

# Reparations and Victim Participation: A Look at the Truth Commission Experience<sup>1</sup>

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## A. Introduction

The design and implementation of reparations for victims in the aftermath of large-scale and serious human rights violations is an area rife with challenges. These processes generally unfold in contexts of transition, in which state institutions mandated to guarantee the rule of law are weak, corrupted, or nonexistent, and victims are often focused on meeting their most basic daily needs. Investing in victims' rights – whether in terms of political capital, meaningful and ethical messages of acknowledgment, or budgetary allocation – is often low on the list of priorities of both national and international actors in these contexts. Yet reparations are about more than just responding to victims' basic needs; reparations must respond to the real impact of violations in victims' lives and at the same time be received as sincere efforts on the part of the larger society to acknowledge what happened and to provide some real measure of justice to those harmed. The design and implementation of reparations must consider both material as well as symbolic dimensions of such recognition and acknowledgment in order to ensure that reparations are both legitimate and just.

The participation of victims in this process is a complex undertaking, fraught with difficulties. It can provoke unrealistic expectations, but it can also be a crucial element in devising and delivering meaningful reparations. Moreover, it may help reparations play an important role in the broader agenda of achieving justice and modeling respect for human rights and democracy.

This paper reflects on the advantages and difficulties of victim participation in the design and implementation of reparations policy. We draw on the experience from a number of countries, highlighting Peru's ongoing experience as well as Chile's extensive history in this regard.<sup>2</sup> Peru's Truth and Reconciliation Commission (CVR for its acronym in Spanish) recommended a reparations plan in 2003 to address two decades of abuses on the part of both government and insurgent forces that affected many thousands of victims, their families and communities. This plan was, in large part, passed into law two years later and is currently in the process of implementation on several fronts. In Chile, reparations were implemented first for family members of victims who were disappeared or executed, and followed several years later by the extensive documentation of victims of political detention and torture, again leading to reparations. These two cases help us to examine some of the issues we raise here in greater

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<sup>1</sup> Chapter excerpted from Carla Ferstman, Mariana Goetz and Alan Stephens, Eds., *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity*, Brill Academic Publishers (2009) <http://www.brill.nl/default.aspx?partid=210&pid=28759>

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<sup>2</sup> For more detail on the Peruvian process through 2005, see Julie Guillerot and Lisa Magarrell, *Memorias de un Proceso Inacabado: las Reparaciones en Peru*, ICTJ, OXFAM and Asociación Pro Derechos Humanos (APRODEH), Lima (2006), <http://www.ictj.org/static/Peru.Reparations/Memorias.Peru.esp.pdf>.

depth, but we must recognize that the scope of the topic is much broader than can be dealt with in this brief article. While we have limited ourselves to reflections based on cases in which reparations have followed truth-seeking mechanisms and only a small set of examples at that, we hope that the lessons taken from these may be relevant more broadly. Certainly this is an issue ripe for additional research and analysis.

Within this modest frame of reference we look first at the underlying challenge: how to honour the right to reparation and ensure that the State carries out its obligation in this regard. We then consider the nature of victim participation, its value to both reparations and transitional processes more generally, and some of the threshold challenges of expectations, representation, and types of participation. Through case examples, we then take a more detailed look at how the issue plays out in three key phases of a reparations process: defining the debate, determining reparations policy, and delivering reparations to victims. Throughout, and in conclusion, we offer some suggested lessons which we hope will be useful not only in the context of reparations processes in relation to truth-seeking, but more generally as well.

### *B. The Underlying Challenge: Reparations in the Face of Massive Abuses*

The obligation of states to provide reparations is set out in the United Nation's *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.<sup>3</sup> While it is now fairly established that this duty includes some combination of restitution, compensation, and rehabilitation, bolstered by steps to prevent recurrence and to provide other measures of satisfaction for victims, the exact content of any reparations programme for massive violations is not prescribed by law.<sup>4</sup> In the aftermath of massive or systematic violations or more generalised conflict, providing reparations in a meaningful way is particularly difficult. The number of victims may be massive; harm may be devastating and irreversible and felt individually and collectively in the short and long term. When these abuses have become the norm rather than the exception, institutional guarantors such as courts or other arbiters of redress can be overwhelmed by the scale of the challenge, destroyed in the conflict, or corrupted by political interference.

