcos, was financed from funds from Marcos's wealth.[80] In Colombia, the Revolutionary Armed Forces of Colombia-People's Army (FARC) agreed to contribute to reparation in the peace agreement signed with the Government of Colombia in 2016.[81]

96. The role of the international community in domestic reparation programmes must also be considered. If States acknowledge their responsibility for the violations, there is no reason for other States, international financial institutions or international organizations to abstain from helping to fund reparation programmes.[82]

C. Selected challenges

97. The importance of the right to reparation cannot be stressed enough. If provided in a prompt, adequate and effective manner, it can make a substantial difference in the lives of victims. In most cases, however, victims do not receive reparation, or if they do, they obtain some form of reparation which does not fulfil those requirements. As a consequence, the harm caused to victims is accentuated. While underscoring the standard of full reparation, the Special Rapporteur notes below two specific challenges that require urgent attention: rehabilitation, and reparation for victims in a vulnerable situation, including victims of sexual violence.

[74] See www.undp.org/content/dam/guatemala/docs/publications/UNDP_gt_PrevyRecu_MemoriadelSilencio.pdf, para. 2.

[75] Programa Nacional de Resarcimiento, Cantidad de beneficiarios por tipo de violación (2005–2014).

[76] National Commission for Social Action, Sierra Leone Reparations Programme newsletter, October 2016.

[77] Eva Ottendörfer, *The Fortunate Ones and the Ones Still Waiting: Reparations for War Victims in Sierra Leone*, Peace Research Institute Frankfurt report No. 129 (2014), p. I.

[78] International Center for Transitional Justice, "Report and proposals for the implementation of reparations in Sierra Leone" (2009), pp. 7 and 10.

[79] Luke Moffett, "Beyond attribution: responsibility of armed non-State actors for reparations in Northern Ireland, Colombia and Uganda", Noemi Gal-Or, Cedric Ryngaert and Math Noortmann (eds.), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Brill, 2015), pp. 323–346.

[80] Commission on Human Rights (Philippines), "Experiences of domestic reparation programmes" (14 May 2018), para. 26.

[81] Peace agreement between the Government of Colombia and FARC, November 2016, points 5.1.3–5.1.4.

[82] Guidance note of the Secretary-General, "Reparations for conflict-related sexual violence" (United Nations, June 2014), point 5; and A/69/518, para. 58.

Rehabilitation

98. Rehabilitation is a form of reparation that is aimed at providing victims with physical and mental health services as well as other legal and social services.[83] It has the ability to address the mental and physical harm caused to victims, or community harm,[84] as well as to enable victims to reconstruct their lives, get new life opportunities, fulfil their rights to justice and truth, and contribute to non-recurrence.[85] If there are transformative opportunities for victims in the right to reparation, rehabilitation is one of the measures most likely to deliver on them.

99. Various countries have included rehabilitation as a form of reparation in their reparation programmes, such as Chile,[86] Colombia,[87] El Salvador[88] and Guatemala.[89] Nevertheless, this is one of the reparation measures where States face serious implementation challenges, which are exacerbated when conflict situations are ongoing, and the required infrastructure and expertise are not available or are insufficient to provide such services.

100. Nonetheless, there are examples of good practice in this field. In Chile, for example, a comprehensive rehabilitation system for physical and mental health was established following the recommendations made by the Rettig Commission.[90] That programme began its work in 1991 and continues to provide rehabilitation to victims today. It provides medical and psychosocial services to parents, children, partners and grandchildren of victims of enforced disappearance, execution and torture, people dismissed from their employment for political reasons, and persons who have provided support to victims of the dictatorship for at least 10 continuous years. However, the Programme for Reparation and Comprehensive Health Care falls short of providing medical and psychosocial support to victims in exile or who live abroad as a result of the harm suffered.[91]

101. The programme, administered by the Ministry of Health, provides medical and dental care, diagnostic tests, access to specialists, hospitalization, and emergency services, to approximately 750,000 registered persons.[92] The personnel include physicians, social workers and psychologists, who are also involved in memory and justice initiatives. The budget for its operation is approved by Congress yearly.[93]

102. In Colombia, there are significant limitations in the provision of health services through the Programme of Psychosocial Assistance and Comprehensive Health Care for Victims, administered by the Ministry of Health.[94] However, alternative forms of rehabilitation have been used with some degree of success, such as "interweaving" (*el entrelazar*), which is a form of collective rehabilitation.[95] It aims to help in the

[83] See General Assembly resolution 60/147, annex, para. 21.

