

Gender and Reparations: Challenges and Opportunities

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Over a year ago, with funds from the Canadian agency (International Development and Research Center-IDRC) the ICTJ started a research project on Gender and Reparations.

The need for this kind of project was justified on the following terms:

- a) We were aware of the limits of criminal justice in scenarios of massive and systematic violations of human rights;
- b) We were aware of the fact that reparations may be the “most tangible manifestation of the efforts of the state to remedy the harms victims have suffered”; and,
- c) We recognized the fact that—although women have been known to play a crucial role during and in the follow-up of violence by searching for victims or their remains, demanding justice and trying to sustain and reconstitute families and communities—reparations programs addressed at victims have thus far not been designed with an explicit gender dimension in mind and that there was virtually no theoretical reflection as to what doing so would require.

Out of the first phase of the project, comes *Reparations for Women Victims of Human Rights Violations: Case Studies* (Rubio Marín, ed.), which will be published in Fall 2006. It comprises six case studies, including Sierra Leone, South Africa, Rwanda, Peru, Guatemala, and Timor-Leste. The authors describe the conflict or authoritarian repression in the country; women’s experiences; the terms of the debate of reparations and women’s participation in such a debate; and provide a detailed discussion of the designed, discussed and/or implemented reparations mechanisms in each country trying to elucidate the ways in which gender can play a role in decisions that are critically important for purposes of reparations.

What I plan to do in my presentation today is distill from the information that these case studies provide to identify some of items of the agenda of gender and reparations and—in relation to it—discuss challenges/opportunities of conceptualizing reparations through the lens of gender. I will touch on the

1. *Women’s agency in the articulation of reparations*
2. *What are reparations about*
3. *Identifying harms*
4. *Imagining forms of redress*
5. *Reaching out to female victims*

1. *Women's agency in the articulation of reparations*

One of the most interesting commonalities that the chapters point to is the fact that although women tend to be in general quite active in movements for justice and reparations, they generally rely on structures that do not encourage them to think about the ways in which they have been victimized as individuals and as women. Women tend to speak and act more about the victimization of others (usually close family relatives) than of their own. They typically channel their participation through general human rights organizations, or organizations of victims or families of victims and only occasionally do they organize around gender specific aspects of their victimization (such as when they mobilize through widows' organizations).

For a variety of reasons, feminist organizations or women's rights organizations tend to be largely absent from the discussions of reparations or even, more broadly, from those about how to deal with the past. [Some of the recurrent reasons accounting for this have to do with the fact that women's groups are often too busy facing the challenges of the present: official peace does not usually mean peace for women who—after the political turmoil—have officially ended continue to be subject to many forms of violence, often in the private sphere. Also, the energies of women in times of transition often and understandably go to seizing the window of opportunity for structural and institutional long term reforms.] While there are no good reasons to think that many of women's interests cannot be well represented by broader organizations, there are good reasons to think that not having any participation of these groups in discussions about reparations may introduce gender bias in the way in which reparations policies are shaped.

2. *What are reparations about*

It has been argued that the ideal of *restitutio in integrum* (reverting the victim to the status prior to the violation) or even that of compensation in strict proportion to harm may not be the best ways to think of reparations when one has a large pool of victims of gross violations of human rights. However, once the tidy –however unachievable- notion of trying to erase the consequences of the violation by reverting the victim to the *status quo ante* is given up, the notion of reparation opens itself up to an array of competing meanings. For instance, should reparations then still be primarily conceived as **compensating** victims, however minimally and imperfectly, for harms or losses endured? Should the emphasis be placed on the notion of **rehabilitating** victims and facilitating a sense of closure on their part so as to allow them to move forward with their lives? Should reparations be perceived as a way of giving **recognition** to victims for what they have endured or for their condition as equal citizens and rights holders? Should the emphasis be laid instead on reassuring victims that they will no longer have to face similar violations in the future?¹ Because the competing underlying rationales may affect

¹ In fact, in the context of international law the term reparation for victims of gross violations of international human rights has taken a broad diversity of forms including measures of *restitution*, which refer to those measures to restore the victim to the original situation before the violation including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return to property; *compensation* for any economically

the specific way reparations programs are designed to allocate material and symbolic resources either on an individual or collective basis, there are legitimate reasons to inquire whether women, or most women, would want to privilege one of these goals over others. Just as important seems understanding the reasons that may account for differences in expressed preferences.

