



Gender and Reparations in Guatemala*

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Guatemala's internal armed conflict began in the 1960s and did not end until the signing of the Peace Agreements in 1996. According to two reports –*Recovery of Historical Memory, Guatemala: Never Again* [*Recuperación de la Memoria Histórica, Guatemala Nunca Más*] (REMHI), produced by the General Archbishopric of Guatemala, and *Guatemala: Memory of Silence* [*Guatemala, Memoria del Silencio*], produced by the Commission of Historical Clarification [*Comisión de Esclarecimiento Histórico*] (CEH)—during the conflict 130,000-200,000 people were murdered, 50,000 were disappeared, one million were internally displaced, 100,000 were made refugees, and 200,000 children were orphaned. Based on these figures and the rest of its work, the CEH concluded that genocide –as defined under the terms of the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the UN General Assembly—had been committed against the Mayan people.

The Experience of Women During the Conflict

Women became involved in the internal armed conflict in different ways. Many of them joined the insurgency, eventually accounting for one-fourth of all combatants. Furthermore, having lost many of their male loved ones, women increasingly assumed social leadership roles. It was mostly women who created –and have continued to lead until the present day—organizations seeking justice for their executed or disappeared relatives.

During the conflict, women were victims of both selective and massive repression. They were targeted as individuals for their involvement in community organizations, their fight for justice for executions of their relatives, and their political activism. The State persecuted women for the roles they played in the opposition movement (which the State considered an internal enemy) and for the roles they played in the public sphere (having 'dared' to break traditional gender divisions of labor). Women were also victims of massive repression because they belonged to the communities suspected by the armed forces of supporting the guerrillas.

* This is an executive summary of a case study in the forthcoming edited volume, Ruth Rubio-Marín, ed., *Engendering Reparations: Recognizing and Compensating Women Victims of Human Rights Violations*.

In their various roles, women suffered a wide range of human rights violations perpetrated by the State, including: i) extrajudicial executions, illegal detention and disappearances (23% of all executed persons were women); ii) torture (again, 23% of the total were women); iii) internal displacement and subsequent death (51% of those who died while displaced were women); iv) rape (99% of rape victims were women); v) sexual slavery and forced labor; vi) forced unions with captors or torturers; and vii) amputation and mutilation of sexual organs. Rape and other forms of sexual violence were specifically included in military training programs as practices within a strategic framework that targeted women.

Major secondary damages resulting from the above-mentioned violations included, among others: unwanted pregnancy or sterility; orphaned children (male and female); loss of material assets; loss of ties to the community and relatives; post-traumatic stress disorder; widowhood; and ostracism and isolation for having been victims of sexual abuses.

Creation of the National Reparations Program

The State's responsibility to indemnify victims of human rights violations perpetrated during the war was expressly established in the Peace Agreements of 1996. However, even before the agreements were signed, human rights organizations had demanded the investigation, prosecution and punishment of the perpetrators (understood as both direct perpetrators and those having ordered the abuses).

In 1999, the CEH, within the framework of its mandate, recommended the creation of a National Reparations Program [*Programa Nacional de Resarcimiento*] (PNR), and defined who should be considered victims and beneficiaries of the reparation measures to be implemented. Although the CEH report included a specific chapter on violence against women, the reparation recommendations failed to reflect the importance given to this issue, mentioning only the fact that women's organizations should be represented in the PNR's executive body and that, among beneficiaries, widows should be given priority.

In order to follow the CEH recommendations (exactly as stated), the Multi-Institutional Office for Peace and Harmony [*Instancia Multiinstitucional para la Paz y la Concordia*] was created in 1999. This body was formed by 50 organizations –12 of them are women's organizations, including: organizations of displaced women (formed by women only and focusing on economic and social issues, such as access to land); war victims organizations (formed and led mostly by women and focusing on memory and truth and justice issues); several committees of widows and orphans; and feminist organizations (focusing on women rights).

Beginning in 2001, the Multi-Institutional Office undertook several initiatives aimed at creating a National Reparations Program. The participation of feminist activists and women's organizations, as well as the inclusion of chapters specifically dealing with women's human rights violations in both truth reports, had a clear effect on the PNR proposals, which to a certain extent reflected a concern with the issue of violence against

women. However, neither feminist organizations nor victims' organizations gave priority to this issue. The former focused on the struggle against current forms of violence against women (domestic violence, sexual abuse, etc.) and the latter on the search for justice related to dead or disappeared relatives. Although indigenous people's organizations did approach the issue of widowhood, they also focused on access to land issues and, particularly, on achieving recognition of the genocide against the Mayan people.

