



Gender and Reparations in Rwanda*

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The 1994 Rwandan genocide was one of the most grotesque and cruel events of the 20th century. Hundreds of thousands of Tutsi and moderate Hutu were slaughtered between April and July of that year. Several factors, including economic interests, land shortages, and the different social roles assigned to them by the former colonial power contributed to the severe tension between the Hutu and Tutsi, two groups that had previously coexisted peacefully. Soldiers and organized militia groups (Interahamwe) led the genocide. The international community did little to intervene. The genocide also renewed conflict between the Tutsi-dominated Rwandese Patriotic Front (RPF) and the Hutu-dominated Rwandan armed forces. While the genocide against Tutsi and moderate Hutu is widely acknowledged, the crimes against humanity committed by RPF forces are not. Isolated cases are recognized by the current regime, but authoritative sources indicate systematic and widespread RPF abuses. The fact that crimes were committed by both sides sheds a more complex light on the conflict and the functioning of transitional justice mechanisms. Instead of a single path toward reparations, various transitional justice mechanisms that address the issue have been developed in Rwanda at both the national and international levels.

At the international level, the UN Security Council created the International Criminal Tribunal for Rwanda (ICTR), which can prosecute individuals for serious violations of international humanitarian law committed in Rwanda and neighboring states. While the Tribunal recognized rape as a crime of genocide, it has dealt with few cases and cannot award reparation to victims. Victim-witnesses complain about maltreatment by the ICTR; they also feel anger and distrust towards it, believing they have no role to play in its process. In 2000, the Registrar launched a social service program to fund civil society organizations, acting through women's NGOs since the first trial involved extreme sexual violence against women. The program concentrated attention on violence against women through support services, including medical and psychological assistance. However, many victims were unaware of this program.

Nationally, the government opted initially for a strictly legal approach through individual retributive criminal justice. The government enacted the 1996 Organic Law to deal with genocide perpetrators. It also adopted a 'civil parties' system in which victims could

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become party to a criminal trial and make their civil claims before the same judge. In this system, when a perpetrator is found guilty, the judge can also award damages to the victims. The Rwandan State is convicted 'in solidum' with the perpetrators for the genocide and required to compensate the victims. Because of the enormous caseload, Rwanda has turned to a traditional community process of resolving conflicts, called Gacaca. Gacaca's main objective is not punishment, but the re-establishment of social order. In 2001, a Gacaca Law was adopted, establishing more than 11,000 local Gacaca tribunals. During the pilot phase of the 2001 law, compensation was never dealt with. Under a new Gacaca Law, adopted in 2004, the tribunals award compensation only for material damages. Other damages, such as the loss of family members or physical or psychological harm, are to be dealt with by the Indemnification Fund (FIND).

While no FIND law has been approved, several drafts were developed. According to the 2001 draft law, the FIND would compensate genocide victims in line with the damages suffered. However, in 2002 a new FIND draft was launched which would award one equal lump sum payment to all beneficiaries, independent of the magnitude of harms or losses suffered; alternatively, beneficiaries could receive social services equivalent to the proposed sum. At the time of writing, the 2002 FIND draft has not been passed. The only mechanism for reparations that has been established, in 1998, is the *Fonds d'Assistance aux Rescapés du Génocide* (FARG). Its beneficiaries are the 'rescapés,' or survivors, not necessarily all victims. The distinction is important. 'Harm' or 'loss' governs the notion of victim, while rescapé means 'having escaped' persecution. In theory, only needy rescapés would receive benefits under the FARG. Its social service packages have included education, health, housing, and income-generation. The 2002 FIND draft proposed to incorporate FARG measures into the lump sum payment as a form of reparation. Many victims who benefit from the FARG claim that it should remain separate as it is not about reparation but rather social services because they are poor.

Women, Gender, and the Conflict in Rwanda

Rwanda is a patriarchal society, which influences not only the relationships between men and women, but also women's social and cultural position. Gender relations have changed since the genocide, not only because of its direct consequences, but also because the Government of Rwanda (GoR) has used the post-conflict period to address gender issues. GoR initiatives include: increasing female participation in political life, changing the discriminatory inheritance rule to allow women to own clear title to land, and improving the female literacy rate. National civil society organizations and international NGOs and donor agencies have put the improvement of the position of women on their agendas. Their development initiatives have played an important role in raising awareness and funds for gender justice issues, but have focused less on developing a gender-sensitive approach to conflict. Moreover, socially- and culturally-embedded values and notions of gender still influence gender relations in practice. Women remain in inferior positions to men, are not expected to play an important or assertive role, and are regarded as dependents of male relatives; their social roles are as mothers and wives.