Many of the authors in this book point to the pattern according to which, when consulted in the aftermath of conflict or authoritarianism about the form of redress that they would favor, many female victims express preference for having services to meet their basic needs and those of their family members over restitution of lost property or monetary compensation in proportion to harm or for lost opportunities. For instance, common demands formulated by women include services for their medical and psychological rehabilitation and that of their families, but also education for their children and housing related assistance.

There may be several competing interpretations for this. It may be an indicator of women's overall levels of poverty and destitution and the fact that women simply seize whatever opportunity is provided to them to have their most basic needs addressed. It may also be an expression of their lack of consciousness of rights entitlement or information –if women knew that these basic things are things they have a right to as citizens and that as victims of violations of other human rights they are entitled to others' benefits, for instance in the form of compensation, they certainly would claim such benefits. Alternatively, one could make the argument that the notion of rehabilitation or reintegration of the victim (which is defined around the aspirational notion of a functional life) is indeed better suited to reflect the complex and diffuse nature of the harms women experience before, during, and after the conflict, than are the notions of compensation or restitution which seem to require the identification of discrete and easily quantifiable losses and/or the idealization of the *statu quo ante*.

3. Identifying Harms

One of the clearly promising signs is the tendency that the country studies point to of including gender specific forms of harms, such as sexual violence, in the list of violations

assessable damage as appropriate and proportional to the gravity of the violation including physical or mental harm, lost opportunities including employment, education and social benefits, material and moral damages; measures of *rehabilitation* including medical and psychological care as well as legal and social services; measures of *satisfaction* including, among others, the verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims and *guarantees of non-repetition* including measures to contribute to prevention such as ensuring effective civilian control of military and security forces, protecting human rights defenders, providing human rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law. See Human Rights Resolution 2005/35 on 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. E/CN.4/2005/L.48, 13 April 2005

that trigger reparations.² Many authors of the book regret though that some other forms of violence that target or affect women not yet have been included. For example, several authors criticize that forms of violence that target or affect reproductive function or capacity have not been adequately conceptualized in the reparations debates because they have either been left out or lumped together under the common banner of sexual violence even if the offense is not strictly the same.

One of the exciting things about the reparations debate from women's perspective is that it focuses on victims and harms in a way that goes beyond the notion of right-holder to include, for instance, close family members/or communities who are also harmed by the violation. This seems especially promising for women to the extent that they are primarily responsible for and dependent on these family and communal network systems end up bearing the brunt of those harms.

The potential of this harms-based extension to the notion of victim that takes it beyond that of the right-holder is highlighted by all of the authors. However, the concretely proposed or approved reparations policies in the countries analyzed give us reasons only for cautious optimism as to whether this potential will be actualized

On the one hand, the dominant tendency seems to be to formally recognize family members of right holders affected by the violation under the notion of victim, but to recognize them as beneficiaries of reparations measures only when the right holder is no longer living (widows are in, spouses of political prisoners are out). Although the fact that these are reparations and not inheritance has allowed to bypass shari'a law inheritance law in Morocco that clearly discriminates against women. Other promising signs might be the tendency to supplement individual with collective forms of reparation that try to restore some of the public resources and the social tissue that women so heavily rely upon in their ordinary lives.

4. Imagining forms of Redress

Beyond the broader question of what reparations are or should fundamentally be about, there is the more specific question as to how to imagine forms of redress that fulfill the specific needs of women, that steer away from reproducing gender subordination and that seize the opportunity of change to advance toward a more egalitarian society in terms of opportunities given to both sexes.

² Among the implemented reparations programs the example of South Africa offers an interesting contrast to this new trend. In South Africa's reparations program it was provided that reparations would be awarded to victims of 'gross violations of human rights' defined as 'the killing, abduction, torture or severe ill treatment of any person'. Although sexual violence was not explicitly mentioned, in the end several forms of it were included as falling under the concepts of "torture" and "severe ill treatment" including assault to genitals and breasts, rape, beating leading to miscarriage and sexual abuse (see Beth Goldblatt). More recent (and mostly as of yet unimplemented) reparations programs or laws that explicitly include some forms of sexual violence among the list of violations for reparations purposes include those in Peru (rape) (see Guillerot in the volume) and Guatemala (rape and sexual violence) (see Paz in the volume). The reparations programs recommended by the Sierra Leone and Timor Leste's Truth Commissions also include victims of sexual violence (see King and Wandita in the volume).