[84] Judith Bueno de Mesquita, Gen Sander and Paul Hunt, "Rehabilitation and the right to health in times of transition", *International Human Rights Law Review*, vol. 5 (2016), pp. 169–193.

[85] Redress, "Rehabilitation as a form of reparation under international law" (London, 2009); and Clara Sandoval, "Reflections on the transformative potential of transitional justice and the nature of social change in times of transition," in Roger Duthie and Paul Seils (eds.), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, International Center for Transitional Justice (2017), pp. 166–201, at p. 190.

[86] Law No. 19.980 which modifies Law No. 19.123, art. 7.

[87] Law No. 1448/2011, art. 135.

[88] El Salvador executive decree 204/2013, arts. 7–9.

[89] Texto El Libro Azul (política pública de resarcimiento), paras. 96–106.

[90] Chilean National Commission on Truth and Reconciliation report, vol. I, part II (1991), pp. 1260–1263.

[91] Inter-American Court of Human Rights, *García Lucero and others v. Chile*, judgment of 28 August 2013 (preliminary objection, merits and reparations).

[92] Ministry of Health of Chile, ordinance A 111 No. 3803, 10 November 2016.

[93] Elizabeth Lira, "Reflections on rehabilitation as a form of reparation in Chile after Pinochet's dictatorship".

[94] Comisión de Seguimiento y Monitoreo a la Implementación de la Ley 1448 de 2011, quinto informe de seguimiento al Congreso de la República 2017–2018, p. 114.

[95] Submission of Paula Gaviria and Irin Marín.

reconstruction of the social fabric and to facilitate reconciliation by empowering victims. It began in 2012 with 10 communities and has continued since then.[96] Key community leaders act as interweavers. They are recognized in the community for their essential role fostering collective health, rebuilding trust and re-establishing emotional bonds between members. They receive training from the Victims' Unit. They work in five areas: collective mourning, rescuing old social practices shared by victims, respecting the differences that exist within communities or groups, group reflection, and transforming local places where atrocities took place.[97]

103. The Special Rapporteur would like to note that rehabilitation goes beyond physical and medical care and includes other social services such as education.[98] Education is a tool that can provide inclusion, recognition and empowerment.[99]

104. While more domestic reparation programmes are acknowledging education as a form of rehabilitation, its operationalization presents challenges. The Chilean approach to rehabilitation constitutes an important attempt to provide rehabilitation to victims and has enjoyed fairly good implementation. Law 19.123 included education for the children of victims who were disappeared or killed, providing them with full scholarships for primary and secondary schooling as well as for technical training until the age of 35. The scholarship included the payment of tuition fees and a monthly stipend.[100] Equally, Law 19.992 included education for survivors of torture.[101] Given that many of the survivors were older, the law was amended to allow the transfer of the education benefit to university level (for undergraduate studies) for one child or grandchild.[102]

105. Even in States ravaged by conflict, steps have been taken to provide education to victims. In Sierra Leone, for example, the truth commission recommended free primary and secondary education for the most vulnerable victims, including children who had suffered amputation, the children of persons who had suffered amputation, victims of sexual violence, children who had been abducted or conscripted, and orphans of war.[103] While the implementation of reparation processes in Sierra Leone raises serious concerns, some of the interim relief measures provided to victims in 2008 and 2009 were for educational support for 6,984 children.[104] By 2013, 1,298 victims had received approximately $1,400 each to pay for child education. The overall impact of these contributions may be questioned, given the lack of sustained and coordinated efforts to provide reparation to victims.

106. A problem with the provision of education as a form of reparation in countries devastated by conflict is that not even basic education infrastructure is likely to be in place. Therefore, States have to consider carefully how to combine – in a way that maximizes their potential – development measures such as the construction of schools in areas ravished by conflict, with victims' entitlement to education: for example free access to quality primary education as recognized under the right to education, or a monthly stipend for children's education kits or to help children with home expenditures so that they can focus on studying, as recognized under the right to reparation. Something similar happens with health services.

