



# General Assembly

Distr.: General  
14 October 2014

Original: English

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## Sixty-ninth session

Agenda item 68 (b)

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

## **Promotion of truth, justice, reparation and guarantees of non-recurrence\***

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, in accordance with Human Rights Council resolution 18/7.

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\* The present report was submitted late in order to reflect the most recent developments.



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

### *Summary*

In the present report, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence addresses the topic of reparation for victims in the aftermath of gross violations of human rights and serious violations of international humanitarian law.

While highlighting progress in law and practice, the Special Rapporteur points to a gap in implementation, which reaches scandalous proportions.

The report focuses on addressing current challenges in implementation, which include States' political unwillingness to implement existing obligations using questionable economic arguments, the inadmissible exclusion of entire categories of victims on the basis of political considerations leading to the perception of biased reparation favouring only one side and the gender insensitivity of a majority of reparation programmes, which results in too few victims of gender-related violations receiving any reparation. The Special Rapporteur urges States to address these challenges and calls on the implementation of a human rights-based approach in the implementation of reparation programmes.

The Special Rapporteur emphasizes the importance of the participation of victims in reparation processes, including in relation to the design of programmes, stressing that active and engaged participation may improve a dismal record in the implementation of reparations.

## I. Introduction

1. This report is submitted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to the General Assembly in accordance with resolution 18/7 of the Human Rights Council. The activities undertaken by the Special Rapporteur from August 2013 to June 2014 are listed in his most recent report to the Human Rights Council ([A/HRC/27/56](#)).

## II. General considerations

2. Having insisted in his first report to the Human Rights Council on the importance of designing and implementing programmes on truth, justice, reparation and guarantees of non-recurrence in a comprehensive fashion as part of a general policy to redress gross violations of human rights and serious violations of international humanitarian law, the Special Rapporteur devotes the present report to the element of reparation.

3. Here the focus is on large-scale administrative programmes intended to respond to a large universe of cases and not on the sort of reparations that stem from the judicial resolution of individual, isolated cases. Judicial reparations for violations of international crimes are important for many reasons and, in many jurisdictions, a matter of rights stipulated in both domestic and international law. Judicial cases can provide a powerful incentive to Governments to establish massive out-of-court programmes. But courts are unlikely to be the main avenue of redress in cases involving a large and complex universe of victims.

4. At their best, reparation programmes are administrative procedures that, among other things, obviate some of the difficulties and costs associated with litigation. For the claimants, administrative reparation programmes compare more than favourably to judicial procedures in circumstances of mass violations, offering faster results, lower costs, relaxed standards of evidence, non-adversarial procedures and a higher likelihood of receiving benefits. This is not a reason to deny access to the courts for purposes of reparation but, it is a reason to establish administrative programmes.

5. Given the existing literature on the topic of reparation programmes, including their design and implementation and lessons learned from them,<sup>1</sup> the present report will concentrate on some of the challenges faced by such programmes and shed some light on how those challenges can be met.

6. Despite significant progress at the normative level in establishing the rights of victims to reparations and some important experiences at the level of practice, most victims of gross violations of human rights and serious violations of international humanitarian law still do not receive any reparation. Normative progress and even solid practice in some cases should not obscure the implementation gap, which can rightly be said to be of scandalous proportions.

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<sup>1</sup> Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford, Oxford University Press, 2008) and *Rule of Law Tools for Post-Conflict States: National Consultations on Transitional Justice* (United Nations publication, Sales No. 09.XIV.2).

7. The violation of fundamental rights can be shattering for victims and have long-lasting effects with ripples felt by many persons and even across generations. The non-implementation of measures that can mitigate (they can never fully neutralize) the legacies of the violations, in addition to being a breach of a legal obligation, has severe consequences for both individuals and collectivities.

8. The present report deals not only with the legal grounds and concerns about what is owed to victims, but also with practical considerations. It is not uncommon, for example, to find support for the proposition that in post-conflict settings each and every ex-combatant should become the recipient of benefits through demobilization, disarmament and reintegration programmes. No similarly ambitious commitments are expressed even rhetorically concerning the reparation of the victims of such conflicts.<sup>2</sup> This is not only unfair, it has detrimental consequences. To the extent that demobilization, disarmament and reintegration programmes aim at the reintegration of ex-combatants, not attending to the claims of receiving communities and the victims therein does not facilitate that process. In post-conflict situations, providing benefits to ex-combatants without making any effort to provide reparations to victims can send the message that bearing arms, in the end, is the only way to get the attention of the State.<sup>3</sup>

9. Making the case in positive terms, reparation programmes can play a significant role in the aftermath of massive violations, both in and out of conflict. Like other transitional justice measures, reparations provide recognition to victims not only as victims but, importantly, also as rights holders. Moreover, they can promote trust in institutions, contribute to strengthening the rule of law and encourage social integration or reconciliation. The fact that reparation shares these goals with efforts to achieve truth, justice and guaranteeing non-recurrence is one of the arguments for adopting a comprehensive approach to redress.

10. The claim that reparations are part of a comprehensive policy, however, should not obscure their distinctive role: reparations are the only measure designed to benefit victims directly. While prosecutions and, to some extent, vetting are in the end a struggle against perpetrators, and truth-seeking and institutional reform have as their immediate constituency society as a whole, reparations constitute an effort that is explicitly and primarily carried out on behalf of victims.

11. Against this background, three caveats are in order. First, reparations are not simply an exchange mechanism, something akin to either a crime insurance policy or an indemnification system that provides benefits to victims in the wake of a violation of their rights. In order for something to count as reparation, as a justice measure, it has to be accompanied by an acknowledgment of responsibility and it has to be linked, precisely, to truth, justice and guarantees of non-recurrence. Second, recognizing the distinctive contribution that reparations can make to victims does not justify, either legally or morally, asking them — or anyone else —

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<sup>2</sup> Jonah Shulhofer-Wohl and Nicholas Sambanis, *Disarmament, Demobilization and Reintegration Programs: An Assessment* (Folke Bernadotte Academy Publications, 2010). Of the 46 countries listed as having had externally assisted demobilization, disarmament and reintegration programmes from 1979 to 2006, the Special Rapporteur counts that only eight had established any kind of reparation programme and that none had completed one.

<sup>3</sup> Pablo de Greiff, “Demobilization, disarmament and reintegration and reparations: establishing links between peace and justice instruments”, in *Building a Future on Peace and Justice*, Kai Ambos, Judith Large and Marieke Wierda, eds. (Springer, 2009).

to make trade-offs among the different justice initiatives. The effort, say, to make impunity for perpetrators more acceptable by offering to victims “generous” reparations, is therefore unacceptable. Third, the observation that reparations are designed to benefit victims directly does not mean that the positive consequences of a well-designed reparation programme are restricted to victims alone. To the extent that reparations are justice measures, they rest on general norms and their benefits have important positive spillover effects, one of which is to exemplify the fulfilment of legal obligation to take the violation of rights seriously.

