



HUMAN RIGHTS COUNCIL

Fourteenth session

**Statement by Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences
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Mr. President, distinguished delegates, representatives of the United Nations and the NGO community,

It is with great honor that I address the 14th session of the Human Rights Council for the first time in my capacity as Special Rapporteur on violence against women, its causes and consequences, since my appointment in June last year. During this period, I have had the privilege to prepare a thematic report on reparations to women who have been subjected to violence, carried out two country visits, and acted on numerous communications involving alleged violations of women's human rights¹. I have also had the pleasure of engaging with State and non-State actors in different fora on the issue of violence against women and women's human rights broadly.

I would like to express my appreciation for this opportunity to inform the Human Rights Council of the activities undertaken by my mandate over the last year.

The comprehensive review of the 15 years of the work of the UN Special Rapporteur on Violence against Women, its causes and consequences (1994-2009)² identified areas which require further attention by the mandate, proposed some ideas on how best to integrate those issues into its future work, and pointed to possible ways in which the mandate can be strengthened through follow-up mechanisms. This document has been a frame of reference for me in the establishment of my thematic priorities.

Thematic report on reparations to women who have been subjected to violence³

My first thematic report to the Council addresses the issue of reparations to women who have been subjected to violence. The duty of the State to compensate for the consequences of violence is highlighted in my predecessors' reports⁴ and also in the 15-year review.

¹ See Communications report, A/HRC/14/22/Add.1, which includes summaries of the communications sent from 1 March 2009 to 20 March 2010 (with respect to allegation letters) and from 3 April 2009 to 15 April 2010 (with respect to urgent appeals). The report also contains summaries of government replies received until 17 May 2010.

² See 15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009): A critical review, A/HRC/11/6/Add.5

³ Thematic report on reparations for women subjected to violence, A/HRC/14/22

Although a coherent theory and practice for remedies for victims of human rights violations does not yet exist under international law, the right of individuals to reparation for the violation of their human rights has been increasingly recognized. Affirmed initially as a principle of inter-State responsibility, since the Second World War a shift of focus can be observed to national arenas. The legal basis for a right to a remedy and, linked to it, a right to reparation has become firmly enshrined in the corpus of international human rights and humanitarian instruments.

The content of the obligation to provide reparations to the individual whose rights have been violated remains, however, far from clear. When referring to the remedies ensuing after a violation of a right, all human rights treaties use rather vague language. International human rights bodies that have jurisdiction to hear complaints often limit themselves to finding facts and issuing declaratory judgments or, at best, recommending that compensation of an unspecified amount be awarded to the claimants. More recently, however, in their observations to periodical country reports, the different human rights bodies have started to insist on the States' obligation to provide compensation and rehabilitation measures.

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 define the contours of State responsibility for providing reparation to victims for acts or omissions which can be attributed to the State. States are responsible for their failures to meet their international obligations even when substantive breaches originate in the conduct of private persons, as States have to exercise due diligence to eliminate, reduce and mitigate the incidence of private discrimination. In cases where a person or other entity is found liable for reparation to a victim, such party should provide reparation. The State should endeavor to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm are unable or unwilling to meet their obligations. The implementation of the due diligence obligation to reparations - as recognised by the Convention on the Elimination of all Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women- remains grossly underdeveloped.

The little attention devoted to reparations, both at a substantive and procedural level, for women who suffer violence contrasts with the fact that women are often the target of both sex-specific and other forms of violence, not only in times of conflict but also in ordinary times. Women often bear the brunt of the consequences of violence that targets them, their partners and dependants. Given the disparate and differentiated impact that violence has on women and on different groups of women, there is a need for specific measures of redress in order to meet their specific needs and priorities. Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation. Additionally, women who experience violence have traditionally encountered obstacles to accessing the institutions that award reparations.

My report looks at conceptual challenges that prevail when placing the question of gender-sensitive reparations on the national and international agenda. It also analyses procedural and substantive considerations emerging in reparations initiatives responding to violence in conflict, post-conflict and authoritarian settings. Further, it examines reparations to women

⁴ See report on The due diligence standard as a tool for the elimination of violence against women, E/CN.4/2006/61

and girls in contexts of “peace” or consolidated democracies, by looking first at discriminatory practices against certain groups of women, and secondly by highlighting recent landmark cases by the Inter-American Court of Human Rights and the European Court of Human Rights, namely, the *Cotton Field v. Mexico* and *Opuz v. Turkey* cases.