The adoption of an administrative reparations programme may allow the state to provide adequate reparations to a greater number of victims than that which might have access to a judicial forum for their claim and the proof to go with it.<sup>5</sup> This is particularly important if one

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<sup>3</sup> Adopted and proclaimed by General Assembly Resolution 60/147, 16 December 2005. Accessible at: <http://www.ohchr.org/english/law/remedy.htm>.

<sup>4</sup> It is worth noting that recent truth commissions are making a contribution to the development of law in the area of reparations. Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR), the Ghanaian National Reconciliation Commission (NRC), the Moroccan Equity and Reconciliation Commission (IER), the Peruvian CVR, the Chilean National Commission on Political Prison and Torture, and the Sierra Leone Truth and Reconciliation Commission (TRC) all refer to the UN basic principles and guidelines on reparations or to their draft versions before they were officially adopted. By doing so, they continue to reinforce the status of these principles in international law, while gradually helping to define the contents of the duty to make reparations in circumstances of massive and systematic violations of human rights and humanitarian law.

<sup>5</sup> On reparations generally, see Lisa Magarrell, "Reparations in Theory and Practice," ICTJ (2007) at <http://www.ictj.org/static/Reparations/0710.Reparations.pdf>; Ruth Rubio Marin, Ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council, New York

considers that the victims who are most economically or geographically marginalised – often the great majority – have the least possibilities to effectively demand their rights in a judicial forum. Additionally, an administrative reparations programme can consider the larger context and both individual and collective dimensions of harm, in ways that may be more comprehensive and holistic than remedies that a court could devise.

In designing an administrative reparations programme one must know to at least a reasonable degree of certainty, the size of the victim population, the kinds of violations suffered and their immediate consequences. Truth commissions help to uncover this information, but not always all that is needed for determining reparations programmes, including demographic information about victims, their families and communities. And while they do a good job of bringing victims' narratives to the fore, not all victims engage with truth-seeking processes, so that additional efforts are required to identify the full range of victims and harms involved. When no prior truth-seeking efforts have been undertaken, some form of documenting these aspects of what happened will be required.

Reparations programmes deal with a number of other variables that must be considered and weighed in terms of how best to respond to the crimes and the harm, to the satisfaction of victims. These include, what types of measures should be designed for which victims, whether individual or collective or both, and in what priority and form these should be delivered, along a continuum from purely symbolic gestures to ones that still send a message but are predominantly defined by their material nature. Decisions must be taken about how to address disparities in the experience of violence across gender, ethnic and class-based lines, as well as pragmatic issues of how to fund the process and who is responsible for it. Plans must take into consideration what is feasible, and how reparations complement and can be complemented by other measures, such as judicial processes, institutional reforms, documentation and commemoration of the truth about what happened and who was responsible, as well as larger national agendas of rebuilding and development.

The perception of this type of policy as legitimate should be shared well beyond the victims and their natural allies, to their neighbors and acquaintances, the media, and public opinion in general. Essentially, reparations measures constitute a message to victims from the rest of society, recognizing that victims belong and expressing solidarity in the face of unjust suffering. In order for this message to be perceived by victims as honest, it must be coherent with the other messages that are directed to victims, through actions such as criminal justice, but also in other contexts of daily discourse. This is why it is so important that reparations processes be transparent to the society as a whole. Information and outreach needs to educate the broader public about the violations committed, the harms and suffering inflicted on victims, and processes of truth-seeking, justice and reparation need to be mutually reinforced in the public consciousness. This is also why it is important that efforts at recognition not only stem from the conclusions of a truth commissioner the statements of individual officials who are especially sensitive to the issue, but also from across all government entities and society in general.