12. A very varied set of countries facing diverse challenges have implemented reparation programmes of the sort at issue in this report and from which valuable lessons can be learned. Among the countries that have implemented some form of massive reparation programmes are Argentina, Belgium, Brazil, Canada, Chile, Colombia, Ecuador, El Salvador, Germany, Ghana, Guatemala, Haiti, Iraq, Morocco, Nepal, Paraguay, Peru, the Philippines, Sierra Leone, South Africa, Spain, Tunisia, Turkey, the United States of America and Uruguay. These countries vary in terms of legal tradition, type of conflict (or origin of violations), historical context, region and degree of socioeconomic development.

13. Given how strongly Governments are inclined to claim that reparation programmes are unaffordable — suspiciously, even before any effort to quantify their costs has been undertaken — the record shows that, beyond a certain threshold, political will seems to be a stronger factor than socioeconomic considerations in determining not just whether a reparation programme is implemented but also the basic characteristics of such a programme, including the magnitude and the type of benefits it distributes.<sup>4</sup>

### III. Legal background

14. In traditional international law, where States are the major subjects, wrongful acts and ensuing reparations are a matter of inter-State responsibility.<sup>5</sup> International human rights law progressively recognized the right of victims of human rights violations to pursue their claims for redress and reparation before national justice mechanisms and, subsidiarily, before international forums.

15. As a result of the international normative process, the international legal basis for the right to a remedy and reparation became firmly enshrined in the elaborate corpus of international human rights instruments now widely accepted by States. Among the numerous international instruments are the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (article 2), the International Convention on the Elimination of All Forms of Racial Discrimination (article 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (article 14) and the Convention on the Rights of the Child (article 39). Equally, the relevance of instruments of international humanitarian law and international criminal law must be recalled in this regard: the Regulations concerning the Laws and Customs of War on Land

<sup>4</sup> See, for example, Alexander Segovia, “Financing reparations programs: reflections from international experience”, in *The Handbook of Reparations*.

<sup>5</sup> Permanent Court of International Justice, *Case Concerning the Factory at Chorzów (Indemnities): Germany v. Poland* (21 November 1927).

(article 3), the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (article 91) and the Rome Statute of the International Criminal Court (articles 68 and 75).

16. As stated by the Human Rights Committee in its general comment No. 31, the duty of States to make reparations to individuals whose rights under the International Covenant on Civil and Political Rights have been violated is a component of effective domestic remedies: “Without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy ... is not discharged.” This statement affirms that jurisprudence of many human rights bodies, which increasingly attaches importance to the view that effective remedies imply a right of the victims and not only a duty for States.

17. The growing body of jurisprudence on both the substantive and procedural dimensions of the right to reparation demonstrates the firm consolidation of the right to reparation in international law. Treaty bodies and national, regional and international courts, including the International Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights, have considered a large number of both individual cases and group claims arising from periods of mass violations, and have developed a rich jurisprudence. That jurisprudence has confirmed that the State obligation to provide reparation extends far beyond monetary compensation to encompass such additional requirements as: public investigation and prosecution; legal reform; restitution of liberty, employment or property; medical care; and expressions of public apology and official recognition of the State’s responsibility for violations.

18. The adoption by the General Assembly 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 by consensus in 2005 is a milestone, not because it is an effort to introduce new rights but, precisely, because it compiles what the international community, through the Commission on Human Rights first and the General Assembly second, recognized as already existing rights (see Assembly resolution 60/147, annex). There is no question, however, that the Basic Principles have had a role in catalysing a better understanding of the right to reparation and in guiding action in this domain, as shown by the fact that reference is increasingly being made to this document in the jurisprudence of various courts.

#### **IV. Reparation programmes**

19. Valuable lessons can be derived from the experience of various countries with massive administrative programmes. In the context of such programmes, the understanding of the term “reparation” is slightly narrower than in international law, where the term is used to refer to all measures that may be employed to redress the various types of harms that victims may have suffered as a consequence of certain crimes. This broader scope can be seen in the diversity of forms reparations can take under international law. The Basic Principles sets out five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

20. The very broad understanding of the term “reparation” that underlies these five categories — an understanding that is closely tied to the more general category of “legal remedies” — is perfectly consistent with the trend of looking for relations of

complementarity between different justice measures. This trend is arguably the main contribution made to the struggle for the realization of human rights by transitional justice. Indeed, the five categories in the Basic Principles overlap with the holistic notion of transitional justice that has been adopted by the United Nations system.<sup>6</sup>

21. Operationally, however, the five categories go well beyond the mandate of any reparation programme to date: no reparation programme has been thought to be responsible for distributing the whole set of benefits grouped under the categories of satisfaction and guarantees of non-repetition in the Basic Principles. In practice, those who design reparation programmes are not responsible for policies dealing with, for example, truth-telling or institutional reform. Rather than understanding reparation in terms of the whole range of measures that can provide legal redress for violations, the term is used to refer to the set of measures that can be implemented in order to provide benefits to victims directly. Implicit in this difference is a useful distinction between measures that may have reparative effects and may be both obligatory and important (such as the punishment of perpetrators or institutional reforms) but that do not distribute a direct benefit to the victims themselves and those measures that do and are therefore to be considered reparations in the strict sense.

22. In the domain of practice concerning massive reparation programmes then, work is organized mainly around the distinction between programmes with material or symbolic measures and those that distribute benefits to individuals or collectivities.

23. For analytical purposes, it is helpful to conceptualize reparation as a three-term relationship in which the crucial concepts are “victims”, “beneficiaries” and “benefits”. The ideal behind a reparation programme, then, is to distribute a set of benefits in such a way as to turn every victim into a beneficiary. This simple model allows for a neat organization of some of the challenges faced by reparation programmes, bearing in mind that reparation is not just a mechanism for the transfer of goods but part of an effort to achieve justice.

#### **A. Which violations should be the object of reparation benefits?**

24. Perhaps the most fundamental question in the design of a reparation programme — Which kinds of violations will trigger access to benefits? — cannot be answered through the adoption of a general definition of “victims”.<sup>7</sup>

25. Such a definition should, however, frame the design of reparation programmes. Of particular importance to framing considerations are: whether the harms to be repaired are of one type only; whether relevant violations include both acts and omissions; whether the victims include both those persons who are directly targeted by an action and those who suffer the consequences of an omission directly; and the fact that whether the perpetrator is identified, prosecuted or convicted is irrelevant in determining whether a person is a victim of a gross violation of international human rights law or of a serious violation of international humanitarian law. Even

<sup>6</sup> See, for example, section IX of the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), the guidance note of the Secretary-General on the United Nations approach to transitional justice (2010) and Human Rights Council resolution 18/7.