The weak structural position of women in society has affected the degree and forms of sexual and other violence they experience during both peace and war. Although violence during the genocide was inflicted upon both men and women, women were often specifically targeted, and extreme and widespread sexual violence against women, including rape, characterized the genocide. It was especially aimed at the femininity of Tutsi women, and employed explicitly to meet the political goal of total destruction of the Tutsi. Hutu women married to or affiliated with Tutsi men were also targeted, since they would give birth to Tutsi children. The consequences of the widespread sexual violence have included harm and violence that were both gender-skewed (disproportionately affecting women) and gender-multiplied (precipitating further impacts). Sexual violence caused trauma, forced pregnancies resulting in 'unwanted children,' health problems, mutilations, infertility and HIV transmission.

Sexual violence remains prevalent in post-genocide Rwanda. Rape of young girls is a household problem. There is a high incidence of domestic violence, threats of physical violence, and forced sexual intercourse directed at women. Literate, educated, employed women are most affected by community violence, suggesting that violence has been a tool to oppose women's emancipation. However, men also face risks of sexual violence, especially in Rwandan *cachots* and prisons. The violence indicates that despite the widespread public condemnation of rape during the genocide, it is still present in Rwanda. With the genocide's immense death toll among the men, women often became heads of households, but often had very few resources. Since the inheritance rules were still guided by customary law, many women had trouble accessing property of husbands or fathers. Women's inferior public position and lower levels of literacy and education contributed to their vulnerability. In addition, during the genocide women were not only victims but also perpetrators, a fact which further complicates co-habitation for surviving women.

Women's Involvement in the Articulation of Reparations

No official body or institution has ever been formally charged with the drafting of a reparations policy. The drafting processes were located primarily at the Ministry of Justice (Minijust), and the participation of others was informal. Minijust consulted civil society on the first FIND draft. Avega (an organization that unites widows of the genocide), the *Associations de Soutien aux Rescapés du Génocide* (ASRG) and Ibuka (organizations that deal with rescapés) participated in these sessions. Avega promoted a monetary approach to reparations and argued for reparations for both 'legitimate' and 'illegitimate' widows and wives. ASRG and Ibuka supported Avega's demand to compensate illegitimate wives and widows. However, the suggestion to include illegitimate widows was rejected and when the new FIND draft was launched in 2002, Avega was not informed by Minijust. The majority of ASRG's and Ibuka's comments concerned the amounts of money specified in the 2001 draft as well as more technical aspects. General victim organizations, such as these, have paid little attention to gender-specific dimensions of reparations.

Despite the presence of gender-based violence, especially sexual violence, during the Rwandan genocide and the gender-specific consequences of the violence, women and girls have not organized on this basis. All women rescapés can become members of general victims' organizations, but these are mainly led by male rescapés and do not pay specific attention to gender-related violence or gender-related consequences of the genocide. The fact that women have not organized around gender-based or sexual violence is indicative of the shame and social attitudes of rejection related to it. Setting up such an organization or becoming one of its members would involve a much too explicit and public assertion of the experience of victimization. Women in Rwanda prefer not to throw their experience into the public arena.

Engendering Reparations

The FARG

The 1998 FARG Law does not focus on specific types of harms that victims have incurred. Rather, the two most important criteria to qualify as a beneficiary are being a 'rescapé' of the genocide and massacres and being 'in need.' The law explicitly excludes as beneficiaries those who participated in the genocide. The use of the categories of genocide and massacres to define beneficiaries has not allowed for explicit reference to the many forms of gender-based violence, such as rape, sexual violence, and gender-specific mutilations. The only harms indirectly recognized are those done to orphans, handicapped, and widows, who are mentioned as explicit examples of people in need. The difficulties victims encounter include interpreting the notion of rescapé, since there are no clear guidelines. In addition, the FARG housing, education, medical, and health programs all face problems of implementation and management.