107. The Special Rapporteur considers that the lack of effective provision of rehabilitation measures for vulnerable victims constitutes inhuman treatment and generates new victimization.

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96 See www.mininterior.gov.co/sites/default/files/noticias/informe_al_congreso_final.pdf, p. 76

97 See www.youtube.com/watch?v=lyZ2QVFj8_w (accessed on 25 March 2019).

98 Depending on the type of harm, education can also be conceived of as a form of satisfaction or restitution or as a guarantee of non-recurrence.

99 Roger Duthie and Clara Ramírez-Barat, "Education as rehabilitation for human rights violations", *International Human Rights Law Review*, vol. 5, issue 2 (2016), pp. 241–273.

100 Law 19.123/1992, arts. 29–31.

101 Law 19.992/2004, arts. 11–14.

102 See www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf, p. 208.

103 Sierra Leone, Truth and Reconciliation Commission, *Witness to Truth*, final report (Freetown, 2004), vol. ii, p. 195.

104 Roger Duthie and Clara Ramírez-Barat, "Education as rehabilitation for human rights violations", *International Human Rights Law Review*, vol. 5, issue 2 (2016).

Reparation for victims in vulnerable situations

108. Reparation programmes should acknowledge that not all victims are in the same situation. They do not experience the same harm and do not face the same consequences. While domestic reparation programmes are unable to provide reparation according to the harm suffered by each victim, they can take measures to respond adequately to those most in need, such as children, including children born out of rape, victims of sexual violence, internally displaced persons, refugees, the elderly, persons with disabilities, and members of the lesbian, gay, bisexual, transgender and intersex community.

109. Some States have set up urgent reparation programmes for victims most in need.[105] In East Timor, for example, the Commission for Reception, Truth and Reconciliation implemented an interim reparation programme distributing approximately $200 to about 700 victims.[106] In Nepal, the Interim Relief and Rehabilitation Programme was established to provide a prompt response for victims prior to the setting up of a domestic reparation programme. The Interim Relief and Rehabilitation Programme included one-time cash payments, medical treatment or scholarship payments.[107] However, Nepal did not set up a domestic reparation programme, and victims of torture and sexual violence were excluded from the Interim Relief and Rehabilitation Programme.

110. States can also address the needs of the most vulnerable victims through collective reparation. An illustration of this is the community reparation approach in Morocco, where it was considered essential to rehabilitate the economic and social development of the 11 most deprived, excluded and marginalized regions in the country, in which victims had suffered serious human rights violations and political violence. Collective reparation took the form of memorialization, income-generating activities, and accessibility to basic social services, among others. Civil society organizations could bid to propose a collective reparation project and be responsible for its implementation.[108] The Special Rapporteur welcomes this approach but reminds States that collective reparation cannot be a substitute for individual reparation.

111. Refugees and migrants are often found in especially vulnerable situations after conflict or repression. Notwithstanding, domestic reparation programmes have failed to include them as beneficiaries of reparation or to provide them with special measures to ensure that they are able to access reparation benefits. The German compensation programme for forced labour is an important example, as it represents a successful experience which provided compensation to forced labour victims, many of whom had been refugees. Chile put in place a series of incentives to get refugees to return to Chile, but they were not conceived of as reparation.[109] Argentina responded, albeit late, to the situation of refugees. The Supreme Court of Justice in the *Vaca Narvaja* case in Argentina considered that reparation given under Law 24.043 to those illegally detained also applied to exiles, as their situation also constituted an infringement on their right to personal liberty.[110] As a result of that judgment, government resolution 670/2016 expressly recognized the application of that law to those in exile. However, none of these experiences can offer tools to respond to the unprecedented number of internally displaced persons needing reparation in different countries of the world.

112. Internally displaced persons are also victims in urgent need of attention. The Syrian Arab Republic has about 6.2 million registered internally displaced persons and Colombia

[105] Guidance note of the Secretary-General, "Reparations for conflict-related sexual violence" (United Nations, June 2014), point 7.

[106] Ruben Carranza, "The right to reparations in situations of poverty" (International Center for Transitional Justice briefing, September 2009), p. 1.