<sup>7</sup> See the definition of “victim” contained in the Basic Principles.

after these points have been integrated in the general framework, however, crucial questions remain unanswered. During oppressive regimes and in times of conflict, a huge variety of rights are violated.

26. For a reparation programme to turn every victim into a beneficiary, its benefits would have to be extended to the victims of all the violations that may have taken place during a given conflict or repression. If it did that, the programme would be comprehensive. To date, no programme has achieved total comprehensiveness. For instance, no massive reparation programme has extended benefits to the victims of human rights violations common during periods of authoritarianism, such as violations of the rights to freedom of speech, association or political participation. Most programmes have concentrated heavily on a few civil and political rights, those most closely related to basic freedoms and physical integrity, leaving the violations of other rights largely unrepaired. This concentration is not entirely unjustified. When the resources available for reparations are scarce, choices have to be made and, arguably, it makes sense to concentrate on the most serious crimes. The alternative, namely drawing up an exhaustive list of rights the violation of which leads to reparation benefits, could lead to an unacceptable dilution of benefits.

27. That said, no programme has explained why certain violations trigger reparation benefits and not others. Not surprisingly, most programmes have ignored types of violations that perhaps could and should have been included. These exclusions have disproportionately affected women and marginalized groups. So the mere requirement to articulate the principles or at least the grounds for selecting the violation of some rights and not others is likely to remedy at least the gratuitous exclusions.<sup>8</sup> Strengthening avenues for the participation of victims, a topic to which the report will return, will be useful in this respect.

28. In the effort to prevent the excessive dilution of benefits by linking benefits to a narrow list of violations, it is important to bear in mind that there are exclusions that contravene not only specific legal obligations but also general principles, including equal treatment, which would weaken the legitimacy of the overall effort. Beyond that, such exclusions merely guarantee that the struggle for reparation will remain on the political agenda, which may threaten the stability of the initiative as a whole.<sup>9</sup>

## **B. What types of benefits should a reparation programme provide?**

29. Fashioning a programme that distributes a variety of benefits (not all of them material or monetary) helps increase its coverage, without necessarily increasing its cost to the same degree.

30. The combination of different kinds of benefits is what the term “complexity” seeks to capture. A reparation programme is more complex if it distributes benefits of more distinct types and in more distinct ways than its alternatives. Material and symbolic reparations can take different forms and be combined in different ways.

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<sup>8</sup> See Ruth Rubio-Marín, “The gender of reparations in transitional democracies”, in *The Gender of Reparations*, Ruth Rubio-Marín, ed. (New York, Cambridge University Press, 2009).

<sup>9</sup> For example, in Chile the exclusion of victims of torture and political detainees from most reparation programmes led the largest group of victims to struggle until the mid-2000s.



Material reparations may assume the form of compensation, i.e. payments in cash, or of service packages, which may in turn include provisions for education, health, housing etc. Symbolic reparations may include official apologies, the change of names of public spaces, the establishment of days of commemoration, the creation of museums and parks dedicated to the memory of victims, or rehabilitation measures such as restoring the good name of victims.

31. There are at least two fundamental reasons for crafting complex reparation programmes. The first is that doing so will maximize resources. Programmes that combine a variety of benefits ranging from the material to the symbolic and that distribute each benefit both to individuals and collectivities may cover a larger portion of the universe of victims. Since victims who have been subjected to different categories of violations need not receive exactly the same kinds of benefits, having a broader variety of benefits means reaching more victims. This broader variety of benefits allows for a better response to the different types of harm that a particular violation can generate, making it more likely that the harm caused can, to some degree, be redressed.

32. Reparation programmes can range from the very simple (i.e. merely handing out cash) to the highly complex (i.e. distributing not only money but also health care, educational and housing support etc.) and include both individual and collective symbolic measures. In general, since there are certain things that money cannot buy, complexity brings with it the possibility of providing benefits to a larger number of victims — as well as to non-victims, particularly in the case of collective symbolic measures — and of targeting benefits flexibly so as to respond to a variety of victims' needs.

33. Material compensation to individuals has received more attention than any other form of reparation, but other benefits, including symbolic measures, are increasingly a part of reparation programmes or are receiving more attention as possible elements of such programmes. As do other reparation measures, symbolic benefits aim, at least in part, to foster recognition. In contrast to other kinds of benefits, symbolic measures derive their great potential from the fact that they are carriers of meaning and can, therefore, help victims in particular and society in general make sense of the painful events of the past.<sup>10</sup> The following individual symbolic measures have been tried with positive effects: sending individualized letters of apology signed by the highest authority in Government, sending each victim a copy of a truth commission report and supporting families in efforts to give proper burial to their loved ones. Collective symbolic measures such as renaming public spaces, constructing museums and memorials, turning places of detention and torture into memorial sites, establishing days of commemoration and engaging in public acts of atonement have also been tried. Symbolic measures usually turn out to be significant because, in making the memory of the victims a public matter, they disburden the family members of victims from their sense of obligation to keep alive the memory of those who perished and allows them to move on to other things. This is part of what it means to say that reparations can provide recognition to victims not only as victims but also as rights holders more generally.

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<sup>10</sup> See, for example, Brandon Hamber, "Narrowing the macro and the micro: a psychological perspective on reparations in societies in transition", in *The Handbook of Reparations*.

34. The trend in favour of including symbolic benefits (both individual and collective) deserves to be encouraged and promoted, but as one type of benefit among others, not as a substitute for the benefits that victims are owed and, in most cases, need. Furthermore, the participation of civil society representatives in the design and implementation of symbolic reparation projects is perhaps more significant than for any other reparation measure, given their semantic and representational function.

### **Medical services**

35. According to the Basic Principles, the notion of “rehabilitation” owed to victims includes medical and psychological rehabilitation.<sup>11</sup> Generally speaking, there are good reasons for reparation programmes to be concerned with health issues, not least because of the very high incidence of trauma induced by experiences of violence and because there seem to be patterns of increased disease and morbidity among the victim population. Thus, the provision of medical services, including psychiatric treatment and psychological counselling, constitutes a very effective way of improving the quality of life of survivors and their families.

36. The provision of medical services as a reparation benefit should not, however, be conceived simply in terms of making pre-existing medical services available to victims. Victims of serious human rights violations often need specialized services that may not be readily available. For instance, in most countries emerging from conflict and repression, the number of mental health specialists experienced with torture victims is minimal. Quite aside from the need for specialized services, the victims’ prior experiences affect the way services of all kinds need to be delivered and great efforts are then required to make providers at all levels aware of these special needs.

