

Introduction: A Gender and Reparations Taxonomy

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In recent years, work in a variety of disciplines has sought to illuminate and highlight women's experience of conflict and authoritarianism. UN Security Council Resolution 1325 on women, peace, and security¹ reflects this when addressing the need to recognize the impact of armed conflict on women and girls, the role of women in peacebuilding, and the gender dimensions of peace processes and conflict resolution. The serious and pervasive nature of gender-based violence in conflict, especially sexual and reproductive violence, has also been increasingly recognized under international criminal law.² Relevant discussions about how other transitional justice measures, including truth-telling mechanisms, can do better justice to women have followed.³ It comes as no surprise, then, that the time is ripe to raise the question of how reparations programs for mass human rights violations can be designed in ways intended to redress women more fairly and efficiently.⁴

The fact that reparations programs are becoming an increasingly frequent feature of transitional and post-conflict processes renders the topic of this book

¹ United Nations Security Council, Resolution 1325, S/RES/1325 (2000), October 31, 2000.

² Proof of this is the Rome Statute of the International Criminal Court, which adopts "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as part of its definition of crimes against humanity and war crimes. See the Rome Statute of the International Criminal Court, Arts. 7 and 8.

³ Debra L. DeLaet, "Gender Justice: A Gendered Assessment of Truth-Telling Mechanisms," in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), 151–181; World Bank, "Gender, Justice, and Truth Commissions," Washington, DC: World Bank, June 2006; Vasuki Nesiah et al., "Truth Commissions and Gender: Principle, Policies and Procedures," (New York: ICTJ, 2006); Fionnuala Ni Aoláin and Catherine Turner, "Gender, Truth and Transition," *UCLA Women's Law Journal* 16 (2007): 229–279.

⁴ International civil society has started to echo this concern: in March 2007, the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation was adopted. See http://www.womensrightscoalition.org/site/reparation/signature_en.php.

only more relevant and urgent. Indeed, there is a growing conviction that doing justice in transitional scenarios requires not only doing something against the perpetrators, but also doing something specifically for victims.⁵ This trend is confirmed by the recommendations of several truth commissions, and by the jurisprudence of both national and international human rights bodies, including the European Court of Human Rights and the Inter-American Court of Human Rights. Nations as diverse as Argentina, Chile, Brazil, South Africa, Guatemala, Peru, and Morocco are examples of countries that have thought of reparations initiatives as an important component of their package of transitional justice measures. The UN has also supported this evolution toward enhancing the importance of the reparative venue and giving victims adequate recognition and redress: in 2005, the General Assembly approved 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*,⁶ and just recently the High Commissioner for Human Rights has produced a tool on reparations programs as part of its series of *Rule-of-Law Tools for Post-Conflict States*.⁷ The latter document is intended, among other things, to guide state practice on how to render the *Basic Principles* operative.

The moves toward “engendering transitional justice” and pushing forward the reparations agenda have thus far progressed in parallel and without meaningful encounters. For the most part, reparations initiatives around the world have to this day failed to raise systematically the question of how to incorporate women’s specific needs and concerns. This is striking in view of the fact that a significant number of victims of authoritarianism and conflict are women who are known to experience both phenomena in distinct ways. Similarly, it is common knowledge that in most cases women play a crucial role in the follow-up of violence – searching for victims or their remains, trying to reconstitute families and communities, carrying on the tasks of memory, and

⁵ See Pablo de Greiff, “Introduction,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 1–18 [*The Handbook*, hereafter].

⁶ *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*, A/RES/60/147, March 21, 2006 [*Basic Principles*, hereafter]. See also the UN Secretary General’s 2004 report, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, August 23, 2004; *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005; Diane Orentlicher, *Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity*, E/CN.4/2004/88, February 27, 2004; and *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, E/CN.4/2005/102, February 18, 2005.

⁷ Available at <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>.

demanding justice. Despite all of this, reparations programs have not been designed with an explicit gender dimension. And yet, there are few reasons to believe that so-called “gender-neutral” reparations programs equally facilitate the achievement of the underlying goals of reparations programs, including recognition, civic trust, and social solidarity for men and women.⁸ True, the goals of a reparations program are to provide a measure of justice, albeit imperfect, to victims; but reparations are also intimately tied to building a just and peaceful foundation for a transitioning society. A program that fails to provide redress or justice to women in effect weakens the link between the goals of reparations and their contribution to the establishment of a democratic state.