The report examines significant trends to reverse the traditional neglect that women have been subjected to, both in the discussion and in the practice of reparations, at national and international levels, and both in relation to the procedural as well as the substantive dimensions. I argue that reparation measures should not concentrate on the fairly limited and traditionally conceived catalogue of violations of civil and political rights, but instead should include the worst forms of crimes or violations targeting women and girls. Importantly, reparations schemes must acknowledge that the same violations may entail different harms for men and women, but also for women and girls from specific groups, and that violations may be perpetrated with the complicity of State or non-State actors.

While domestic and international judicial venues determining individual and State responsibility - and consequently tasked with awarding reparations - constitute the standard procedure for dealing with both past and present violations, the report examines the substantive and procedural limits of ordinary judicial proceedings to achieve the full and comprehensive realization of women’s right to reparations.

With regard to substantive considerations, my report argues that reparations programmes allow for the simplification, in a consistent manner, of a complex reality of mass and gross violations of human rights by relying more or less explicitly on a set of common elements, including: the definition of “victims” or the selection of the list of violations or crimes for which there will be reparations; the definition of “beneficiaries” as the group of persons who are eligible for the benefits to be distributed; and the definition of benefits of both material and symbolic, individual and collective nature.

Procedural obstacles that victims of sexual violence have traditionally encountered in the judicial arena can amount to an experience of re-victimization, exposing women not only to psychological harm but also to reprisal, stigma and communal and family ostracism. Furthermore, a judicial approach does not endorse forms of reparations that have the potential to challenge pre-existing gender hierarchies, including those that result in women holding less property than men, having lesser educational opportunities and, hence, less income-generating potential. In the context of mass violations, administrative reparations programmes can obviate some of the difficulties and costs associated with litigation. They may also create enabling conditions for a more proactive approach to the involvement of a larger group of people, including victims, at all levels, from conceptualization of reparation schemes, to reaching victims, to understanding the structural component of the violations – including the share of State responsibility by either action or omission, and the gender-specific impact of the violence on women’s and girls’ lives.

Mr. President,

My report highlights a fundamental aspect in the field of reparations that cannot be underestimated. In view of the structural and multiple forms of discrimination that women face during conflict and post-conflict as well as in times of peace, reparations cannot be just about returning women to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies

that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience. In this regard, complex schemes of reparations, such as those that provide a variety of benefits, including guarantees of non-repetition, can better address the needs of female beneficiaries in terms of transformative potential, both on a practical material level and in terms of their self-confidence and esteem. Measures of symbolic recognition can also be crucial. They can simultaneously address both the recognition of victims and the dismantling of patriarchal understandings that give meaning to the violations.

Country Visits

Mr. President,

I would now like to present an overview of the findings from the country mission I conducted in November 2009 to Kyrgyzstan. I also would like to briefly refer to the follow-up visit I carried out in El Salvador in March 2010. Before doing so, however, I would like to take this opportunity to thank the Governments of these countries for their cooperation and hospitality during my visit. I am particularly pleased to report that each mission generated a positive dialogue at both governmental and non-governmental levels.

Kyrgyzstan⁵

From 9 to 16 November 2009, I carried out an official visit to the Kyrgyz Republic at the invitation of the Government. During the course of my mission, I visited Bishkek and the city of Osh, where I met with high ranking officials, members of civil society and the international community, as well as women survivors of violence.

The Government has undertaken important initiatives and has had a number of significant achievements in raising the status of women. They have adopted a set of national legislative and policy frameworks, which have the potential to provide comprehensive human rights protection to women and girls. For example, they have adopted a Law on equal rights and opportunities and a National Action Plan for Achieving Gender Equality; a Law on protection from domestic violence, which is considered one of the most progressive in the region; and provisions in the Election Code ensuring a minimum level of representation of women in the political life of the country. These formal legislative and policy efforts, while commendable, have not yielded sufficient results to date to address the root causes and the consequences of violence against women.

Various forms of violence against women such as domestic violence, bride-kidnapping, trafficking, custodial violence, sexual violence and harassment and violence against lesbians, bisexuals and transgender persons remain unreported and unpunished. Marriage practices such as unregistered religious marriages, early marriage, and polygamy are increasingly undermining women's rights and position in the family and society. This is exacerbated by other social phenomena, including as a result of the disproportionate impact the transition to a market democracy and market economy has had on women, such as the growing feminization of poverty and economic dependence, social acceptance of certain forms of violence and a

⁵ Country mission report on Kyrgyzstan, A/HRC/14/22/Add.2

resurgence of patriarchal practices, which are rendering women and girls more vulnerable to violence, exploitation and destitution.

In my report, I make a number of specific recommendations which I hope will contribute to Government's efforts in addressing these issues. In particular, I urge the government to strengthen the national women's machinery, including by establishing an independent State body specifically responsible for women's rights and gender equality, and which can solicit accountability from relevant Ministries and agencies. I also encourage the Government to make specific budgetary commitments towards the implementation of programmes related to gender equality, the socio-economic position and rights of women, and to addressing violence against women. A number of more specific measures to combat violence against women are also suggested in my report.

