

Representation on the topic of Reparation  
Before the Justice Verma Committee, New Delhi

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1. I appreciate that the Committee has engaged in such a broad-based consultation for reforms in the law to address sexual assault and I appreciate the opportunity to speak on reparation. There is a need for a comprehensive reparation policy on sexual assault. The specific details of a policy that would address reparation for all forms of sexual assault and against all categories of victims/survivors can be arrived at only after a similar broad-based consultation with victims/survivors, women's groups & individuals that have years of experience working with victim survivors, lawyers that litigate sexual assault and women from groups and communities more vulnerable to sexual assault. I therefore present broad principles and guidelines that should form the basis of a comprehensive reparation policy. In the course of doing so, there are some specifics that come up that may be helpful for the immediate purposes of the committee and these are highlighted.

2. Reparation for sexual assault means and includes restitution, compensation and rehabilitation of the victim/survivor. It also includes measures that have reparative effects such as reintegration, satisfaction and guarantees of non-repetition. **It is a legal right of victims and survivors** of all forms of crimes against their physical autonomy and integrity including and particularly, sexual assault.

3. Reparation policies and measures must be **designed and implemented on the principle of non-discrimination** on the grounds of caste, class, gender, religion, language, ethnicity, political affiliation, sexual orientation and disability; bearing in mind that these may necessitate affirmative action to address inequalities resulting out of one or a combination of the said grounds.

4. **Restitution** involves restoring the survivors' sense of dignity, privacy, safety and security. These could be achieved through a number of legal and non-legal

measures such as respectful documentation of the crime, having gender-conscious and aware individuals drive the investigation / prosecution / trial / hearing as the case maybe, non-intrusive protective measures for self, children and family, providing enabling environment for the victim/survivor to pursue justice and continue living her life with dignity.

5. **Compensation** is the widely, though not accurately understood form of reparation for sexual assault. It continues to be termed as ‘relief and rehabilitation’ i.e. charity instead of a legal right to reparation making the last draft of the ‘scheme for relief and rehabilitation of victims of rape 2010’ conceptually flawed, inadequate and incapable of providing reparation. The problems with the scheme are several but just to name a few:

- Conceptually, the scheme fails to take a gender-conscious and sensitive view of sexual assault, the obstacles women face seeking justice and the specific vulnerabilities of women. These are reflected in every aspect of the scheme from the amount of compensation to the grounds on which the Board can reject a claim for compensation.
- Instead of stating an upper limit as the amount of compensation and rehabilitation, the scheme could state the minimum and keep the upper limit open for exercise of discretion by the body making the determination of sexual assault.
- The amount for rehabilitation, for example, must cover medical expenses until the victim / survivor fully recovers. Physical recovery of the victim cannot be curtailed for having met the upper limit provided for rehabilitation. E.g enhanced but limited relief for victims infected with HIV by rape serves little purpose where a victim may require anti-retroviral for life.
- The claim for compensation seems to be linked to the outcome of the criminal trial. Compensation has to do with the fact of the sexual assault and not the culpability of the perpetrator. Determination of the fact of sexual assault by other quasi-legal and independently constituted bodies must be adequate to activate a claim of compensation.
- The amount of compensation excludes the award of expenses incurred by the victim/survivor or her family in the course of the legal/judicial process that is otherwise compensated under CrPC 157A. The victim/survivor or her family

incurs a number of expenses in the course of the prosecution that is currently a burden on the victim/survivor.

The victim/survivor of sexual assault needs to be compensated *inter-alia* for the following:

- the attack on her dignity and sexual autonomy,
- the physical injury suffered,
- the mental pain and anguish experienced,
- the loss of educational and employment days,
- the loss of all forms of opportunities - economic, educational and social, in the present and the foreseeable future
- all big and small expenses incurred towards engaging the justice system such as transport costs to and from police stations, courts, medical institutions, payments made for specialized services etc.

While for the first three of the above list, the amount of compensation may be a fixed and common for all victims/survivors of sexual assault, the rest is specific to each case to be determined on the basis of the circumstances and needs of the victim/survivor and not the merits of the case.

