

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

PREAMBLE

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

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

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

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

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

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

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

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

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

RECALLING the adoption by the UN General Assembly in October 2005 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*;

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

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

DECLARE AS FOLLOWS:

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

access to equality (positive discrimination) are required in order to take into account the reasons and consequences of the crimes and violations committed, and in order to ensure that they are not repeated.

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

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

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

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

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

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

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

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

2 – ACCESS TO REPARATION

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

and other actors must ensure that women and girls are adequately informed of their rights.

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

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

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

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

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

3 – KEY ASPECTS OF REPARATION FOR WOMEN AND GIRLS

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

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

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

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

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

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

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

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

The following organizations are authors and signatories of the declaration:

Coalition for Women's Human Rights in Conflict Situations

Urgent Action Fund-Africa, Kenya

Rights & Democracy, Canada

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

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

Asociación Reflexión de Inocentes Liberados, Peru

Association des femmes juristes, Burundi

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

CDA - Community Development Centre, Sudan

CEDA - Community Extension Development Association, Sierra Leone

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

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

Coordinadora Nacional de Mujeres Afectadas por la Violencia Política, Peru

Corporación Humanas, Chile

Corporación para la Vida Mujeres que Crean, Colombia

Demus - Estudio para la defensa y los derechos de las mujeres, Peru
ESSAIM - Cadre de concertation et d'activités pour la protection et la défense des droits des femmes à l'est de la République démocratique du Congo, Democratic Republic of Congo
Feinstein International Center, Tufts University, USA
FOKUPERS - East Timorese Women's Communication Forum, Timor Leste.
Grupo Suporta Inan, Timor Leste
Instituto de Estudios Comparados en Ciencias Penales, Guatemala
International Women's Human Rights Law Clinic, CUNY Law School, USA
Khulumani Support Group, South Africa
LDGL - Ligue des droits de l'Homme dans la région des Grands-Lacs, Rwanda
Mamá Maquín, Guatemala
MARWOPNET - Mano River Women Peace Network, Sierra Leone
PAIF - Programme d'appui aux initiatives féminines, Democratic Republic of Congo
PCS - Consejería en Proyectos, Latin America
REDRESS, United Kingdom
Ruta Pacifica de las Mujeres, Colombia
SEVOTA - Solidarité pour l'épanouissement des veuves et des orphelins visant le travail et l'auto-promotion, Rwanda
SOFEPADI - Solidarité féminine pour la paix et le développement intégral, Democratic Republic of Congo
Women's Forum, Sierra Leone
Women's Research and Action Group, India