

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

Questionnaire

GENDER PERSPECTIVE IN TRANSITIONAL JUSTICE PROCESSES

The mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence was established in September 2011 by the Human Rights Council (Resolution 18/7) and extended in September 2018 (Resolution 36/7). Within the scope of Resolution 36/7 (para. 4 c), the Special Rapporteur has been mandated to “To identify, exchange and promote good practices and lessons learned, and to identify potential additional elements with a view to recommending ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence.” He was also mandated to “make recommendations concerning, inter alia, judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights and serious violations of international humanitarian law”, as well as to “integrate a gender perspective throughout the work of the mandate”.

In compliance with his mandate, the Special Rapporteur decided to focus his report to the 75th session of the General Assembly, in October 2020, to thoroughly examine and identify the multi-layered aspects of a gender perspective in transitional justice processes, and assess good practices, lessons learned, emerging challenges and opportunities that could help States undergoing political transitions and other stakeholders to ensure the involvement and participation of women and LGBT persons in the conceptualization, design and implementation of national transitional justice strategies and mechanisms.

In order to obtain a broad representation of views to inform the thematic report, the Special Rapporteur is seeking written contributions by Member States, civil society and other relevant stakeholders through responses to the questionnaire below.

Please note that you can choose to answer all or some of the questions below

Questionnaire

- 1- Please indicate how the participation of women and LGBT persons is integrated in the national transitional justice strategies and mechanisms, including truth commissions, prosecutorial strategies, reparations, guarantees of non-recurrence, and prevention and peace building strategies. E.g.: How active have they been in the movement/discussions in the concerned country? Have***

there been significant differences concerning different groups of women or LGBT persons, e.g. urban versus rural? How did the different groups mobilize and what were their main strategies of mobilization: national/international legal actions, lobbying for governmental support, etc.? Which were the main obstacles/facilitators in their mobilization: human rights NGOs, feminist organizations, LGBT organizations, victims 'organizations, etc.?

- 2- Please indicate any official attempts to encourage women's and LGBT persons' participation/consultation in transitional justice strategies and mechanisms including truth commissions, prosecutorial strategies, reparations, or guarantees of non-recurrence, prevention and peace building strategies.** *E.g.: Were different groups of women and LGBT organizations consulted by the government or UN agencies concerning the conceptualization and design of transitional justice policies? Were human rights' organizations and victims' organizations consulted and have they given adequate voice to women and LGBT person's concerns? Were different groups of women and LGBT persons included in the agencies and commissions leading the conceptualization and design of the transitional/post-conflict process (e.g., peace negotiations tables, etc.)? Please explain the procedures that ensure their participation - what has worked and what hasn't - and if there is a connection between women's and LGBT persons' participation and the incorporation of a gender dimension to the transitional justice strategies and mechanisms.*
- 3- Please indicate which are the good practices, shortcomings and the lessons learned in engendering the transitional justice strategies and mechanisms in the country concerned. What are the formal or informal constraints¹, challenges and opportunities?**
- 4- Please indicate how the gender-related dimension of violations and abuses committed during periods of conflict and/or repression has been identified by the transitional justice strategies and mechanisms, including truth commissions, prosecutorial strategies, reparations, or guarantees of non-recurrence, prevention and peace building strategies?** *E.g.: Has the list of crimes covered by transitional justice policies incorporated those crimes committed disparately against women and LGBT persons? Have the secondary harms been taken into account in the design and implementation? Have demographic, ethnic, cultural or religious contextual elements been considered? Please provide examples of good and effective practices in this regard.²*

¹ Consider the following non exhaustive list of possible obstacles: lack of information; illiteracy; lack of full legal autonomy of women under the state law or under other legal regimes to which women may also be subject to such as customary or religious law; informal pressure exercised by the tribe, the family, the racial group or the religious or ethnic community; lack of necessary documents, such as identity cards; lack of formally recognized status (for instance, as spouse or partner of a disappeared person); fear of stigmatization and other forms of communal ostracism; fear of reprisal; lack of trust in the process; constraints deriving from customary law or practice; complexity of the administrative procedure; fear of secondary victimization during the procedure; lack of confidentiality of the procedure; difficulty in accessing the administrative agency because of geographical distance or the inability to take time off from work or leave their families; lack of gender and gender identity disaggregated data collection; inaccuracy of official census; standards of proof; difficulty of distinguishing between different forms of violence against women and LGBT persons (private versus political; ordinary versus extraordinary; etc.).