6. **Rehabilitation** measures are measures based on a gender-conscious and aware position that rape and other forms of sexual assault is NOT the worst thing that can happen to women. They acknowledge the importance of the survivor having survived the sexual assault, assists with the task of her complete recovery and to live her life to its fullest. They include, but are not limited to the following:

- medical treatment for any physical injury sustained by the assault until she is fully recovered and does not need any further medical treatment, (one of the ways this can be achieved is by issuing a bio-metric health card that hospitals and medical institution would honor for free treatment – this has been done successfully in Chile for example. Another method could be to pay for a health insurance for the victim survivor.)
- psycho-social support until she is free from mental anguish, trauma, guilt and depression, (in addition to measures similar to the above, creating a list of professional counselors across the country that could retained for referring victim/survivors to them when the need arises)

- provision of sustainable livelihood alternatives if the assault makes it difficult for her to continue in her occupation prior to the assault, (sustainable livelihood alternatives could be set-up in consultation with the victim/survivor. These may involve advancing the initial capital to set up a tea stall, purchase vegetables to sell or other measures such as assistance to access market for her produce. It is important to stay away from providing women jobs as domestic workers, tailoring, scavengers, rag-pickers etc. and move towards more skill enhancing occupations)
- provision of educational or vocational skills necessary to prepare her for pursuing a source of livelihood and (victim / survivors must be encouraged to pursue education. Women should also be encouraged to undertake vocational skills such as electrician, drivers, plumbers, mechanics etc. The points mentioned above apply similarly.)
- provision of safe and secure temporary shelter or housing alternative in the event it is unsafe to continue living in the same place.
- Provision of all of the above to a woman's dependents in the event the victim did not survive.

Marrying the rapist (if the victim is 'willing') is NOT a safe, empowering rehabilitation measure. Even today, some members of judiciary and people in positions of authority make such a suggestion. It comes from a flawed understanding of rape as a crime of passion instead of a crime of power and stems from an unwillingness to treat marital rape as a crime. It pushes the victim in the jaws of the rapist to be 'legally' raped over and over again. It helps to remember that it was the victim's unwillingness that led to the crime in the first place. If the victim is indeed willing to marry, she does not need a judicial directive to do so.

7. **Reparative effect:** The state has a responsibility to put in place measures that have reparative effects. These may or may not relate to a specific case but has an overall reparative effect on cases of sexual assault. Strong assurances from the state making women's safety a priority backed by measures including but not limited to the following serve to provide the victim/survivor a sense of satisfaction and guarantees of non-repetition:

- making public transport, streets, parks and other public spaces safe for women with enhanced non-intrusive security aimed to prevent sexual assault

(patrolling by plain clothes policemen and women who have undergone months of gender training, brightly lit spaces and streets, creatively using the concept of 'safety in numbers,' etc.)

- just, fair and timely justice to sexual assault trials (making the environment conducive i.e. gender-friendly and sensitive to the reporting, the documentation, examination, investigation, prosecution of sexual assault and providing non-intrusive protection and security to the victim/survivors.)
- providing institutional and other forms of support systems for victims of sexual assault consisting of individuals / organization that work to advance women's rights.
- Counseling for families that curtail women's freedom of movement and choices for fear of sexual assault or disown the victim entirely after the assault.
- Acknowledging that women from certain groups such as Dalits, Muslims, Christians or sexual minorities in certain situations such as during communal or other forms of mass and targeted violence are highly vulnerable to sexual assault and therefore need special protection.

8. There is a need for special forethought on the **procedures for women's access to reparation**. Often procedures are such that impede women's access to schemes for their benefit. The experience of accessing compensation is similar. Examples of how this can be improved are:

- Make the procedure for claiming reparation easy on the victim / survivor providing them with all information regarding the process and the possibilities of getting reparation.

- Instead of requiring women to visit a formal, distant, alien and intimidating space of a police station, an institution or a court, have the investigating authorities and agencies visit the victim/survivor at her place of residence for documentation and recording evidence, for assessing the circumstances, needs and interest of the victim/survivor, for assessing the most suited rehabilitation measure, for providing compensation etc.

- Ensure that any asset given in the name of the victim / survivor as compensation is in a form that appreciates in value.