The FARG builds houses, a top priority for victims, with some assistance from international cooperation agencies. However, houses were often left for victims to finish, and most had no means to do so. Consequently, heavy rainfalls have demolished walls and unstable roofs. At the same time, since the new houses were often grouped together, women were able to establish contacts with other victims instead of having to live with old neighbors they did not trust. The downside is that many people now live too far away from land they used to cultivate and have to walk hours to reach it. Finally, the accreditation procedure was not truly transparent. Some houses were distributed on the basis of first-come, first-served, while the distribution of others was based on whether the individual knew a person from a victims' organization. Many women and widows, especially those living in remote areas, remain without proper houses.

The education program provides school assistance, mainly school fees of children in secondary school and of some university students. The most important FARG program, it is the only one generally still on track, to the detriment of all others. The FARG focus on education since 2002 has made many female victims unhappy, especially those whose children have died or who need their children's support in the household or to generate income. Others have children too young to go to secondary school. Children of genocidal rape do not yet go to secondary school, and it is still unclear if they will have access to

FARG school assistance. It is regrettable that the education program does not provide training or education to adult women, since increasing their professional skills could clearly strengthen their economic position.

The health program issues cards for free medical care at several hospitals to rescapés. This care was given both for non-genocide related diseases, such as the flu, and genocide-related diseases, such as wound infections and medical consequences of mutilation. No statistics are available on the types of care that have been provided, nor on the number of treatments. The FARG also tried to launch a trauma-counseling program, but it never really got off the ground. This program could have brought gender to the fore by, for example, including the treatments needed by women who suffered sexual violence.

Under the income-generation program, credits were given to rescapés or small associations of rescapés. Millions of Rwandese francs were spent, but the program's implementation was so poorly managed that most people spent the money without ever returning it to the FARG. Because of the program's failure, little data are available. Both men and women clearly had access to these micro-credits, but it is impossible to estimate at what rates. Here again, the FARG missed an important opportunity to reflect gender considerations in its packages, especially since income and economic survival is a daily issue for many women. An income-generation program would no doubt be most relevant for female survivors, but due to the program's overall failure it is unlikely that it will ever be restarted.

The FIND Drafts

In describing the victims eligible for reparation, both FIND drafts refer to genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994. However, in describing the harms and beneficiaries eligible for reparations, the 2001 FIND draft deals with certain types of harm separately, while the 2002 draft does not differentiate between types of harm at all. How compensation is awarded also differs between the two drafts.

The 2001 draft does not refer to the notion of rescapé, but concentrates on victims of genocide and crimes against humanity. The three harms recognized are: material loss, loss of life, and permanent incapacity. For material loss, the rightful owner receives compensation. This approach would have specific detrimental consequences for women, who almost never held legal titles on property and did not inherit from their husbands during the genocide. Regarding the reparation of moral harm linked to loss of life, the draft provides that family members with a right to reparation are: the surviving, legally married husband or wife; all the legally recognized or legally adopted children; and the parents. De facto unions are not recognized. With regard to permanent incapacity, both direct and indirect victims, namely close family members, are considered beneficiaries. The draft required a significant exercise to calculate the award. The complexity of the scales and amounts contemplated were among the reasons for the 2002 draft.

The 2002 draft does not refer to types of harm at all, thus taking the same approach as the FARG. It proposes granting a single reparation amount to all beneficiaries. It establishes three categories of beneficiaries: first, the rescapés (those persecuted because of their ethnicity or because of their opposition to the genocide); second, the children, legal partners, brothers and sisters and parents of those killed because of their ethnicity or opposition to the genocide; and, finally, those Rwandans living in Rwanda who were not in the country during the genocide but whose children, legal partners, brothers and sisters or parents were killed for the mentioned reasons. While the new draft simplifies reparations, it does not reflect the severity of the harms suffered, and consequently does not take into account the gender-differentiated impacts of those harms. As an alternative to a lump sum payment, it proposes service packages up to the amount of the lump sum. It does not provide many details on these alternative service packages, and it is possible that the FARG service packages and the FARG itself would be abrogated if the FIND is implemented. In addition, a two-track approach (lump sum or service package) risks being quite detrimental, especially to women. One risk is that the most vulnerable victims (largely women) would receive reparations through service packages, while non-vulnerable victims would receive quite a substantial sum of money. Some rescapés – mostly men—have inherited plots of land from family members killed during the genocide. Women, however, were unable to inherit land, and their economic situation is much more precarious than that of male victims. They desperately need services and several types of assistance. Thus the two-track approach may in practice entail severe gender discrimination in the distribution of resources.