### **Other forms of rehabilitation**

37. A good number of reparation programmes have established specific measures to rehabilitate not just the health of victims but what may be called their “civic status”. These include measures to restore the good name of victims by making public declarations of their innocence, expunging criminal records and restoring passports, voting cards and other documents. The importance of these measures goes well beyond reasons of expedience and should be part and parcel of any programme that seeks to provide recognition of victims as rights holders. Some reparation programmes have learned from the traumatic experience of the widows of the disappeared, in particular in Argentina, who on the one hand clearly needed to resolve custody, matrimonial and succession issues but who on the other hand were reluctant to ask for the death certificates of their disappeared spouses. In programmes of this sort, certificates declaring a person to be “absent by forced disappearance” have started to be issued, allowing surviving spouses to recover or sell property, remarry and solve custody disputes, for example, without generating

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<sup>11</sup> Since 1992, Chile has been providing medical services to the victims of the dictatorship. The reparation programme proposed by the Peruvian truth and reconciliation commission included recommendations concerning health care, both physical and mental. Interestingly, both the Peruvian commission and the Moroccan Equity and Reconciliation Commission included in-house medical units.

in them the feeling of betrayal they so frequently reported to be part of a request for a death certificate.<sup>12</sup>

### Collective reparation

38. The notion of collective reparation has recently garnered interest and support.<sup>13</sup> The term “collective reparation” is ambiguous, as “collective” refers to both the nature of the reparation (i.e. the types of goods distributed or the mode of distributing them) and the kind of recipient of such reparation (i.e. collectivities).

39. A public apology, for example, is a collective reparation measure. The aims of such measures include giving recognition to victims, but also reaffirming the validity of the general norms that were transgressed (and, in this way, indirectly reaffirming the significance of rights in general, including, of course, the rights of victims, thereby strengthening the status of victims not just as victims but as rights holders).<sup>14</sup>

40. Collective reparations are not only symbolic: some are material as well, as when a school or a hospital is built in the name of reparation and for the sake of a particular group.<sup>15</sup> Collective reparations of the material kind are constantly at risk of not being seen as a form of reparation at all, and as having minimal reparative capacity. Part of the problem is that such measures do not target victims specifically. Collective programmes that distribute material goods concentrate frequently on non-excludable goods (i.e. goods that, once made available, are difficult to keep others from consuming). If a collective reparation programme constructs a hospital, for example, it is clear that both victims and non-victims alike will use it.

41. The problem is compounded by the fact that collective programmes of this sort tend to distribute basic goods, in other words goods to which all citizens, not only victims, have a right. It is argued by some that the benefits provided by these development “reparation” programmes are not accessible in contexts of deprivation and that making them available, therefore, constitutes a positive benefit. While prioritizing investment in these areas would result in victims having access to basic services before other citizens, that benefit dissipates once the basic good has become generally available. Strictly speaking, development programmes are not reparation programmes, for they do not target victims specifically and their aim is to satisfy basic and urgent needs to which beneficiaries have a right as citizens, not necessarily as victims.

42. Consequently, in order for reparation programmes to retain their distinctiveness, collective reparation programmes should be organized around

<sup>12</sup> See Law No. 24,321 (1991).

<sup>13</sup> See the Basic Principles and the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1).

<sup>14</sup> See Pablo de Greiff, “The role of apologies in national reconciliation processes: on making trustworthy institutions trusted”, in *The Age of Apology: Facing up to the Past*, Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud and Niklaus Steiner, eds. (Philadelphia, University of Pennsylvania Press, 2008).

<sup>15</sup> Inter-American Court of Human Rights, *Aloboetoe et al. case* (10 September 1993). See also Cristián Correa, “Reparations in Peru: from recommendations to implementation” (International Center for Transitional Justice, June 2013), and “The Rabat report: the concept and challenges of collective reparations” (Advisory Council on Human Rights of Morocco and International Center for Transitional Justice, 2009).

non-basic services. How this is to be done in contexts where basic services are not available is not so easy to fathom. Educational, cultural, artistic, vocational and specialized medical services targeting the special needs of the victim population are possibilities that deserve further exploration.

### C. Magnitude of economic benefits

43. One of the greatest challenges faced by reparation programmes is where to set the level of monetary compensation. International practice in the area of reparations varies significantly from country to country. For instance, although the South African Truth and Reconciliation Commission proposed giving victims a yearly grant of around \$2,700 for six years, the Government ended up making a one-off payment of less than \$4,000 to the victims identified by the Commission. The United States provided \$20,000 to the Japanese-Americans who were interned during the Second World War. Brazil gave a minimum of \$100,000 to the family members of those who died in police custody. Argentina gave the family members of victims of disappearance bonds with a face value of \$224,000, while Chile offered a monthly pension that amounted originally to \$537 and that was distributed in set percentages among family members. A recent law for victims in Colombia provides that family members of victims of killings or enforced disappearance receive around \$13,000. A similar figure was proposed by the interministerial commission in charge of implementing reparations in Peru.

44. The rationale offered for selecting a given figure, if one is offered at all, also varies. The South African Truth and Reconciliation Commission had originally recommended using the national mean household income for a family of five as the benchmark figure. The Government's selected figure of \$4,000 was never justified in independent terms, and the figure does not correspond to anything in particular. The same thing can be said about the choice made by the Government of the United States to give \$20,000 to the Japanese-Americans interned during the Second World War and about the decision by Brazil to provide at least \$100,000. In Argentina, after it was suggested that the reparation plan be based on the existing plan for compensating victims of accidents, the President at the time, Carlos Menem, dismissed the suggestion, arguing that there was nothing accidental about the experiences of the victims and chose instead the salary level of the most highly paid officials in the Government as the basis for calculating reparation benefits. The one-time payment made by the Government of Colombia to family members of victims of enforced disappearance corresponds to 40 minimum monthly salaries. In such political contexts, the choices are made more with an eye to meeting the criterion of feasibility than to questions of principle. This, and not only the generally low levels of compensation offered by most programmes, makes such practices of questionable value as precedents and as guides for future practice. Indeed, simply requiring future programmes to justify their decisions concerning compensation levels may in itself produce positive results.

45. Judicial approaches to reparations have settled on a compelling criterion to decide on the magnitude of reparations, namely that of *restitutio in integrum*, which is an unimpeachable criterion for individual cases, for it tries to neutralize the effects of the violation on the victim and to prevent the perpetrator from enjoying the spoils of wrongdoing. Actual experience with massive reparation programmes suggests, however, that satisfying this criterion is rarely even attempted.