In 2003, the government finally approved a plan to set up the National Reparations Program, which would be chaired by the National Commission for Reparations [*Comisión Nacional de Resarcimiento*] (CNR). The PNR was created by Executive Decree 250-2003 and has been subsequently modified by Executive Decrees 188-2004 and 619-2005. On 3 February 2005 the Regulations of the PNR were approved, but were then derogated in December of that year by Executive Decree 43-2005. Three more documents have been elaborated by the CNR to guide its operations: the Handbook for the Qualification of Victims and Beneficiaries of the National Reparations Program [*Manual para la calificación de víctimas y beneficiarios del Programa Nacional de Resarcimiento*] (hereinafter, Handbook); Reparation Measures of the National Reparations Program [*Medidas de Resarcimiento del Programa Nacional de Resarcimiento*] (hereinafter, Reparation Measures); and Guidelines for the Implementation of the PNR (approved on 26 July 2005). These documents provide guidance regarding the gendered nature of the determination of the crimes and harms to be repaired and the benefits and beneficiaries of the reparations program.

The ongoing legal reforms and the changes in the direction of the PNR make it very difficult to foresee which policies it will follow and which of the documents approved by the CNR will remain in force. As many of the statements in the following pages refer to these documents, it is important to bear in mind that they might be changed in the near future. The fate of the PNR would be significantly improved if Congress passed a law that institutionalizes it, thereby preventing it from being further subject to political changes.

Engendering Reparations

a) Definition of Violations to be Repaired

The PNR, as modified by Executive Decree 619-2005, includes the following as crimes to be repaired: forced disappearance; extrajudicial execution; physical and psychological torture; forced displacement; forced recruitment of minors; sexual violence and rape; violations against children; massacres and 'other violations.'

The mere inclusion of sexual violence and rape as an independent, specific crime is generally seen as a step forward, as is the fact that economic compensation will be granted in cases of rape. The inclusion of violations against children and forced displacement is also to be celebrated because of the way in which these violations specifically and negatively impacted women. Unfortunately, though, other violations

were excluded from this list, including forced labor, forced unions with captors or torturers, and amputation and mutilation of sexual organs.

The PNR defines sexual violence and rape in the Handbook (Section four, “Violations,” article 16) as “aggression by men against women, in captivity or under coercive conditions when such conditions are used to the advantage of consummating the various acts of sexual contact or physical or psychological aggression. Other instances of sexual violence include sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and other sexual abuses of comparable seriousness.” This definition was strongly influenced by the Rome Statute, especially regarding the inclusion of forced pregnancy, sterilization and prostitution, even though no instances of the latter were documented by the CEH.

b) Definition of Beneficiaries and Benefits

The PNR considers as victims and beneficiaries those who directly or indirectly, individually or collectively, suffered human rights violations and crimes against humanity. This is a comprehensive definition, since people are considered victims not only if their rights were directly violated, but also if they suffered the indirect effects of violations, as did relatives of a disappeared or executed person. However, in practice, the definition of victim has been narrowed to those who directly suffered human rights violations. Family members will only qualify as beneficiaries if the victim has died or disappeared and if they are direct relatives (i.e. parents, children, spouses or partners, and, only if the latter are not available, siblings). This differs from the definition of inheritors under national legislation by including ascendants, who, under the said legislation, may only inherit if the deceased has no children.

The PNR, as reformed by Executive Decree 619-2005, also establishes criteria to set priorities among the individual beneficiaries. These include the seriousness of the violations and the socioeconomic condition and social vulnerability of beneficiaries. Also, special attention must be paid to widows, orphans, disabled persons, senior citizens, and minors. Although these criteria seem to potentially benefit women, no one knows how they will be applied in practice. No distinctions are made between civilians and combatants. However, those responsible for serious human rights violations, as well as civilian patrol members who have already received compensation from the State, are excluded from reparations.

The PNR is an integrated program made up of individual, collective, or mixed measures, including the following: material restitution, economic indemnification, psychosocial reparations, rehabilitation and dignifying measures for victims, and cultural reparations.

Material restitution measures aim to reestablish the material situation of victims prior to the violations, or to compensate for loss resulting from the violations. So far, the focus has been on land restitution, housing provision and productive investment. Victims of rape or sexual violence, like victims of torture, do not qualify for material restitution, even though they may face a serious loss of their productive opportunities as a result of

stigmatization, sterility caused by rape, or having to bring up children resulting from rape. However, the public policy document on reparations approved in 2003 provides that affirmative action type measures must be included in the restitution of land. This aims at protecting women's right to property when their husbands have died as a consequence of the armed conflict, and takes into account women's difficulties in accessing land titles under customary law.

Regarding indemnifications, a monthly pension system was initially discussed but eventually discarded. Instead, in September 2005, an agreement was reached to make a single payment of 24,000 Quetzals (US\$3,200) to each victim of extra-judicial execution, death in massacre or forced disappearance, and a single payment of 20,000 Quetzals (US\$2,667) to each survivor of torture, sexual violence and rape.