In terms of beneficiaries, both FIND drafts have recognized women as beneficiaries – equal to men—but without dealing with cultural issues or contexts that may render women’s access to benefits more difficult. Neither has become law primarily because of lack of political will and issues of financing.

The National Courts

The crimes under investigation by the national courts include genocide, war crimes, crimes against humanity, and ordinary crimes committed in relation to the genocide. Sexual violence is explicitly included in defining classes of perpetrators. Members of the nuclear family, and sometimes of the extended family, are recognized as beneficiaries, but no awards have ever been paid. While compensation for rape has been awarded in certain cases, it is not clear in how many other cases it was disregarded. Furthermore, monetary compensation has differed highly, even within the same jurisdictions and for the same kinds of losses. Analyzing the reasons behind such disparate treatment is impossible since the reparation judgments have never included their legal reasoning, nor can the gender implications of it be studied since no payments have been made.

According to the 2001 Gacaca Law, the Gacaca tribunals are supposed to deal with all genocide-related cases, except for those in category one (masterminds of the genocide and those committing sexual violence). Thus women who are victims of sexual violence will have their perpetrators judged by the ordinary courts and not by the Gacaca tribunals. It seems that victims of sexual violence can raise their claims during both Gacaca

sessions and criminal trials in the national courts. It remains unclear which procedure women will prefer, but a two-track system risks making things even more complicated.

There are also other issues with the national courts: it was difficult for victims to obtain the necessary documents, cover the cost of legal defense, or attend the trials because of transport/distance problems. A government ruling declared that all documents had to be provided for free, but transportation and access to formal authorities remain difficult. Communication also proved to be a problem; often victims did not know when trials would take place. Women, especially illiterate women living in remote rural areas, are more likely to be affected because they have less dense informal networks and more difficulty accessing modern communication systems. Furthermore, there is the cultural hurdle to overcome, there are few female prosecutors or lawyers who can deal properly and sensitively with sexual violence, the burden of proof is often high, and there is fear of reprisal and social stigmatization.

Gender, Reparations and Transitional Justice

Rwandan women have not been very involved in conceiving Rwanda's transitional justice mechanisms. Their social perspective on issues such as the implementation of reparation and truth-telling mechanisms seems to differ from that of men. Many issues remain. Transitional justice mechanisms in Rwanda have primarily been conceived by the government and not by victims. Many victims still oppose Gacaca, considering it a general amnesty. Annual commemoration services are held by the government –although most survivors are women and commemorating should primarily be a survivors' issue, women are not involved in conceiving the ceremonies. The spokespersons for the victims are generally men. In addition, women remain dependent on social structures for their daily survival, which directly impacts the implementation of reparation measures. Indiscriminate use of monetary compensation may jeopardize the social relations on which women depend. Women who participate in the Gacaca tribunals and the truth-telling process may fear for their safety. Additionally, testifying may endanger women's fragile social mechanisms of daily survival.

The reparation measures, especially service packages, could be made more gender sensitive. So could the monetary compensation approach, which has the advantage of allowing victims to choose how to spend the money. This could be done by making certain services more easily available to victims –services that would now be affordable thanks to the compensation. Risks remain regarding lump sums; many victims have no experience with large amounts of money, and a lump sum approach does not address the differential impact of violations on victims. A two-track approach, in which needy victims have access to social services and non-needy to a lump sum, risks having severe discriminatory effects on women, who are almost always in more fragile positions. The imbalances of such a two-track approach should be seriously considered. It is also important to make reparations measures accessible –especially to women in remote areas. In terms of identifying beneficiaries, decentralized procedures are preferable since they facilitate access to vulnerable people –often women. Safeguards need to be built in because local social relations and clientelism can have a negative impact upon local

identification procedures. Despite all these issues, efforts to strengthen women's position are beginning to bear fruit. Yet, while general awareness on gender issues has increased in Rwanda, women still have a long path to travel.