46. While international law arguably provides some latitude for the settlement of the large volume of reparations that are addressed in massive cases, it still calls, as summarized in the Basic Principles, for “adequate, effective and prompt reparation for harm suffered”. The Special Rapporteur expresses alarm at the failure of some programmes to satisfy any defensible interpretation of these criteria.

47. In the context of transitional justice, understood as a comprehensive policy to redress massive violations, the aims of reparation programmes are to provide recognition to victims not only as victims but primarily as rights holders and to foster trust in institutions that have either abused victims or failed to protect them. These aims can be achieved only if victims are given reason to believe that the benefits they receive are a manifestation of the seriousness with which institutions take violations of their rights. Because reparation programmes are not mere mechanisms to distribute indemnities, the magnitude of the reparation needs to be commensurate with the gravity of the violations, the consequences that the violations had for the victims, the vulnerability of victims and the intent to signal a commitment to upholding the principle of equal rights for all.

## **V. Selected problems**

48. The fundamental challenge that reparation still faces today is the great reluctance of Governments to establish such programmes. This lack of implementation leads to a situation that can be appropriately characterized as a scandal: most victims of gross human rights violations and serious violations of international law receive, in fact, little to no reparation, despite progress at the normative level.

49. The reluctance of Governments to implement reparation programmes rests upon many factors, including the not infrequent marginalization of most victims, which makes them, relatively speaking, politically weak agents. This marginalization makes the victims and their plight largely invisible to decision makers. The Special Rapporteur takes the opportunity to insist that taking rights seriously involves satisfying them independently of political considerations, even if the political views of victims are deemed unattractive.

50. Similarly, in many countries there are those who hold the view that, regarding past violations, it is better to “turn the page” and “let bygones be bygones”. Not surprisingly, this is a view that is often expressed by elites, who either have not borne the brunt of the violations or have the wherewithal to neutralize some of their impact, and not by victims, on whose tireless efforts, progress on reparation usually depends. The Special Rapporteur insists that countries cannot pretend to secure stability at the expense of the rights of victims.

### **A. Reparation programmes are unaffordable**

51. Many Governments react to demands for reparation by offering one of two arguments related to resources. The first is that reparations are unaffordable. The second is that reparations are not only expensive but that they compete for resources with other priorities such as development. Both claims warrant close scrutiny.

52. There is no question that a massive reparation programme for a large universe of victims involves the mobilization of significant resources. There is the tendency to think that there is, consequently, a straightforward correlation between a country's socioeconomic development and its ability to implement a reparation programme at all, and to the magnitude of the benefits it can distribute.

53. The record suggests, however, a more complex picture, in which political factors play a large role. There is no obvious direct correlation between the degree of socioeconomic development of a country and the magnitude of the reparation programmes it establishes to redress massive violations. Some countries with relatively wealthy economies have established programmes that are not particularly munificent, while some countries with comparatively smaller economies have established programmes that distribute relatively large benefits. Nor do economic factors alone explain either the existence of a reparation programme or the magnitude of the benefits distributed through it. Countries in comparable economic circumstances often take quite different paths on this issue.

54. Consequently, it appears that non-economic constraints play at least as large a role as purely economic factors. Whatever feasibility the claim that reparations are unaffordable for a given country may have depends on the seriousness of the effort to quantify these costs. Suspiciously, most Governments that make this claim do so before any such effort has been undertaken, laying bare their unwillingness to take seriously what is in fact a matter of legal obligation.

55. Furthermore, judgements about the feasibility of paying certain costs are usually of the *ceteris paribus* type, and in transitional or post-conflict situations it makes little sense for all other things to remain equal; absent an unexpected budget surplus, it will be impossible to engage in meaningful reparations for victims leaving all other State expenditures untouched.<sup>16</sup> As the lack of obvious correlations between macroeconomic factors and reparations suggest, the crucial variable has more to do with commitment to satisfying legal and moral obligations.

56. Broadly speaking, there are two main models for financing reparations: creating special trust funds or introducing a dedicated line in the yearly national budget for reparations. Countries that have experimented with the first model have, to date, fared significantly worse than countries that have used the second. Part of the reason may have to do with a question of political commitment. Nothing illustrates commitment more clearly than the willingness to create a dedicated budget line. The expectation that it will be possible to find alternative sources of funding for purposes of reparations underlying the creation of trust funds may either demonstrate, or actually give rise to, weak political commitments, emphasizing yet again that although socioeconomic development is important, it should not cloud the crucial significance of political factors.<sup>4</sup>

57. Having said this, there is no reason, in principle, why all creative funding efforts should fail. Some explanations include:

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<sup>16</sup> Thus, for example, some countries were expanding their navies while refusing to establish reparations in line with the recommendations of truth commissions, arguing that reparations would be too burdensome economically. See also Brandon Hamber and Kamilla Rasmussen, "Financing a reparations scheme for victims of political violence", in *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa* (Johannesburg, Centre for the Study of Violence and Reconciliation, 2000).

(a) Special taxes targeting those who may have benefited from the conflict or the violations, like those that were proposed by the Truth and Reconciliation Commission in South Africa (but were never adopted);

(b) Especially in cases in which a State has accepted to provide reparations for victims of third parties, nothing should prevent the State from attempting to recover illegal assets from those parties. Peru has devoted a portion of the assets it recovered from corruption to victim-related issues, as did the Philippines, with monies recovered from the Marcos estate. Colombia is attempting to do the same with assets held by paramilitaries and, presumably, so will Tunisia, whose Truth and Dignity Commission is empowered to settle, through arbitration, cases of corruption. Reparation programmes should not, however, be held hostage to or made conditional upon the recovery of such assets in cases where the State bears clear responsibility for the violations, either through action or omission.

58. The international community's traditionally weak support for reparation initiatives stems from the belief that the assumption by the national Governments of the financial burden of reparation is part of what is involved in recognizing responsibility, and that carrying the burden has, in itself, a reparative dimension. This is not unjustified. The international community can, however, play a significantly larger role in the financing of reparations, including by: rethinking, at least in some cases, particularly in those in which international actors themselves have played an important role in a conflict, their reluctance to provide direct material support to reparation efforts; making sure that multilateral institutions, which play an important and influential role in setting economic conditions in the aftermath of transitions in general and of conflict in particular, do so in a way that is at least compatible with attending relevant obligations towards victims; and considering creative approaches to supporting reparations, including debt swaps whereby international lenders cancel a portion of the host country's debt on the condition that the same amount be spent on reparations and other forms of support for victims.<sup>17</sup> The Special Rapporteur calls on the international community to be more responsive in supporting reparation programmes for victims.