[107] International Organization for Migration and Office of the United Nations High Commissioner for Human Rights, "Report on mapping exercise and preliminary gap analysis of the interim relief and rehabilitation programme" (December 2010), p. iii.

[108] See www.ier.ma/article.php3?id_article=1496.

[109] Law 19.074 of 28 August 1991 and Law 19.128 of 7 February 1992.

[110] See www.refworld.org/pdfid/4721ffa72.pdf, p. 5.

has about 7.7 million.[111] While States such as Colombia have included this category of persons in their reparation programmes,[112] they have struggled to operationalize those benefits. Other domestic reparation programmes have failed to include internally displaced persons, as in the case of El Salvador.[113]

113. Given the increasing occurrence of internal armed conflicts in the world, and the growing number of displaced and migrant persons, the Special Rapporteur considers it essential to address the question of how to effectively include them in transitional justice processes and provide them with reparation.[114]

Victims of sexual violence

114. Sexual violence remains a pervasive crime and its victims remain invisible or ignored in society.[115] As a consequence, they have often been excluded as beneficiaries in domestic reparation programmes. For example, victims of sexual violence have not been direct beneficiaries of reparation in Argentina or Uruguay. Children born out of rape have as a general rule been excluded from these programmes.

115. In other places, legislation on reparation for victims of sexual violence has arrived decades later. In Croatia, for example, legislators adopted the Act on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War in 2015, twenty years after the conflict. A similar situation took place in Kosovo.[116] While reparation was provided by law only in 2011,[117] victims of sexual violence continued to be excluded until the law was amended in 2014.[118] Children born out of rape are not beneficiaries of reparation under this programme.

116. Safety and private spaces are essential in order for victims of sexual violence to come forward. Such spaces can be offered by trusted, neutral and discreet community workers, such as a properly trained health provider.[119] The new law in Kosovo, of 2014, allows victims to come forward, protecting them from stigma and revictimization. Four civil society organizations are authorized to receive applications, help victims to complete the forms and help them gather the relevant documentation to ascertain their status as victims of sexual violence. The civil society organizations also provide them with psychosocial support. All information provided is confidential.[120]

117. In Colombia, the Victims and Land Restitution Law includes various important measures for victims of sexual violence. The law includes the concept of transformative reparation,[121] and the view that reparation should have a differential and a gender approach to victims. Various articles in the law develop these concepts to lower the standard of evidence required from victims, indicate the kind of treatment they are entitled to, and grant them priority access to some benefits.

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[111] Office of the United Nations High Commissioner for Refugees, "Global trends: forced displacement in 2017", p. 6.

[112] Law 1448/2011, arts. 25, 72 and 78 among others.

[113] Art. 2 of executive decree 204.

[114] A/73/173, para. 42.

[115] The devastating consequences of sexual violence can be found in the expert report presented to Trial Chamber III of the International Criminal Court, on the situation in the Central African Republic, in the *Case of the Prosecutor v. Jean-Pierre Bemba Gombo*, public redacted version of annex, 28 November 2017, ICC-01/05-01/08-3575-Conf-Exp-Anx-Corr2, para. 117.

[116] References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

[117] Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims and their Families.

[118] Law No. 04/L-172 Amending and Supplementing Law No. 04/L-054. See also Regulation (GRK) No. 22/2015 Defining the Procedures for Recognition and Verification of the Status of Sexual Violence Victims During the Kosovo Liberation War.

[119] Sunneva Gilmore, "Medico-legal reparations for conflict-related sexual violence", working paper (2019).

[120] Law No. 04/L-172.

[121] Law 1448/2011, arts. 13 and 28.

118. While the law succeeds in adopting a holistic approach to victims in a situation of vulnerability, its implementation is insufficient. Out of approximately 24,000 persons registered as victims of sexual violence (90 per cent of whom are women), only approximately 7,000 have received compensation, including advice on how best to invest the money and use it for empowerment purposes.[122]

V. Conclusions

119. The Special Rapporteur notes the recognition by States and in State practice of the right to reparation for victims of mass atrocities that goes beyond compensation and includes an array of measures. Important State practice has emerged on how to design, implement and monitor domestic reparation programmes, from which valuable lessons can be drawn.

