

GENDER PERSPECTIVE IN TRANSITIONAL JUSTICE PROCESSES
SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPOREUR ON
TRANSITIONAL JUSTICE

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ALL SURVIVORS PROJECT

Introduction

All Survivors Project (ASP) welcomes the consultation by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on gender perspective in transitional justice processes.

ASP provides research to improve the global response to every survivor of sexual violence in situations of conflict and displacement. We document cases of abuse against men, boys and lesbian, gay, bisexual and transgender (LGBT) persons to supplement work on women and girls to support a global response that includes all victims of sexual violence. We are an independent, international research project working with individuals and organisations to strengthen communities by upholding the dignity of each individual.

We believe that transitional justice mechanisms can play an important role in addressing sexual violence in armed conflict, preventing its reoccurrence and providing justice and reparation to survivors and their families.

In situations where massive human rights abuses have occurred, as is often the case in armed conflict, the Special Rapporteur and other UN bodies and experts have repeatedly stressed the importance of a comprehensive approach to justice.¹ In its 2019 resolution on women, peace and security, the UN Security Council explicitly called on states to ensure the opportunity for the full and meaningful participation of survivors of sexual and gender-based violence at all stages of transitional justice processes.²

Addressing sexual violence in non-judicial transitional justice mechanisms, including truth-seeking processes and reparations programmes, can complement and reinforce criminal justice processes by providing broader and more in-depth understandings of the scale, nature, causes and consequences of abuses as well as greater recognition of victims and more gender sensitive and transformative responses to survivors than is possible via the courts.

¹ See for example Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/ HRC/21/46 (2012).

² UN Security Council resolution 2467 (2019).

Gender-inclusive approach to sexual violence in the transitional justice processes to include men, boys and LGBT persons

The pervasive nature and appalling consequences of sexual violence against women and girls in situations of armed conflict is well established. Although women and girls are disproportionately affected, the extent to which conflict-related sexual violence (CRSV) impacts men, boys and LGBT persons is also increasingly recognised.

Rape and other forms of sexual violence involving males perpetrated by state security forces or non-state armed groups (NSAGs) has been documented in at least 30 different states affected by armed conflict in recent years.³

CRSV against LGBT persons has also been documented by ASP, the UN, national bodies and/or NGOs in several countries including in Afghanistan, Colombia, Iraq, Kenya, Myanmar, Nepal, Nigeria, Somalia, and Syria. The 2019 Annual Report of the Secretary-General on CRSV noted that victims are frequently “targeted on the basis of actual or perceived sexual orientation or gender identity”.⁴

Because of these trends and patterns, a gender-inclusive approach is needed in the establishment and the working of transitional justice mechanisms to ensure that sexual violence against all survivors, including men, boys and LGBT persons is properly investigated and addressed.

Truth commissions, for example, are often well placed to identify the systematic nature of sexual violence and the underlying structural discrimination that enabled it to occur. Incorporating a gender perspective into their work can also help to break down that stigma and change societal attitudes regarding sexual violence.

Where truth commissions have been mandated to address CRSV or have interpreted their mandate to include it, the focus has been primarily on women and girls. So far, few have paid attention to sexual violence directed against men and boys and in the contexts where they do, rape and other forms of sexual violence against males has often been classified as torture or other forms of physical violence such that neither the sexualised nature of the acts nor the motivation of perpetrators and the full impact on victims, their families and communities has been recognised.⁵ In addition, the recognition and examination of LGBT victimisation and

³ These include Afghanistan, Bosnia and Herzegovina (BiH), Burundi, Central African Republic (CAR), Colombia, Côte d'Ivoire, Democratic Republic of the Congo (DRC), El Salvador, Guatemala, Indonesia/Timor-Leste (with reference to incidents documented during Indonesia's occupation of Timor-Leste from 1975 to 1999), Iraq, Israel, Liberia, Libya, Mali, Myanmar, Niger, Nigeria, Peru, Russian Federation (Chechnya and Crimea), Rwanda, Sierra Leone, Somalia, South Sudan, Sri Lanka, Sudan (Darfur), Syria, Uganda, Ukraine (including the Autonomous Republic of Crimea) and Yemen. Sexual violence against men and boys has also been reported in situations of political violence or repression such as in Argentina, Chile, Kenya, South Africa and Venezuela.