This book seeks to lay the foundations for a gender-sensitive analysis of reparations programs that would increase their effectiveness as redress measures available to female victims and their families. The analysis is also intended to maximize the transformative potential of reparations programs and thus their capacity to help advance toward more inclusive and egalitarian democracies (potential and capacities that it is important not to overestimate). The book is the result of an ambitious three-year research project undertaken by the International Center for Transitional Justice (ICTJ). Besides learning what reparations programs to date *in fact* have done with respect to gender issues, the project took to heart the task of starting to articulate what future programs *ought to do* if they aspire to do justice to female victims in transitional or post-conflict situations, and thus of articulating the normative goals of reparations programs with respect to gender issues. This dual empirical and normative perspective characteristic of ICTJ research projects would, it was hoped, make it possible to identify best practices and, more importantly, to propose innovative approaches to the integration of a gender perspective into the design and implementation of reparations programs. It would ultimately also serve to test and to illustrate the project’s underlying hypothesis, namely, that a gender perspective *would* make a difference in the field of reparations.

The first task was to make up for the dearth of factual information on the different needs of men and women vis-à-vis reparations. We tried to do this by compiling case studies that provided detailed accounts of how six countries – Peru, Guatemala, Sierra Leone, Rwanda, Timor-Leste, and South Africa – have dealt or failed to deal with gender issues in their discussions about how to repair victims.⁹ Then came the challenge of thinking about the topic both

⁸ These are some of the goals that are attributed to reparations programs by Pablo de Greiff in his “Justice and Reparations,” in *The Handbook*, 451–477.

⁹ See the six case studies in Ruth Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations* (New York: Social Science Research Council, 2006) [*What Happened*, hereafter].

If all of the above is true in general, I have argued elsewhere that there are also gender-specific reasons to favor large-scale reparations programs that place the emphasis on the recognition of victims as opposed to judicial reparations seeking compensation in proportion to harm.¹² Maybe the most important one is that reparations programs can obviate some of the difficulties and costs associated with litigation, including high expenses, the need to gather evidence (which in some cases may be unavailable), the pain associated with cross-examination, and the lack of confidence on the part of victims in judicial systems¹³ – difficulties that may have a particularly strong disparate and negative effect on women. Overrepresented among the poor, the illiterate, those with little information, those facing language barriers, and those overburdened with family-related obligations that make traveling long distances a difficult task, women may find it particularly difficult to access the court system. Also, the large underreporting of gender crimes even in “normal times” speaks of the challenges women face in most societies in trying to make use of criminal processes that can so often result in their further victimization.

STRUCTURE AND CONTENTS OF THE BOOK

The first two chapters of the volume were conceived as the normative framework of the project. Margaret Walker’s “Gender and Violence in Focus: A Background for Gender Justice in Reparations” provides an overview and analysis of the nature and varieties of violence and harms that are known to affect women in contexts of armed conflict and political repression. The chapter examines both the forms of violence that affect women and the gendered character of these forms of violence. Current research establishes that violence and harms suffered by women in these contexts are many and are often linked in complex ways. The links create destructive synergies of loss and suffering: violence inflicted on women harms women; some harms expose women to further violence and additional harms; and serious, even life-altering

the Ashes, hereafter]; Debra Satz, “Countering the Wrongs of the Past: The Role of Compensation,” in *Reparations: Interdisciplinary Inquiries*, ed. Jon Miller and Rahul Kumar (New York: Oxford University Press, 2007); and Naomi Roht-Arriaza, “Reparations in the Aftermath of Repression and Mass Violence,” in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004).

¹² See Ruth Rubio-Marín and Pablo de Greiff, “Women and Reparations,” *International Journal of Transitional Justice* 1, no. 3 (2007): 317–337.

¹³ See de Greiff, “Justice and Reparations,” and Heidy Rombouts, Pietro Sardaro, and Stef Vandeginste, “The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights,” in *Out of the Ashes*, 488.

starts by developing a normative framework for conceptualizing reparations, one that sets the main aim of reparations to be to give victims due recognition *as citizens*, something which, I argue, requires all of the following: the recognition of the wrongful violations of victims' rights; the acknowledgment of state responsibility for such violations; the recognition of harms ensuing from the violations; and the attempt to help victims cope with the effects of harms in their lives and to subvert, however minimally, the structures of subordination that might have led to the violations of their rights in the first place. The chapter then spells out what "engendering reparations" might mean in the light of these requirements. In summary, it means: first, avoiding formal gender discrimination in the design and implementation of such programs; second, looking for ways of ensuring that patriarchal norms and sexist standards and systems of values do not leak into reparations; and, third, exploring ways to optimize the (admittedly modest) transformative potential of reparations programs so that they serve to advance toward the ideal of a society altogether free of gender subordination. I try to show that taking all of this into account has an impact on how reparations programs are designed and implemented. Specifically, it affects the selection of the crimes or violations for which there will be reparations, ensuring, for example, that crimes that affect predominantly women are not left out of the list of those that trigger access to reparations programs; the definition of the notion of "beneficiary," which should reflect that violations of rights may affect male and female victims disparately, and that generally these violations affect families and communities and not only individuals; and the design of the packet of possible benefits in favor of those that will best reach women and address the multifaceted harms they experience and, to the extent possible, help women move beyond the socioeconomic status they held before the violations.