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(2006), available for on-line access or purchase at <http://press.ssrc.org/RubioMarin/>; and Pablo de Greiff, Ed. *The Handbook of Reparations*, Oxford University Press, New York (2006).

<sup>5</sup> This book is forthcoming in English and is currently available on-line in Spanish at: <http://www.ictj.org/static/Peru.Reparations/Memorias.Peru.esp.pdf>.

One aspect among all of these that must be considered, is who takes these decisions and by what process. In the following section, we examine some of the reasons why victims should be included, in what ways, and the challenges of making victim participation an important part of the reparations process from conception to delivery.

### *C. The Nature of Participation*

While participation is generally considered to be a virtue in principle, it is important to remember that it can be staged, manipulated for political ends, and frustrated by unrealistic mechanisms, a lack of follow-through or by eliciting engagement without sharing information. Here, we refer to participation as ideally encompassing three essential component parts: 1) effective representation that recognises complexity and builds capacity; 2) information, knowledge and capacity that flow in two directions; and 3) meaningful and transparent impact.

Choices about participation of victims in addressing the issue of reparations, designing reparations measures and seeing these implemented can contribute powerfully to a policy's success or to its downfall. There are important risks that should not be underestimated. These include the imposition of time frames for policy development that may not accommodate first creating the ideal conditions for participation; in fact, this is often the case. Victim groups are often under-resourced, may have limited skills in crafting and negotiating government policy, and may not be structured in a way (if organized at all) that makes it easy for there to be effective and communicative representation of them through selective participation. Participation that does not first facilitate the existence of these conditions may frustrate the purpose of it, and even create a dynamic that leaves victim groups feeling inadequate and ignorant (or treated as such) in their interventions with government officials. An assessment of enabling conditions for participation and steps taken to facilitate those conditions may need to be undertaken, while participation is adjusted to evolving capacity over time.

At the same time, a real or presumed lack of technical skill should not be an excuse for failing to find appropriate channels for participation of some kind. Participation that is respectful, knowledgeable, and transparent, and achieved through effective forms of representation, allows victims to feel that they are valued and recognized as rights-holders under the law and as relevant actors in their society. This is particularly important for groups of persons who were victims of violence due to their political stance and who demand recognition as political actors, but it is also true for those who were victims because they belonged to populations that were marginalised, discriminated against or made effectively invisible by society. In this way, participation serves not only to add value to measures of restitution, rehabilitation, or compensation, but also as a good in itself by opening the space for debate about how to ensure greater inclusion for victims both socially and politically. Participation can itself become a guarantee of non-repetition and play a role in institutional changes that allow society to learn from what happened and ensure respect for human rights in the future.

In practical terms, consulting with victims can be an important factor to consider along with others in responding to the real impact of the violations in their lives. Victims, their families and

the representatives of their organizations are a direct source of information on some of the key points needed in designing a reparations programme, for example, the kind of violations suffered, the consequences of these, victims' current needs and condition. Reparations will be most effective if they make sense to victims and if the priorities respond to the real impacts in the lives of victims and honour their realistic expectations. To the extent that reparations are not perceived as such by the victims, they fail in their purpose.

Viewed more broadly, victim participation can contribute to strengthening victim organizations<sup>6</sup>, to promoting their active presence in the country's political life, and provide new foundations for generating public trust. This is especially important if one considers that political repression usually is accompanied by the destruction of social organizations and the generation of distrust and fragmentation of the population. In this sense, a participatory process in the realm of reparations can have an important reparative effect itself, by countering the fragmentation through stimulating and strengthening victim organizations.<sup>7</sup>

Participation is a malleable term that can and often should vary substantially in its purpose, form, degree, and timing. Those variations need to respond not only to the enabling conditions for participation already noted, but also to the broader context and stages of the reparations process. As we explore in more detail in section IV of this paper, in the earlier stages of defining the debate and documenting the underlying facts that give rise to reparations, participation may be more about avenues for accessing information about victims' experience, situation and needs; later, as policy on reparations is developed, participation may be more focused on transparency, input and feedback on policy decisions. When it comes time to implement reparations, participation may range from continuing to provide information about victims to participating in bodies that direct reparations or oversee their implementation in some way. The forms that participation takes can be more or less expansive in terms of the interaction with victim groups: a few representatives on a consultative body, or a consultative conference that brings together a wide array of groups and individuals. Victim groups may develop their own proposals or conduct research that can influence policy-makers, or they may work to create regular channels of communication, just to mention a few alternatives.