59. The second resource-related argument that Governments are wont to offer against reparations is that they compete with other priorities, including development. There are, indeed, two versions of this argument, one mild and one extreme: the milder form consists of pretending that development programmes are reparation programmes<sup>18</sup> and the extreme form is based on the assertion that justice can be reduced to development and that violations do not really call for justice but for development. Both forms constitute a failure to satisfy the abiding obligation to provide both justice and development initiatives.

60. Even when the attempt to pass a development project as a reparation programme is not a transparent ploy, in effect, the tendency to not spend resources on reparation should be resisted. Indeed, it is important to distinguish between development interests in general or the duty to satisfy social and economic rights in particular and the obligation to provide assistance under international humanitarian

<sup>17</sup> In the guidance note of the Secretary-General on reparations for conflict-related sexual violence several relevant examples are given of international financial support for reparation programmes.

<sup>18</sup> See *Rule of Law Tools for Post-Conflict States: National Consultations on Transitional Justice* for some illustrative examples of this tendency.

law. It is also important to distinguish these two from the obligation to provide reparations for human rights violations. Although there is much to be said about the advantages of trying to establish links between programmes that satisfy each of these obligations so as to enhance their impact, it is important to keep firmly in mind that these are distinct sources of obligation and that programmes will be successful if they integrate and respond to the nature of the distinct obligation on which they are grounded.<sup>19</sup>

61. Thus, while neither development initiatives nor humanitarian assistance need to be accompanied by an acknowledgment of responsibility, nothing can count as reparation, *sensu stricto*, without such acknowledgment. Furthermore, for an act to count as reparation, it is not just the intention that matters (that is, the willingness to acknowledge responsibility, as a retrospective expression of a commitment to rights, by trying to redress past violations but as a prospective expression also, by signalling through the very existence of the programme itself that rights are taken seriously); the type of goods distributed matters as well. Goods and services that all citizens get by virtue of being citizens can hardly count as reparations for victims.

## **B. Reluctance to admit responsibility**

62. In some cases, a reluctance to admit responsibility is manifest independently of considerations related to costs. Indeed, there are countries that establish “reparation” programmes that provide benefits to victims but, at the same time, try, by different means, to deny or limit responsibility. Thus, in the legislation establishing some programmes it is argued that the benefits are given not as a way of satisfying the legal obligations of the State and the rights of the victims but as an expression of “solidarity” with them.<sup>20</sup> In other legal frameworks, the acts that are the subject of redress are declared to be “unjust” but such a declaration is also said to have no legal consequences (see Historical Memory Act of Spain, in [A/HRC/27/56/Add.1](#)).

63. Reparation programmes that fail to acknowledge responsibility in effect attempt to do the impossible. Just as an apology is ineffective unless it involves an acknowledgment of responsibility for wrongdoing (an apology depends on such recognition, everything else being an excuse or an expression of regret) reparation programmes that fail to acknowledge responsibility do not provide reparation and are more akin to mechanisms for the distribution of indemnification benefits. Experience confirms that victims, quite correctly, do not see the transfers performed through such programmes as reparations, and therefore continue to struggle to have that right satisfied. The Special Rapporteur emphasizes that reparation, properly speaking, involves an acknowledgment of responsibility.

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<sup>19</sup> Inter-American Court of Human Rights, *Gonzalez et al. (“Cotton Field”) v. Mexico* (judgement of 16 November 2009).

<sup>20</sup> See, for example, Law No. 975 of Colombia. This is a view that has unfortunately been endorsed by the Constitutional Court. For years, victims of State agents could not gain access to administrative programmes because the State claimed that it could accept responsibility only on the basis of judicial sentences.



### C. Exclusions and selectivity

64. As mentioned above, all reparation programmes face the challenge of achieving comprehensiveness, in other words of making sure that the broadest possible categories of violations are the subject of redress (without diluting benefits to the point of becoming irrelevant). There are however, two ways of getting this wrong. One way is to exclude from the purview of the programme whole categories of victims that are significant because of either the nature or the prevalence of the violations. Part of the reason why this happens is that a significant number of reparation programmes nowadays stem from the recommendations of truth commissions, whose mandates predefine the types of violations to be focused on and because those mandates are not designed with an eye to reparations. Thus, for example, it took Chile (a country that has plenty of lessons to teach about successful reparations) years to establish reparation programmes for victims of torture and arbitrary detention, despite the fact that there were many more victims of these kinds of violations that there were of violations leading to death. The difficulty here was related to mandate of the National Commission on Truth and Reconciliation of Chile, which was limited to the latter kind of violations.<sup>21</sup> Similarly, even before the Government of South Africa decided not to follow the recommendations of its Truth and Reconciliation Commission concerning the magnitude of the benefits that victims should receive, the recommendations had become the subject of criticism for leaving out important categories of victims, an omission that was grounded in the mandate of the Commission. The argument that almost every non-white person in South Africa was the victim of apartheid and therefore deserved reparation aside,<sup>22</sup> the Truth and Reconciliation Commission's mandate defined victims in such a way as to exclude categories of victims that arguably should have been considered as beneficiaries. Among those individuals were the victims of the kind of routine violence that accompanied the social engineering aspects of apartheid, such as people who died, not in political demonstrations, but, for example, in forced removals and people who were detained under state-of-emergency provisions.

65. That said, whole categories of violations have also been disregarded in countries that have established reparation initiatives independently of truth commissions. In Uruguay, for example, the victims of arbitrary detention and torture have not received sufficient attention, despite the fact that the types of violations they suffered were inflicted systematically, as part of the modus operandi of a regime that came to have the largest population of illegal detainees per capita in Latin America (see [A/HRC/27/56/Add.2](#)). In Spain, where programmes were also established over the years to benefit various types of victims of both the civil war and the Franco dictatorship, many categories of victims, including those sentenced by some special tribunals, are still not considered even though they should be. The benefits that victims of the civil war and the dictatorship receive also differ significantly from the benefits offered by existing programmes (and from those that

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<sup>21</sup> Law No. 19,123 (1992) established the framework for reparations for victims of deadly political violence, political executions and disappearance while in detention. It was only after the establishment of the Truth Commission for Torture and Political Detention in 2004 that deliberations leading to the establishment of reparations for these victims started.

<sup>22</sup> See, for example, Mahmood Mamdani, "Reconciliation without justice", in *Southern African Review of Books*, No. 46 (November/December 1996).

would be offered by legislation under consideration) to the victims of recent acts of terrorism, a politically laden issue (see [A/HRC/27/56/Add.1](#)).