For instance, many reparations programs include symbolic measures of redress some of which can indeed be best framed as providing victims due recognition, but very few seem to have addressed the question of whether women may require specific forms of symbolic redress in general, or for certain types of violations, such as those of sexual nature.³

Also, the notion of material compensation presents us with interesting alternatives and challenges. As this book shows, there seems to be a broad range of variation among different programs as to the degree to which different victims should be prioritized in the distribution of material benefits depending on their preexisting or continuing vulnerability or on their situation of need. Given women's overall subordination to men is it not surprising that the decision has a gendered dimension. The fact that, as in the reparations program recommended in Sierra Leone by the TRC, war widows, victims of sexual violence and children are among those given relative advantage when vulnerability is taken into account and that, as in South Africa's interim reparations measures, the number of dependents can be one of the criteria relied upon to assess the degree of need of the victim for reparations purposes, shows some of the practical gender implications of opting for this approach. Beyond this, there is the broader question of the yardstick used to assess the harm or lost opportunity for the purpose of material compensation and whether or not it incorporates or reproduces gender biases. For instance, one recurring theme in some of the chapters in this book is how employment disability insurance schemes that are sometimes relied upon to assess loss of income generation potential may be ill suited to assess the material destitution of victims of sexual abuse who are abandoned by their partners, ostracized by their communities or rendered unmarriageable or to assess harm done to women with imposed children or loss of reproductive capacity.

5. Reaching out to Female Victims

All the authors in the volume seem to agree that procedural aspects may be just as important as substantive ones in determining whether female victims actually receive reparations benefits. One lesson that can be drawn from the past is that tying the access to reparations of female victims to participation in truth telling mechanisms means depriving many women of reparations. Both the South African experience and that of Timor Leste with the Urgent Reparations implemented by the Truth Commission show how forcing women to "come out" as victims to qualify for reparations may have a largely inhibiting effect, especially for victims of sexual violence who hold back because of shame or fear.⁴

³ The fact that sexual violence has traditionally been considered "private" would encourage seizing the opportunity of reparations to restore victims of sexual violence to their status of citizens whose rights have been violated. On the other hand, given that part of what harms sexually assaulted women has to do with the system of collective meanings attached to the experience of having been subject to sexual abuse, what forms of recognition are specifically called for in an instance like this are far from clear.

⁴ Similarly, all authors raise the issue of the need of adequate rules of evidence and confidentiality for victims of sexual violence in the process to decide and implement reparations.

Beyond this, all the chapters raise broader questions of access for women, and not only for victims of sexual violence, having to do with women's greater difficulties to comply with formal requirements (such as id, certificates, official documents, etc), their greater difficulty in accessing information (linguistic barriers, illiteracy, etc) or having a bank account, their degree of involvement in civil society organizations that function as intermediaries in either the identification and registry of victims or the delivery of services, and the geographical distance from the instances that decide on reparations or deliver services. The most recently recommended reparations program of those analyzed here, the program recommended by Timor Leste's Truth Commission comes up with two innovative ways of surmounting some of the obstacles of this kind such as linking the delivery or services to women to the access of benefits to children (to ensure that women care about themselves and not only about their children) and the earmarking a 50% quota of the resources for reparations for female victims to make sure that the mechanism in charge of implementation makes a sufficiently strong effort to reach female victims.⁵

To conclude, let me inform you that the reparations program recommended in the Final Report of the Timor-Leste Commission for Reception, Truth, and Reconciliation (launched in November 28, 2005) includes gender as one of the five guiding principles that inspires its conception⁶. Other than including sexual violence as forms of victimization that call for reparations, little consensus or even reflection as to what this requires has been given so that we may find ourselves in one of those instances in which the results of previous political struggles by feminist movements have borne fruit before serious reflection has been given as to the concrete ways in which this can be adequately capitalized

⁵ Also, it may be worth thinking about ways of distributing the benefits, such as providing pensions rather than lump sum payments, to ensure that more families and more women actually touch the benefits. In short, whether the limited resources that any given country is willing to devote to redressing victims at any given point in time will actually reach women will often have less to do with fancy conceptualizations about the ultimate goal of reparations than with the much more rudimentary issue of process and implementation.

⁶ See Gender and Reparations in Timor Leste, in this volume. Also, Morocco's Equity and Reconciliation Commission, set up in 2004 and with a mandate that lasted until December 2005, held a 'National Forum on Reparations' in Rabat in October 2005 announcing that gender mainstreaming would be one of the priorities in its reparations policy.