120. The establishment of appropriate reparation systems is essential in order to provide effective reparation to victims. The more measures included in a programme, the more robust the system would need to be in order to implement them, including through extensive local outreach.

121. The Special Rapporteur underscores the need to establish a comprehensive registration of victims prior to the design of reparation programmes, and to assess the universe of victims and the expected costs.

122. Such programmes must also be underpinned by a solid legal framework that provides sustainability and shields victims from political upheaval, as well as by adequate resource allocation to guarantee their implementation.

123. Victims are often in a vulnerable situation and excluded from decision-making. Their participation, and/or consultation with them, remains crucial to ensure that the views of all those who have suffered harm are duly taken into account during the design, implementation and monitoring of reparation programmes.

124. The Special Rapporteur stresses the importance of providing victims with effective and timely rehabilitation in the areas of physical and mental health, as well as other services such as education.

125. Refugees, internally displaced persons and migrants continue to be neglected in reparation programmes. A key challenge for the future is how best to include them in such programmes so that they can obtain adequate reparation.

126. Redressing victims of sexual violence, and children born out of rape, remains another key challenge. Effective systems require special measures to prevent the social exposure of these victims and to avoid inflicting further harm on them.

127. Civil society organizations play an essential role in ensuring that domestic reparation programmes are set up properly and that possible deficiencies are addressed. They are also crucial in reaching out to victims, as shown in cases of victims of sexual violence, and in setting up registration processes, documenting harm caused to victims, and providing, when possible, psychosocial support.

128. The Special Rapporteur outlines below his recommendations for the effective implementation of domestic reparation programmes.

VI. Recommendations

129. **In the design and implementation of domestic reparation programmes, States should:**

[122] See www2.unwomen.org/-/media/field%20office%20colombia/documentos/publicaciones/2018/01/mujeres%20victimas%20final.pdf?la=es&vs=1047, p. 31.

(a) **Design and implement adequate, prompt and effective domestic reparation programmes to remedy the harm suffered by victims of mass atrocities, which recognize the responsibility of the State;**

(b) **Ensure that such programmes include different forms of reparation beyond compensation, such as measures of satisfaction, restitution and rehabilitation, and guarantees of non-recurrence;**

(c) **Ensure that compensation, including the distribution criteria across victims, the family unit, and those in the most vulnerable situations, is reasonable and proportional;**

(d) **Design reparation programmes which are complete, comprehensive, complex, and coherent internally and externally, as indicated in paragraph 45 above;**

(e) **Develop national registries of victims, which are flexible and reach out widely, to adequately estimate the potential universe of victims and expected costs, prior to the design of reparation programmes;**

(f) **Adopt solid legal frameworks to ensure legal certainty and sustainability of reparation programmes;**

(g) **Adopt solid institutional frameworks that bestow domestic reparation systems with the institutional security, political leverage, financial autonomy and territorial outreach needed to operationalize the reparation policy;**

(h) **Make the necessary budgetary allocations, based on the universe of victims and realistic cost expectations, through the creation of special funds, inclusion in the national budget, or other financing by sustainable means;**

(i) **Where relevant, design financing mechanisms by which other actors responsible for violations contribute towards reparation expenses, through, for example, financial or in-kind contributions;**

(j) **International donors may also play an important role in financially supporting reparation programmes;**

(k) **Adopt emergency reparation programmes or services, while domestic reparation programmes are being designed, to address the urgent needs of victims and avoid exposing them to further harm;**

(l) **Ensure and facilitate effective participation and consultation and a meaningful role for victims in the design, implementation and monitoring of reparation programmes. Also ensure effective participation of and consultation with civil society and victims' organizations in these efforts;**

(m) **Establish effective and timely rehabilitation services to address the physical and mental health and educational needs of victims, as well as other services, and coordinate efforts between State institutions and specialized civil society organizations and victims' organizations in this regard. The international community may support the delivery of such services;**

(n) **Adopt special measures in the design and implementation of domestic reparation programmes to address the reparation needs and the challenges faced by victims of sexual violence, and by children born out of rape when the woman has decided to continue her pregnancy, including safety and privacy measures to prevent their social exposure and to avoid inflicting further harm on them;**

(o) **Adopt special measures in the design and implementation of domestic reparation programmes to address the reparation needs of refugees and internally displaced persons.**