66. No exclusion undermines the contribution that a reparation programme can make to the idea of the value of human rights more than those exclusions that give the impression that they are grounded on the political affiliation of either the victim or the perpetrator. Just as nothing undermines the credibility of a prosecutorial strategy more than its appearance of being one-sided, the same applies when reparation programmes appear to be opportunities to benefit one side of a conflict (see [A/HRC/27/56](#) and [A/HRC/24/42/Add.1](#), on Tunisia).

67. A truly human rights-based approach to reparations would take as the only relevant criterion for providing access to benefits the violation of rights. Several programmes, however, implicitly target supporters of some causes.<sup>23</sup> Worse still, some explicitly define access in terms of political considerations. Thus, there are laws creating reparation programmes that, for example, bar access to benefits for members of former or existing subversive groups, even if those individuals have been captured and tortured.<sup>24</sup> The Special Rapporteur insists that human rights should be placed at the centre of the design and implementation of reparation programmes and that introducing political considerations of any kind in defining criteria for access to benefits poses a fundamental threat to the nature and function of such programmes.

#### **D. Gender and reparations**

68. Cases of exclusions to reparations for gender-related reasons have received increasing attention of late and, because they have been the subject of significant normative progress and of some improvements in practice, in the present report it is stressed that it is important to further that progress and improve consistency in design and implementation.

69. In spite of significant conceptual progress (see [A/HRC/14/22](#) and [A/HRC/27/21](#))<sup>25</sup> and some positive practices at the domestic level, in far too few instances have individuals received reparation for serious gender-related violations through programmes with an inherent gender-sensitivity aspect. In the face of this

<sup>23</sup> See, for example, the use of the term “martyr” in discussions about reparations. On the issue of reparation for “martyrs” and their families in Tunisia, see [A/HRC/24/42/Add.1](#), paragraphs 19-21.

<sup>24</sup> See, for example, Law No. 19,979 (2012) and article 4 of Law No. 28,592 (2005) of Peru, by which members of subversive organizations are not considered victims (a limitation that explicitly contravenes the recommendations made by the Truth and Reconciliation Commission). See also article 11 of Law 1,449 (2011) of Colombia. In Chile and South Africa, reparations have been granted to victims even though they belonged to repressive organizations or subversive groups. In Brazil, reparations have been granted to those benefiting from the 1979 amnesty law, which covers political crimes and crimes with a political nexus. It could be argued, however, that the Brazilian laws (Nos. 9,140 and 10,559) are in fact exclusionary, given that they refer only to types of violations committed by State agents; this is also true of the laws on reparation of Argentina (Nos. 24,043, 24,441 and 25,914). In the former Yugoslavia, legislation for victims is partial in yet another sense, for it provides benefits for victims of enemy forces but not for victims of national forces.

<sup>25</sup> See the Nairobi Declaration on Women’s and Girls’ Rights to a Remedy and Reparation and the guidance note of the Secretary-General on reparations for conflict-related sexual violence.

shortcoming, the Special Rapporteur would like to recall the main elements and challenges set out below.

70. The participation of victims, in particular women and girls, in the early stages of debates on the design of reparation programmes contributes to ensuring that serious gender-related violations are not excluded from the range of rights that, if violated, will trigger reparation benefits. The intersection of gender with other aspects of identity (e.g. ethnicity and religion) and more structural positions (e.g. level of education) needs to be taken into account. In addition, focusing on overly narrow ranges of forms of sexual violence must be avoided so as to capture other, although still gender-related, serious violations (see [A/HRC/14/22](#)).<sup>26</sup>

71. Procedural and evidentiary rules often constitute sources of exclusion. Consequently, in instances of serious violations, some entities have applied a presumption of related gender-specific violations<sup>27</sup> or a lowered or differentiated evidentiary test.<sup>28</sup> Confidentiality and the provision of a safe environment will assist in minimizing re-victimization, stigma or exposure to reprisals. Other dimensions of procedure, such as the requirement of being a bank-account holder, strict application deadlines and closed-list systems beyond well-known limitations of lack of proximity and linguistic or literacy barriers, often constitute insurmountable hurdles.

72. The Special Rapporteur emphasizes that the main objective of reparation programmes is to tackle and, to the extent possible, subvert pre-existing patterns of structural discrimination against and inequalities experienced by women (see [A/HRC/14/22](#)).<sup>26</sup> Reparations must therefore not contribute to the entrenchment of these factors, which, indeed, provide a breeding ground for gender-related violations to occur in the first place. The Equity and Reconciliation Commission of Morocco, for example, departed from traditional law of inheritance when apportioning benefits among family members of deceased victims in order to benefit women. In some instances, such a transformative approach has shown to have an instigating spillover effect in relation to the reform of personal status and related legislation and practices.

73. In terms of distribution, providing periodic benefits or the undertaking of autonomy-enhancing projects, such as the provision of shares in microcredit programmes to women beneficiaries in combination with specific training, have shown to have a more sustainable effect than lump-sum or one-off benefits. Thus, beyond the necessary benefits in the areas of health and housing, for example, reparation programmes should aim to empower their beneficiaries, instead of drawing them into another form of dependency.

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<sup>26</sup> Ruth Rubio-Marín and Pablo de Greiff, “Women and reparations”, *International Journal of Transitional Justice*, vol. 1, No. 3 (2007).

<sup>27</sup> See, for example, the Equity and Reconciliation Commission of Morocco: International Center for Transitional Justice and Foundation for the Future, *Morocco: Gender and the Transitional Justice Process* (2011).

<sup>28</sup> International Criminal Court, *Prosecutor v. Lubanga Dyilo*, decision establishing the principles and procedures to be applied to reparations.

## E. Victim participation

74. There are many reasons for including participatory processes in the design and implementation of reparation programmes. For example, these processes may make a positive contribution to the programme's completeness and to its ability to turn every victim into a beneficiary; in situations of gross and systematic abuse, it is frequently the case that many victims are not registered anywhere, or that there is no single place where all of them are registered. Civil society organizations may have closer links with and a deeper reach into victims' communities than official institutions, which is why completeness can hardly be achieved without their active efforts.

75. The aim of securing the participation of victims and their representatives requires guaranteeing their safety. The case of Colombia, where in 2013 the Office of the United Nations High Commissioner for Human Rights confirmed the murder of 39 human rights defenders (see [A/HRC/25/19/Add.3](#), paras. 70 and 72), including those raising claims for reparations, in particular land restitution, is an especially worrisome case, but Colombia is nowhere close to being the only country where people involved in the struggle for reparation are physically threatened. The Special Rapporteur emphatically calls on Member States to abide by their obligations to protect the life and well-being of those who are trying to make effective their rights, including those to reparation.