In the case of victims of extra-judicial executions, death in massacre, or forced disappearance, the beneficiaries of the indemnification are direct relatives (father, mother, sons and daughters, spouse or partner) who will all receive equal shares; if there are no direct relatives as defined above, the beneficiaries will be siblings. This distribution is different from that provided by the national legislation, which awards half of the assets to the surviving spouse and divides the other half among the inheritors. In fact, the PNR should have followed the criteria established in the national legislation, since it better reflects the more acute needs of the widow or widower, particularly when the children rely on him/her for basic support.

Regarding the remaining measures, the only ones that pay specific attention to women are psychosocial reparations and rehabilitation, which refer to psychosocial assistance aimed at female victims of sexual violence. Dignifying measures and cultural reparations still fail to include any type of specific compensation for human rights violations suffered by women. At the time of writing, the only measure aimed at dignifying female victims of sexual violence and rape has been the publicity given to the CEH report. At the very least such publicity serves to acknowledge women's experience in the conflict, a reality that is too often ignored.

Women's Obstacles in Accessing Reparations

At the time of writing, the PNR has gathered approximately 3,800 testimonies, most of which have come from women. However, no reparations have been awarded –in spite of the fact that a yearly budget of 300 million Quetzals (approximately US\$37.5 million) has been specifically allocated for this purpose. The State's weak commitment to the PNR seems to be the major obstacle preventing victims of human rights violations from accessing reparations. Certainly, however, divisions among civil society organizations have also made this struggle more difficult.

Among the obstacles faced by women seeking reparations, it is important to make specific mention of the following: understatement and invisibility promoted by (male and female) political players regarding the magnitude of the human rights violations perpetrated against women during the conflict; fear and social shame still felt by victims

of violent acts, particularly those of a sexual nature; fear of the State machinery that was aimed at fighting the insurgency, which has not yet been dismantled; women's illiteracy and lack of identity documents, particularly among indigenous women; and difficulty accessing PNR offices by women living in the interior of Guatemala.

Conclusions and Policy Recommendations

In general terms, women, women's organizations, and victims' organizations (mainly led by women) have been actively involved in the peace process before, during, and after the creation of the PNR. Their continued involvement has helped surface gender-relevant aspects of violations of human rights committed during the internal armed conflict—such as the recognition of the widespread use of sexual violence against women—and led to the inclusion of sexual violence among the violations to be repaired by the PNR. Moreover, women's participation has increased in each subsequent stage of reparation planning, bringing with it continued progress in acknowledging relevant facts about gender violence. Each of these spaces for participation and advocacy, along with the acknowledgement by the State of the existence of violence against women during the war (including its own responsibility thereof), have been, in themselves, reparation measures. The opportunity to speak out and be heard is often highly valued by women. There is still a long way to go, however, for all this to be translated into concrete practices.

Several positive and negative lessons can be drawn from the way reparations have been conceptualized and articulated in policy recommendations and the impact this could have on women if the measures are ever to be implemented. Among the positive lessons, the fact that rape and other forms of sexual violence have been considered serious crimes to be explicitly repaired through indemnification should be underscored. This is a significant step forward which may, in the long run, convince survivors to speak out more about their experiences. However, it is regrettable that the definitions of crimes in the PNR fail to respond to all of the forms of sexual violence documented by the CEH while including others covered by the Statute of Rome, the occurrence of which was not documented in Guatemala. Furthermore, considering the stigmatization, ostracism and shaming suffered by widows and women survivors of rape, some measures beyond the programs of psychosocial rehabilitation are called for, including public recognition and official apologies for all types of violations committed against women—especially acknowledgement from the military, security forces, and local and community authorities that sexual violence was used as a weapon against the insurgency, and corresponding official apologies from those bodies.

The comprehensive notion of victim used for the purposes of reparations, including both directly and indirectly affected persons, is to be celebrated; although the notion was then narrowed to include indirectly affected persons as beneficiaries only when the primary victims had died or disappeared. Also positive are the reference to widowhood as a criterion to set priorities among beneficiaries and the inclusion of children and adolescents as victims. Finally, another step forward is the complex scope of the PNR, which covers not only economic reparations, but also psychosocial reparations, dignifying measures, and recovery measures in respect of the Mayan culture.

The only measures that have not yet expressly been included –and that are key to building peace in Guatemala—are guarantees preventing repetition. Such measures are necessary and could include the following:

- Adding specific training to the curriculum of the Armed Forces and National Civilian Police on the consequences and prevention of individual and collective sexual violence;
- Implementing a change to Guatemala’s criminal code to include as aggravating circumstance the fact that a perpetrator of rape is a member of the security forces;
- Developing a public education policy to prevent sexual violence against women, based on the events that occurred during the internal armed conflict;
- Developing a public literacy and access to reproductive health policy aimed at women, based on the events that occurred during the internal armed conflict; and
- Purging the security forces, particularly the National Civilian Police, of members involved in human rights violations, and investigating and punishing those responsible for women’s human rights violations.

Measures to address the vulnerability of women should also include an identity documents plan covering women in rural areas, as well as measures guaranteeing women’s access to land, education, and health.