I was also pleased to hear that the Government intended to undertake a number of important reforms, and encourage them to implement these as soon as possible. One potential reform relates to the possibility of imposing a new legal requirement that proof of a civil marriage be provided before a religious marriage can be performed. With regard to marriage practices, I also urge the government to raise the penalty for polygamy, bride abduction and coercion into marriage, and to actively undertake information and sensitization campaigns on the negative consequences of certain marriage practices.

El Salvador

From 17 to 19 March this year I conducted a follow-up visit to El Salvador, last visited by the mandate in 2004⁶. The objective of this visit was to review progress made on the recommendations provided by my predecessor, assessing the current situation of violence against women and the State response to such violence. While the full report of this mission will be presented at the June 2011 session of the Human Rights Council in 2011, I made available my preliminary observations in the press statement I issued upon conclusion of the visit⁷.

Future Country Visits

I am pleased to report that I received invitations from the Governments of Algeria and the United States of America to carry out country visits in the forthcoming months. I look forward to working with these Governments in preparation for these visits. I have also made requests for official country visits to the Governments of Somalia, Zambia, Zimbabwe, Jordan, Turkmenistan and Uzbekistan. It is my hope that such requests will be favourably considered.

Group of Experts on the Democratic Republic of the Congo⁸

Pursuant to Human Rights Council resolution 10/33, I contributed to the second joint report by seven thematic special procedures on the situation in the Democratic Republic of Congo, which was presented to the 13th session of the Human Rights Council in March 2010.

⁶ 2004 country mission report on El Salvador, E/CN.4/2005/72/Add.2

⁷ See http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Violen_AgnstWomen

⁸ Second joint report on the situation in the Democratic Republic of Congo, A/HRC/13/64

The seriousness of the situation in the country requires that the Government and donors continue to address violence against women and provide assistance to survivors as a matter of priority by building on current initiatives and enhancing coordination, including with local women's organisations.

Regional consultations

Mr. President,

Regional consultations with civil society have become a distinctively important feature of this mandate. During my first year as Special Rapporteur my mandate will have already participated in three regional consultations. In November 2009, an Asia Pacific Regional Consultation was held in Bangkok, Thailand, on the theme of sexual and reproductive rights. In January 2010, I took part in the third African Regional Consultation in Lusaka, Zambia, on sexual violence against women and girls in the context of so-called 'peace'. In March this year, I attended the first ever Central American and Caribbean Regional Consultation, which took place in El Salvador, and addressed a number of key challenges relating to violence against women in that region.

Through these consultations, this mandate can keep abreast of regional and domestic trends, and establish direct contacts with women organisations, academics and victims in different regions of the world. Such venues also offer an opportunity to inform civil society on the work of special procedures and my mandate in particular, with a view to promoting and facilitating cooperation, including in relation to the communications procedure and country visits. I am committed to continue and to strengthen this practice, including by consolidating annual regional consultations in some regions as well as extending them to new regions.

Conclusion

Mr. President,

Violence against women has gained visibility worldwide and has become a major agenda item within the work of the United Nations, regional entities and individual countries. Yet, the reality on the ground shows that many forms and manifestations of violence against women remain endemic around the world, cutting across national boundaries, race, class and religion, violating the human rights and dignity of women, including the right to equality, non-discrimination, physical integrity and freedom from violence.

The 15-year review of the mandate highlights the multiple layers of discrimination that combine to heighten the vulnerability of women and their experience of violence and that most typically result in a continuous chain of violence for marginalised women. Another important challenge remains the compliance and accountability through legal frameworks, definitions, and expansion of the due diligence standard in relation to violence against women. In this respect, I am pleased to inform you that my thematic priorities for the next two years will focus on multiple, intersecting and aggravated forms of discrimination, and on the implementation of the due diligence obligation.

The intensification of efforts to eliminate all forms of violence against women is an urgent imperative for all of us. The 15-year review of the implementation of the Beijing Declaration and Platform for Action; the 30th anniversary celebrations and reflections on the achievements

of the CEDAW; the recent adoption of resolution 1888 on sexual violence; and the daily struggle of millions of women throughout the world for a life free of violence and discrimination, all provide us with the opportunity to intensify our efforts at protection, prosecution, prevention and provision of effective redress – in order to meet the ultimate goal of the elimination of all forms of violence against women.

I thank you for your attention and I look forward, Mr. President, to a constructive dialogue with the distinguished members of this Council.