Following these two chapters is a set focusing on specific topics that are of particular importance for the issue at hand. **Chapter 3** is devoted to the reparation of sexual and reproductive violence. In spite of systematic underreporting, it is well documented that both under repressive regimes and in large-scale civil conflict women and girls are often subject to many forms of sexual and reproductive abuses, including rape (sometimes mass and multiple), sexual amputations, forced prostitution, sexual slavery, forced unions, forced impregnations, forced abortions and sterilization, and other forms of sexual denigration. Men and boys are sometimes subject to similar forms of abuse, although in view of widespread cultural prejudices that "feminize" male victims of sexual violence, the underreporting in such cases is even more severe. Recent (implemented or at least recommended) reparations programs and measures, such as those in Peru, Guatemala, Rwanda, Sierra Leone, Timor-Leste, and Morocco, have reacted to the widespread use of sexual and

reproductive violence and explicitly include sexual violence among the violations that entitle victims to reparations. In this chapter, Colleen Duggan and Ruth Jacobson address the challenges and possibilities of repairing victims of the many forms of sexual and reproductive violence, providing the most comprehensive overview of the forms of reparations that have been either implemented or recommended in the past and identifying best practices and suggesting possible innovations in the field. The challenges of coming up with adequate reparations measures for victims of sexual and reproductive violence include taking into account the variety of harms that these violations can produce, such as loss of status, communal ostracism, material destitution, contraction of sexually transmitted diseases, other harms to victims' reproductive and mental health, and the bearing and raising of unwanted children. Special difficulties for reparation come from those harms that follow not directly from the violation itself but from the reaction to the violation on the part of the spouse, extended family, or community (such as harm to the person's social status, impossibility of remarrying, repudiation by the husband and other family and community members, etc.), all of which suggest the need to come up with innovative ways to deal with reparations targeting both the individual and her environment while being careful not to reinforce sexual stereotyping or entrench sexual bias. The fact that sexual violence is the only crime for which victims themselves are often blamed is only one of the reasons that repairing this kind of violation is a particularly daunting enterprise.

It is well documented that both boys and girls are subject to various forms of abuse, including illegal detention (together with their mothers), forced recruitment, abduction and forced removal from their families, sexual abuse, sexual and domestic labor, slavery, forced marriage, and amputations, among others. Children also bear some of the most serious consequences of violations committed against their parents, such as executions or illegal detention, which can result in upbringing in an orphanage or a single- or child-headed household. Gender seems to play a significant role in the type of abuse that girls and boys more commonly experience, with girls being more often subject to sexual violence, sexual and domestic labor, and forms of slavery, and boys to forceful recruitment for combat. Also, violations affect boys and girls in gender-specific ways. Finally, given that in many societies women are the main caretakers of minors, the differential impact on whether children become beneficiaries of reparations measures on women is undeniable. All of this explains the importance in a volume such as this one of Dyan Mazurana and Khristopher Carlson's [Chapter 4](#), "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations against Girls and Boys during Situations of Armed Conflict and under Authoritarian and Dictatorial

Regimes.” Their study classifies the forms of violations and harms that children and youth experience most typically in times of political turmoil as a result of violent acts that target them or their parents. It then looks systematically at the experiences, possibilities, and challenges around repairing children for the harms they endure, placing the emphasis on the need to consult them and include their voices in reparations processes and to draft programs that enhance the visibility of children as rights bearers and not only dependent family members.

Whereas many of the forms of violence committed under dictatorial regimes and during large-scale ethnic and civil strife target men for their political activities, family members – particularly in societies predominantly organized around the family structure embracing the breadwinner model – are not only severely impacted by the violations committed against men, but also sometimes directly targeted for abuse because of their status, precisely as relatives of those who will become the “primary” victims. In either case, parents, partners, spouses, and children of the disappeared, executed, or detained persons are often left emotionally desolate and economically destitute. This is especially true of partners and spouses who are left with the entire burden of raising a family without a breadwinner, often in societies where women lack income-generating skills, have little education, and may even be stigmatized for their involvement in activities outside the home. Ironically, these are precisely the women who, in most experiences, lead the fight for justice and truth about their loved ones, frequently relegating reparations claims for their own suffering and hardship to the bottom of their list of claims. In [Chapter 5](#), “Repairing Family Members: Gross Human Rights Violations and Communities of Harm,” I, along with Clara Sandoval and Catalina Díaz, address the challenges, possibilities, and experiences of repairing the family members of victims of grave violations of human rights. The chapter is ambitious in its scope as it tries to provide a comprehensive account as well as a critical analysis of how the subject matter has been treated under the case law of the European Court of Human Rights and the Inter-American Court of Human Rights, and by national reparations programs. Among other things, the article underscores the importance of departing from a succession paradigm, according to which family members will receive reparations only if their loved ones have died or disappeared, in favor of one that recognizes the need to repair next of kin in their own right for the moral and material harm they experience as a result of the violations.