- Ensure that any housing alternative provided are in the name of the woman victim / survivor

9. The principles of **reparation policies** for sexual assault and other forms of gender-based violence **in situations of mass crimes, in areas of internal conflicts or in regions of prolonged internal war must be drawn and adapted from the Nairobi Declaration on a Woman's and Girl's Right to a Remedy and Reparation, 2007** (attached as Annexure). It is a declaration drafted by women from conflict countries and international women's rights activists that is now recognized and cited by UN bodies as guiding principles on reparation for sexual violence in conflict areas. Among the key aspects of reparation in such contexts are:

- reparation measures take into account the multi-dimensional and long-term consequences of sexual and gender-based crimes against women, their families and their communities.
- Reparation in the above contexts requires specialized, integrated and multi-disciplinary approaches.
- Removal of all structural and administrative obstacles in all forms of justice that impede women's access to reparations.
- Reparation must aim to address the political and structural inequalities that negatively shape women's and girls lives.
- Reparation measures are designed and implemented on principles of non-discrimination.

10. Reparation for sexual assault on any given case may require one, a combination of two or more, or all of the above measures, which may be decided on basis of the circumstances, needs and interests of the victim/survivor. Reparation measures should be just, effective and prompt and include any measure to be provided in the interim to address an immediate need of the victim/survivor. Reparation should be proportional to the gravity of the crimes, violations and the injury suffered. Victims needs and interests must be paramount in the design and implementation of reparation. Adequate budgetary allocation must be made for implementation of reparation measures.

11. I am personally not in favour of creating new authorities, institutions and Boards to resolve the problems related to implementation of different laws and policies. Implementation of any reparation policy too therefore does not need creation of yet another new institution. These can **potentially** be implemented by the National Commission of Women (NCW). However, given the flawed scheme for compensation that the NCW has put out, it is doubtful whether members of the NCW acknowledge the history and share the analysis of gender oppression generally and of sexual assault in particular. There are serious problems with the entire governance and management of the NCW as it stands today and needs a complete overhaul. It cannot be emphasized enough that institutions such as NCW must be headed and staffed by individuals with experience working with women on the issue of sexual assault and other rights. Only after it is re-constituted and headed/staffed by gender-knowledgeable women can the NCW begin to do justice and advance the cause of women's rights or implement a reparation policy.

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## **NAIROBI DECLARATION ON WOMEN'S AND GIRLS' RIGHT TO A REMEDY AND REPARATION**

At the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007, women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict, from Africa, Asia, Europe, Central, North and South America, issued the following Declaration:

### **PREAMBLE**

**DEEPLY CONCERNED** that gender-based violence, and particularly sexual violence and violations against women and girls, are weapons of war, assuming unacceptably alarming proportions as wars, genocide and communal violence have taken their toll inside and between countries the world over within the last two decades;

**BEARING IN MIND** the terrible destruction brought by armed conflict, including forced participation in armed conflict, to people's physical integrity, psychological and spiritual well-being, economic security, social status, social fabric, and the gender differentiated impact on the lives and livelihoods of women and girls;

**TAKING INTO CONSIDERATION** the unimaginable brutality of crimes and violations committed against women and girls in conflict situations, and the disproportionate effects of these crimes and violations on women and girls, their families and their communities;

**ACKNOWLEDGING** that gender-based violence committed during conflict situations is the result of inequalities between women and men, girls and boys, that predated the conflict, and that this violence continues to aggravate the discrimination of women and girls in post-conflict situations;

**TAKING INTO CONSIDERATION** the discriminatory interpretations of culture and religion that impact negatively on the economic and political status of women and girls;

**TAKING INTO CONSIDERATION** that girls specifically suffer both from physical and sexual violence directed at them and from human rights violations against their parents, siblings and caregivers;

**BEARING IN MIND** that girls respond differently than women to grave rights violations because of less developed physical, mental and emotional responses to these experiences. Noting also that girls are victims of double discrimination based on their gender and age.