⁴ UN Doc. S/2019/280, 29 March 2019. Also the 2016 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council highlighted that rape and other forms of sexual violence are rampant in armed conflict, it is perpetrated by State and non-state actors alike, and it is sometimes being used as a form of “moral cleansing” of LGBT persons.

⁵ For detailed discussion of the way in which sexual violence against men and boys has been addressed by transitional justice processes including truth-seeking processes, see International Center for Transitional Justice

persecution including for sexual violence by truth commissions has been extremely limited. However, examples from recent Latin American truth commissions demonstrate a growing attention to violence against LGBT people.⁶

As with criminal justice processes there are also significant challenges to ensuring the participation of victims/survivors of sexual violence in truth-seeking processes. In the same way that special measures such as outreach, specially trained investigators and closed sessions with female-only commissioners have been used to encourage female victims/ survivors to provide testimonies to truth commissions in some contexts, consideration should also be given to whether comparable measures are needed to facilitate the participation of male victims/survivors and of LGBT persons, who may otherwise be excluded.

There are positive signs that such concerns are being addressed by Colombia's Commission for the Truth, Coexistence and Non-Recurrence Commission (CEV). Established pursuant to the 2016 peace agreement between the Government of Colombia and the FARC-EP, the CEV's guiding criteria and mandate emphasise its gender-sensitive approach and its role in addressing the different ways in which the conflict impacted different persons including on account of age and gender.⁷ Although the mandate makes no explicit reference to CRSV, it is among the abuses being addressed and reports of CEV outreach activities indicate that it is considering and consulting on how to ensure the participation of male as well as female victims/survivors.⁸ The CEV's mandate specifically lists "LGBTI populations" as among the categories of persons which the CEV should seek to address in clarifying the impact of the conflict. To this end, co-operation with LGBTI groups is reportedly being sought and LGBT victims/survivors of sexual violence have been recognised in early activities by the CEV.⁹ In addition, the Special Jurisdiction for Peace (JEP) met with adult male survivors to discuss their experiences and expectations in October 2019.¹⁰

(ICTJ), When No One Calls it Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts, December 2016, www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf

⁶ See Bueno-Hansen, Pascha, The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America, International Journal of Transitional Justice, 2018, 12, 126-145; and Fobear, Katherine, Queering Truth Commissions, Journal of Human Rights Practice, 2014, 6, 51-68.

⁷ See "Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace", 24 November 2016 and Decree 588, 5 April 2017.

⁸ In June 2019 the CEV held in Cartagena the first event on CRSV with over 650 women and LGBT participants, CEV, "La verdad de las violencias sexuales que ha dejado la guerra en Colombia," 27 June 2019, <https://comisiondelaverdad.co/actualidad/noticias/la-verdad-de-las-violencias-sexuales-que-ha-dejado-la-guerra-en-colombia>; CEV, "Acoso, violencia, temor y silencio", 14 June 2019, <https://comisiondelaverdad.co/actualidad/noticias/violencias-sexuales-nororiente-colombia-acoso-sexo-violencia-temor-y-silencio>.

⁹ See "Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace", 24 November 2016; Decree 588, 5 April 2017; CEV, "Encuentro por la Verdad: 'Mi Cuerpo dice la Verdad'", 26 June 2019, <https://comisiondelaverdad.co/actualidad/noticias/primer-encuentro-por-la-verdad-mi-cuerpo-dice-la-verdad>; and CEV, "Colombia Diversa, Limpal Colombia y Taller de Vida firmaron acuerdos de colaboración con la Comisión", 4 September 2019, <https://comisiondelaverdad.co/actualidad/noticias/colombia-diversa-limpal-colombia-y-taller-de-vida-firmaron-acuerdos-de-colaboracion-con-la-comision>

¹⁰ See Valdés Correa, Beatriz, "Hombres violentados sexualmente en el conflicto armado hablan por primera vez," el Espectador, <https://www.elespectador.com/colombia2020/justicia/jep/hombres-violentados-sexualmente-en-el-conflicto-armado-hablan-por-primera-vez-articulo-886149>