[Chapters 6](#) and [7](#) shift the focus from forms of victimization and categories of victims and beneficiaries to forms or modalities of reparations. In [Chapter 6](#), “Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary

In this regard, certain recent and innovative approaches deserve to be highlighted. Among them are several initiatives of Timor-Leste's Commission for Reception, Truth and Reconciliation, which, in view of the severe impact of violence on women, decided to dedicate 50% of the funds allocated for reparations to women, in the hope that this would push the follow-up body in charge of implementing the recommendations to create strong gender policies.¹⁹ The commission's reparations program (which, unfortunately, has not been implemented as of yet) would also allow women to qualify for benefits under multiple criteria, so that women who suffered sexual violence or had a child from rape could be seen as receiving reparations for other harms and in this way escape stigmatization. The program would also provide collective reparations to communities, making gender balance of beneficiaries a condition for supporting such programs. It would also link the distribution of benefits to qualifying children to the provision of services to their mothers as a way to encourage women to think about themselves, specifically offering services to women in the same place they have to visit to get the scholarship stipends for their children. Finally, Timor-Leste's commission recommended keeping its list open for two years after the closing of operations to ensure the completeness of its reparations policy.

The "complexity" of a reparations program refers to the diversity of benefits that it distributes.²⁰ Whereas very simple programs limit themselves to the distribution of payments, the evolution toward increasingly complex programs is shown by the fact that reparations programs now often incorporate – together with payments – health, education, and housing services and symbolic measures of redress, often addressed at both individuals and collectivities. Reparations programs best accomplish one of their main goals – to provide recognition to victims – if they reflect awareness of how the different types of violations affect victims, and if they craft their benefits accordingly, so as to help victims move forward with their lives in concrete ways. Given that the effects of violence are often gendered, complexity brings with it the possibility of targeting benefits flexibly so as to respond to women's specific needs more closely. For instance, sexual violence has multifaceted effects on women's lives, and it is not clear that the payment of compensation money, important as it may be, can *by itself* provide adequate reparation.²¹ Hamber and Palmary's

¹⁹ See Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims," in *What Happened*, 284–334.

²⁰ de Greiff, "Introduction," 10.

²¹ See Colleen Duggan and Adila Abusharaf, "Reparations of Sexual Violence in Democratic Transitions: In Search of Gender Justice," in *The Handbook*, and Duggan and Jacobson, in this volume.

chapter in this volume illustrates this point with the story of the so-called “comfort women,” women who were exploited sexually by the Japanese army during the second world war and who have since always insisted on the importance of monetary payments being accompanied by the proper form of apology.²² More generally, although including compensation payments in a reparations program may be essential to enhance women’s economic independence, relying exclusively on monetary payments may prove inadequate reparation for a variety of reasons, including the possibility that the money will end up in men’s hands and the fact that, when asked about reparations, women tend to prioritize the provision of services.²³ Mazurana and Carlson express similar skepticism in their chapter about relying on monetary compensation as the main reparation measure when the intended beneficiaries are boys and girls.

“Integrity” (or “coherence”) is a category that has both an internal and an external dimension. Whereas “internal coherence” refers to the relationship between the different types of benefits a program distributes and is achieved when the different benefits support each other in the achievement of the underlying aims of the program, “external coherence” expresses the requirement that the reparations efforts be designed in such a way as to be closely connected with other transitional justice mechanisms such as criminal justice, truth-telling, and institutional reform measures. According to de Greiff, coherence increases the likelihood that the different transitional efforts will satisfy the expectations of citizens. As he rightly points out, reparations without truth or justice may be perceived as a state attempt to buy the silence of victims and their families.²⁴ In real-life scenarios, when we talk about families of victims, we are often talking about mothers and widows of the politically detained, executed, or disappeared. These women take it as their primordial task to vindicate their loved ones via truth and justice measures, and thus for many of them, compensation in the absence of other efforts to elucidate the fate and vindicate the lives of their loved ones simply will not be an option.

External coherence is also most relevant for women in another regard, especially when applied in a broad sense to include not only coherence between the measures of transitional justice, but also coherence between justice measures and all those that form the entire package of democratization measures. To see this, it is important to bear in mind that women are often subject to multiple and standard forms of abuse and exploitation before, during, and after the conflict, and that these abuses are usually committed with almost total

²² See Hamber and Palmary, in this volume.

²³ See Ruth Rubio-Marín, “Introduction,” in *What Happened*, 20–47, and Rubio-Marín, in this volume, Chapter 2.

²⁴ de Greiff, “Introduction,” 10–11.