**TAKING INTO CONSIDERATION** the roles and contributions of women and girls in repairing the social fabric of families, communities and societies, and the potential of reparation programs to acknowledge these roles;

**BEARING IN MIND** advances in international criminal law that confirm gender-based crimes may amount to genocide, crimes against humanity and war crimes;

**RECALLING** the adoption by the UN General Assembly in October 2005 of 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*;

**TAKING COGNIZANCE** of the existence of international, regional and national judicial and non-judicial mechanisms for individual and collective, symbolic and material reparation, and the enormous challenges of catering for all victims and survivors, individually and/or collectively;

**CONCERNED** that initiatives and strategies at the local, national, regional and international levels to ensure justice have not been effective from the perspectives of victims and survivors of these crimes and violations in a holistic manner;

**DECLARE AS FOLLOWS:**

1. That women's and girls' rights are human rights.
2. That reparation is an integral part of processes that assist society's recovery from armed conflict and that ensure history will not repeat itself; that comprehensive programmes must be established to achieve truth-telling, other forms of transitional justice, and an end to the culture of impunity.
3. That reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women's and girls' human rights predate the conflict situation.
4. That, in order to accurately reflect and incorporate the perspectives of victims and their advocates, the notion of "victim" must be broadly defined within the context of women's and girls' experiences and their right to reparation.
5. That the fundamental nature of the struggle against impunity demands that all reparation programmes must address the responsibility of all actors, including state actors, foreign governments and inter-governmental bodies, non-governmental actors, such as armed groups, multinational companies and individual prospectors and investors.
6. That national governments bear primary responsibility to provide remedy and reparation within an environment that guarantees safety and human security, and that the international community shares responsibility in that process.

7. That the particular circumstances in which women and girls are made victims of crimes and human rights violations in situations of conflict require approaches specially adapted to their needs, interests and priorities, as defined by them; and that measures of access to equality (positive discrimination) are required in order to take into account the reasons and consequences of the crimes and violations committed, and in order to ensure that they are not repeated.

**FURTHER ADOPT THE FOLLOWING GENERAL PRINCIPLES AND RECOMMEND** that appropriate bodies at national, regional and international levels take steps to promote their widespread dissemination, acceptance and implementation.

## **1 - BASIC PRINCIPLES RELATING TO WOMEN'S AND GIRLS' RIGHT TO A REMEDY AND REPARATION**

A - Non-discrimination on the basis of sex, gender, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability.

B - All policies and measures relating to reparation must explicitly be based on the principle of non-discrimination on the basis of sex, gender, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability and affirmative measures to redress inequalities.

C - Compliance with international and regional standards on the right to a remedy and reparation, as well as with women's and girls' human rights.

D - Support of women's and girls' empowerment by taking into consideration their autonomy and participation in decision-making. Processes must empower women and girls, or those acting in the best interests of girls, to determine for themselves what forms of reparation are best suited to their situation. Processes must also overcome those aspects of customary and religious laws and practices that prevent women and girls from being in a position to make, and act on, decisions about their own lives.

E - Civil society should drive policies and practices on reparation, with governments striving for genuine partnership with civil society groups. Measures are necessary to guarantee civil society autonomy and space for the representation of women's and girls' voices in all their diversity.

F - Access to Justice. Ending impunity through legal proceedings for crimes against women and girls is a crucial component of reparation policies and a requirement under international law.

## **2 – ACCESS TO REPARATION**

A - In order to achieve reparation measures sensitive to gender, age, cultural diversity and human rights, decision-making about reparation must include victims as full participants, while ensuring just representation of women and girls

in all their diversity. Governments and other actors must ensure that women and girls are adequately informed of their rights.

B - Full participation of women and girls victims should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making.

C - Structural and administrative obstacles in all forms of justice, which impede or deny women's and girls' access to effective and enforceable remedies, must be addressed to ensure gender-just reparation programmes.

D - Male and female staff who are sensitive to specific issues related to gender, age, cultural diversity and human rights, and who are committed to international and regional human rights standards must be involved at every stage of the reparation process.

E - Practices and procedures for obtaining reparation must be sensitive to gender, age, cultural diversity and human rights, and must take into account women's and girls' specific circumstances, as well as their dignity, privacy and safety.

F - Indicators that are sensitive to gender, age, cultural diversity and human rights must be used to monitor and evaluate the implementation of reparation measures.