76. Victim participation in reparation programmes is not possible without effective outreach, information and access. Strategies need to be designed in order to overcome cleavages related to differences between urban and rural populations, indigenous and other cultural and ethnic groups, linguistic factors and literacy rates. No matter how neat a blue print for reparation might be, it is unlikely that a reparation programme can fulfil its fundamental aim of providing recognition and fostering civic trust if it is simply foisted on victims.

77. Victim participation can help increase the "fit" between the benefits on offer and the expectations of victims. Regarding symbolic reparations, both individual and collective, the benefits cannot fail to speak to their intended targets, among others, on pain of the message floundering completely.

78. This is true not just regarding symbolic reparations: rarely is the distribution of material reparations through massive programmes capable of satisfying the principle of *restitutio in integrum*. Their acceptability also depends on a complicated judgement about the appropriateness of the whole complex of benefits and of the relationship between them and other justice measures, including criminal justice, truth and guarantees of non-recurrence, a judgement that is also for victims to make.

79. One important contribution that victims can make, a contribution that is analogous to that made by victims to the definition of a prosecutorial strategy, which they can improve by helping to define the charges to be pursued, relates to the fundamental question of the types of violations that need to be redressed (see [A/HRC/27/56](#)). "Gravity" and "seriousness" are not merely technical terms. Whether a reparation programme is sufficiently comprehensive is not just an abstract issue but a function of whether the programme responds to violations that victims perceive to be especially significant.

80. In the face of the scandalously poor level of compliance with national and international obligations concerning reparations, and of the relatively poor record of implementation of the recommendations of truth commissions and other bodies, there is no better way to improve the degree of compliance with the relevant obligations than through an active, well organized and involved civil society. The Special Rapporteur calls on Governments to establish meaningful victim participation mechanisms regarding reparations, where success is measured not merely in terms of token measures but also in terms of satisfactory outcomes.

## **VI. Conclusions and recommendations**

81. **Despite significant progress at the normative level establishing the rights of victims to reparations, as well as some important experiences at the level of practice, most victims of gross violations of human rights and serious violations of international humanitarian law still do not receive any reparation. This implementation gap is of scandalous proportions. It not only affects victims directly, but has a ripple effect that can be felt across generations and entire societies and that is laden with legacies of mistrust, institutional weaknesses and failed notions and practices of citizenship.**

82. **While well-designed reparation programmes should primarily be directed at victims of massive violations, they can have positive spillover effects for whole societies. In addition to making a positive contribution to the lives of beneficiaries and to exemplifying the observance of legal obligations, reparation programmes can help promote trust in institutions and the social reintegration of people whose rights counted for little before.**

83. **For a benefit to count as reparation and to be understood as a justice measure, it has to be accompanied by an acknowledgment of responsibility and needs to be linked with other justice initiatives such as efforts aimed at achieving truth, criminal prosecutions and guarantees of non-recurrence. The Special Rapporteur insists that each of these kinds of measures is a matter of legal obligation and warns against the tendency to trade one measure off against the others. Offering reparations to victims should not be part of an effort, for example, to make impunity more acceptable.**

84. **A distinction can be made between reparation programmes with material or symbolic measures and those that distribute benefits to individuals or collectivities. The Special Rapporteur calls on those responsible for designing reparation programmes to consider the great advantages of distributing benefits of different kinds and to not reduce reparation to a single dimension, be it material or symbolic. The great harms that reparation is supposed to redress require a broad array of coherently organized measures.**

85. **Symbolic measures are increasingly and successfully being used because they make the memory of the victims a public matter. They can disburden victims' relatives from a sense of obligation to keep the memory of the victims alive, thus allowing them, and hence society, to move on to other things. Yet, symbolic measures cannot bear the whole burden of redress.**

86. **Collective reparation programmes may offer, among other things, services that victim populations clearly need, including health care, education and**

housing, and thereby overlap with development programmes. The Special Rapporteur insists on the importance of linking reparations and development, but also on their distinct grounding, functions and purpose. He cautions against trying to pass development programmes as reparations. In addition to the right to basic services that everyone has, victims have, individually, a right to distinct forms of reparation.

87. The Special Rapporteur expresses alarm at the failure of a number of programmes, which fall significantly short of providing adequate, effective and prompt reparation, as enshrined in the Basic Principles. While reiterating that reparations are not mere mechanisms to distribute indemnities, the magnitude of reparations needs to be commensurate with the gravity of the violations, the consequences they had for the victims, the vulnerability of victims and the intent to signal a commitment to upholding the principle of equal rights for all.

88. The argument that reparations are unaffordable cannot be taken at face value, especially if this claim is made prior to any effort to quantify the real costs and benefits of such programmes and to an analysis of other expenditures. The evidence suggests that there is no obvious correlation between economic factors and a willingness to implement reparation programmes. Political factors seem to be strong determinants. A commitment to satisfying rights is a stronger factor than affluence.

89. Human rights should be placed at the centre of the design and implementation of reparation programmes. Introducing political considerations of all kinds in defining criteria of access poses a fundamental threat to the nature and function of such programmes. Reparations should not be used as an opportunity to even scores or to benefit the supporters of the current regime. Neither the identity nor the political views of the victim and the perpetrator should be used as the defining criterion of reparation. The violation of rights, independently of other considerations, is the necessary and sufficient condition for gaining access to benefits. The Special Rapporteur calls on those responsible for establishing reparation programmes to be mindful of the possible unjustified exclusion of entire categories of victims.

90. Despite some progress in law and in some particular cases, there is ample room for reparation programmes to improve in terms of gender sensitivity. Too few victims of gender-related violations receive any reparation. Most programmes, to the extent that they even consider women, concentrate on sexually based violations and, to the extent that these address sexually based violations, they concentrate on rape. The Special Rapporteur calls for more comprehensive programmes that redress violations that typically and predominantly affect women. Practical and procedural obstacles should be removed so that women can benefit from the programmes. Requiring the explicit articulation of the principles that define the selection of violations that trigger access to reparation is a useful exercise. To the extent possible, reparation programmes should subvert pre-existing patterns of structural inequalities and discrimination against women. More work should be undertaken on empowering and autonomy-enhancing programmes.

91. The Special Rapporteur calls on Governments to establish mechanisms for the meaningful participation of victims and their representatives. This requires guaranteeing their safety. The Special Rapporteur urges Member States to

**abide by their obligations to protect the life and well-being of those who are trying to make effective their rights, including to reparation.**

**92. Victim participation can help improve the reach and completeness of programmes, enhance comprehensiveness, better determine the types of violations that need to be redressed, improve the fit between benefits and expectations and, in general, secure the meaningfulness of symbolic and material benefits alike. Moreover, active and engaged participation may offer some relief in the light of the dismal record in the implementation of reparations.**

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