Gender-inclusive reparations programmes

Gender-inclusive reparations programmes can also respond to specific harms experienced by affected individuals, respond to priorities and needs which may differ according to many different factors including age, sex and gender, and also serve to address broader harms to the families and communities of victims/survivors.¹¹

The UN Secretary-General's Guidance Note on Reparations for CRSV sets out key principles for designing and implementing gender-sensitive reparations programmes that are specifically tailored to the harms, sensitivity and stigmas attached to sexual violence and the specific needs of victims/survivors of sexual violence. The Guidance Note calls for reparations programmes and tribunals to explicitly acknowledge that men and boys who suffer CRSV also need rehabilitation and that their needs (such as health, education and housing) may be different to that of women and girls.¹² Similar considerations should be taken into account in relation to LGBT persons.

In practice, reparations for victims of CRSV remain an exception and crimes of sexual violence are still not routinely included in reparations programmes.¹³ Where provided, male victims/survivors can still be excluded if the definition of victims/survivors in relevant legislation or policies is not gender-inclusive. Additionally, victims/survivors are deterred from seeking justice in countries where same-sex relations are criminalised. Exclusion may also result from stigma and shame which can deter victims/survivors from registering for reparations and thereby disclose the violation they have suffered. It can also occur if outreach efforts pay insufficient attention to assisting male victims/survivors to come forward and claim their rights.¹⁴

In Colombia, the Law No. 1448 on Victims' and Land Restitution of 2011 established (in article 13) the principle of 'differential approach', which for the first time identified people with diverse sexual orientation and gender identity as subject victims in need of special attention and protection, and the obligation of the State to implement a differential approach taking into account their particular characteristics in the implementation of measures of humanitarian aid, integral attention, assistance and reparations. As of March 2020, the Victim's Registry (RUV) had identified 481 LGBT victims of CRSV who have suffered sexual violence since 1985.

In addition to more tangible benefits such as financial compensation and health care, formal apologies, commemorations and other measures to officially acknowledge and commemorate victims can also help to repair harms. Careful and sensitive acts of acknowledgement and memorialisation designed in consultation with victims/survivors can contribute to their recognition and help to reduce stigma and shame. The Secretary-General's Guidance Note recommends that more should be done in this area in relation to CRSV against men and boys,

¹¹ See OHCHR, Analytical study focusing on gender-based and sexual violence in relation to transitional justice, UN Doc. A/HRC/27/21 (2014).

¹² Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, June 2014.

¹³ For example, in Nepal victims/survivors of conflict-related sexual violence were not among the categories of persons entitled to relief under the "Interim Relief and Rehabilitation Program" for human rights abuses committed during the 1996-2006 armed conflict.

¹⁴ See All Survivors Project, Legacies and Lessons: Sexual violence against men and boys in Sri Lanka and Bosnia and Herzegovina, 16 May 2017.

as well as for groups who have faced discrimination, including on the basis of their actual or perceived sexual orientation and gender identity.¹⁵

Recommendations

ASP would like to encourage the Special Rapporteur to reflect on the specific challenges posed by CRSV and to support the following recommendations aimed at ensuring that transitional justice mechanisms address sexual violence against men, boys and LGBT persons, in addition to women and girls.

- Truth commissions and other transitional justice mechanisms should include gender-inclusive definitions of rape and sexual violence and have policies and procedures to support the investigation of CRSV against all affected persons, including men, boys and LGBT persons.
- Outreach strategies by transitional justice mechanisms should encourage and support the safe, confidential participation of victims/survivors of CRSV include measures to reach out to men, boys and LGBT survivors.
- Staff and commissioners of truth commissions and other transitional justice mechanisms should receive in-depth training on sexual violence, including against men, boys and LGBT persons; interviewers should be trained in techniques to safely, confidentially and sensitively identify and record the experience of male as well as female victims/survivors of sexual violence, including those who have been targeted on account of their actual or perceived sexual orientation or gender identity.
- Comprehensive, survivor-centred, gender-inclusive reparations should be available to and be accessible by all survivors of sexual violence including men, boys and LGBT persons.

¹⁵ Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, June 2014.