² In answering the previous questions, consider the following harms as a non-exhaustive list: rape, sexual slavery, forced labor including gender specific form of forced labor, forced impregnation, forced abortion, forced sterilization, forced incest, forced marriage, internal displacement, abduction or loss of descendants, torture - including gendered forms of torture, illegal detention and imprisonment -including gendered forms of harms linked to the experience, disappearance including disappearance of children, spouses and or partners, amputation, mutilation -including sexualized forms of mutilation, dispossession of property, serious violations of socio-economic rights, pregnancy as un/intended result of rape, contraction of sexually transmitted disease as un/intended result of

5- Please indicate how a gender sensitive implementation has been integrated into the national transitional justice strategies and mechanisms. *E.g: Have women and LGBT persons been included in the implementation bodies and mechanisms of the transitional justice process? In which ones, at what level and stage and in what numbers (e.g. as decision-makers or secretaries; how many at high, mid, to low levels?)? Has there been any monitoring or follow-up mechanism to ensure the implementation of national transitional justice strategies and mechanisms for women and LGBT persons? Have the existing implementation/monitoring bodies prioritized a gender perspective? Have women and LGBT persons availed themselves of national transitional justice strategies and mechanisms? Have there been official attempts to assess this (e.g by disaggregating the data on the number of victims that have participated in transitional justice mechanisms)? What are the reasons for satisfaction/dissatisfaction that women and LGBT persons, and their organizations have expressed regarding the implementation? Have the national transitional justice strategies and mechanisms been designed in such a way as to avoid secondary victimization of women and LGBT persons or indeed to actually empower them?*³

Given the timeline for the preparation of the thematic report, we kindly request that written contributions be sent by 29 May 2020. We would also welcome any other PDF or word document, report, article or the like providing further information about the memorialization process in the country concerned.

Please limit your contributions to a maximum of 750 words per response and attach annexes, where necessary. Your responses may be published on the website of the Office of the High Commissioner for Human Rights.

Should you not wish to have your response published on the website, please indicate so in your response.

We thank you in advance for your cooperation, and for your responses.

rape, bearing and raising of children as un/intended result of sexual crimes, loss of reproductive capacity as a result of sexual crimes, undergoing abortion as a result of rape, being targeted for mutilation or abuse as a result of pregnancy or loss of reproductive capacity, being targeted for detention or violence due to sexual orientation or gender identity, different forms of communal ostracism and stigmatization as a result of having been detained, tortured, raped, impregnated, mutilated or forced into a marital-type relationship with the opposition group, repudiation or divorce by one's spouse/partner as a result of having been incarcerated, tortured, raped, impregnated, mutilated, etc. or immediately after the spouse/partner is released from prison, taking in of abandoned children or children who have lost their parents, widowhood, orphanage, legal precariousness as a result of disappearance of spouse/partner, loss of means of livelihood, inability to marry/remarry as a result of having been subject to different forms of oppression during the conflict/oppression, harassment by official authorities for being or having been a victim's family member, loss of educational opportunities, loss of opportunity to have or raise one's own children (e.g., because of time in prison, displacement, etc.), loss of possibility of political agency, loss of other opportunities linked to the amount of time/energies/resources spent taking care of family member in prison?

³ In answering, consider the following options as a non-exhaustive list: ensuring the adequate representation of women and LGBT persons in the agencies that have to adjudicate and implement TJ measures; preserving the confidentiality of the names of victims in registration procedures; allowing different ways of providing testimony, including in camera testifying for certain crimes; training personnel in charge of taking testimony of female and LGBT victims; designing adequate standards of proof; establishing adequate statute of limitations norms; incorporating support services such as counseling.