### **3 – KEY ASPECTS OF REPARATION FOR WOMEN AND GIRLS**

A - Women and girls have a right to a remedy and reparation under international law. They have a right to benefit from reparation programs designed to directly benefit the victims, by providing restitution, compensation, reintegration, and other key measures and initiatives under transitional justice that, if crafted with gender-aware forethought and care, could have reparative effects, namely reinsertion, satisfaction and the guarantee of non-recurrence.

B - Governments should not undertake development instead of reparation. All post-conflict societies need both reconstruction and development, of which reparation programmes are an integral part. Victims, especially women and girls, face particular obstacles in seizing the opportunities provided by development, thus risking their continued exclusion. In reparation, reconstruction, and development programmes, affirmative action measures are necessary to respond to the needs and experiences of women and girls victims.

C - Truth-telling requires the identification of gross and systematic crimes and human rights violations committed against women and girls. It is critical that such abuses are named and recognized in order to raise awareness about these crimes and violations, to positively influence a more holistic strategy for reparation and measures that support reparation, and to help build a shared memory and history. Currently, there is a significant lack of naming and addressing such abuses in past reparation programs and efforts, much to the detriment of surviving victims.

D - Reconciliation is an important goal of peace and reparation processes, which can only be achieved with women and girls victims' full participation, while respecting their right to dignity, privacy, safety and security.

E - Just, effective and prompt reparation measures should be proportional to the gravity of the crimes, violations and harm suffered. In the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches.

F - Governments must consider all forms of reparation available at individual and community levels. These include, but are not limited to, restitution, compensation and reintegration. Invariably, a combination of these forms of reparation will be required to adequately address violations of women's and girls' human rights.

G - Reparation processes must allow women and girls to come forward when they are ready. They should not be excluded if they fail to do so within a prescribed time period. Support structures are needed to assist women and girls in the process of speaking out and claiming reparation.

H - Reparation must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girls' lives.

**The following organizations are authors and signatories of the declaration:**

Coalition for Women's Human Rights in Conflict Situations

Urgent Action Fund-Africa, Kenya

Rights & Democracy, Canada

Alianza de Mujeres Rurales por la Vida, Tierra y Dignidad, Guatemala

ASADHO/Katanga - Association africaine de défense des droits de l'Homme, section Katanga, Democratic Republic of Congo

Asociación Reflexión de Inocentes Liberados, Peru

Association des femmes juristes, Burundi

CCJT - Coalition congolaise pour la justice transitionnelle, Democratic Republic of Congo

CDA - Community Development Centre, Sudan

CEDA - Community Extension Development Association, Sierra Leone

CLADEM - Comité de América Latina y El Caribe para la Defensa de la Derechos de la Mujer, Peru

CODEPU - Corporación de Promoción y Defensa de los Derechos del Pueblo, Chile

Coordinadora Nacional de Mujeres Afectadas por la Violencia Política, Peru

Corporación Humanas, Chile

Corporación para la Vida Mujeres que Crean, Colombia

Demus - Estudio para la defensa y los derechos de las mujeres, Peru

ESSAIM - Cadre de concertation et d'activités pour la protection et la défense des droits des femmes à l'est de la République démocratique du Congo, Democratic Republic of Congo

Feinstein International Center, Tufts University, USA

FOKUPERS - East Timorese Women's Communication Forum, Timor Leste.

Grupo Suporta Inan, Timor Leste  
Instituto de Estudios Comparados en Ciencias Penales, Guatemala  
International Women's Human Rights Law Clinic, CUNY Law School, USA  
Khulumani Support Group, South Africa  
LDGL - Ligue des droits de l'Homme dans la région des Grands-Lacs, Rwanda  
Mamá Maquín, Guatemala  
MARWOPNET - Mano River Women Peace Network, Sierra Leone  
PAIF - Programme d'appui aux initiatives féminines, Democratic Republic of Congo  
PCS - Consejería en Proyectos, Latin America  
REDRESS, United Kingdom  
Ruta Pacifica de las Mujeres, Colombia  
SEVOTA - Solidarité pour l'épanouissement des veuves et des orphelins visant le travail et l'auto-promotion, Rwanda  
SOFEPADI - Solidarité féminine pour la paix et le développement intégral, Democratic Republic of Congo  
Women's Forum, Sierra Leone  
Women's Research and Action Group, India