While it is easy to point out the virtues of participation it is not particularly easy, or even attractive, for governments to establish mechanisms for participation in reparation design or implementation. Giving voice to victims who have enormous needs and who have suffered unimaginable harms opens up an endless horizon of expectations that no state has yet been able

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<sup>6</sup> There is often some legitimate concern about "institutionalising victimhood" but that does not have to be a consequence of strengthening these organizations.

<sup>7</sup> This can be done expressly by taking steps to create or strengthen victim agency through organizations. An example of this is the Aboriginal Healing Foundation in Canada, established as a non-profit organization in 1998 with a \$350 million grant from the Canadian Government, following that country's Royal Commission on Aboriginal Peoples. Its "mission is to encourage and support Aboriginal people in building and reinforcing sustainable healing that address the legacy of physical abuse and sexual abuse in the residential school system, including intergenerational impacts." Its work has been very successful, earning the respect of Aboriginal and non-Aboriginal Canadians. [Http://www.ahf.ca/about-us/mission](http://www.ahf.ca/about-us/mission).

to fully redress.<sup>8</sup> The difficulties in finding legitimate representatives of victims as well as concerns within government over how much meaningful space to provide and what degree of expectations to open up for victim groups, are obstacles that either must be overcome or will become justifications for not including victims in these processes. We explore these and other challenges below.

### *1. Participation and expectations*

There are at least two areas of expectations on the part of victims that need to be addressed in considering the best way to ensure effective participation. First, expectations about the scope of participation and degree of influence: understanding that while victims' voices are an important factor, this is not the only basis for policy decisions, or even appropriately a voice at all on certain aspects of policy definition and implementation. And second, expectations about reparations and the relation of this agenda with other national issues of importance to victims: there are excellent reasons why victims may want to take a maximalist position on reparations issues, but any position should have a realistic understanding of what reparations programmes can and cannot accomplish. At the same time, victims groups need to be strategic about their expectations on multiple agendas, so they must take on participation with an eye to how expectations about reparations fits into a larger picture of needs and priorities.

A lack of adequate information and grounding on the subject, or an undue emphasis on victims' situation in the current moment, can also unnecessarily limit expectations and, consequently limit reparations. Victims who have just emerged from conflict and are displaced may be more focused on returning to their lands and ensuring access to security, housing, and employment or the tools to carry out their livelihood. In one context in Colombia, despite explanations about what reparations might include, people at a meeting insisted that the only reparation needed was simply a cessation of the killings. While they may not be thinking at the moment of initial consultation about including in reparations policy elements of psychological attention for rape victims or memorials commemorating lives lost or meeting other less immediate demands for rehabilitation and services, these may well be important aspects for a reparations programme to contemplate at some point.

Participation, and the necessary accompaniment of information about victims' rights, should not be avoided because of the risk of unfettered expectations, but rather precisely as a way to inform, shape and challenge those expectations. In Peru, the exercise of carrying out a joint research project, undertaken by the ICTJ and an outspoken Peruvian human rights NGO was a first step toward giving concrete expression to what reparations might be, and a first exposure to the challenges of seeking to satisfy demands with feasible policies.

### *2. Identifying the victims and their representatives*

One of the difficult challenges of opening up space for participation is finding adequate representation and channels of communication for making it effective. Victims' organizations are

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<sup>8</sup> Pablo de Greiff describes some of the limitations of reparations policy, even when it is at its most efficient and expansive, in "Repairing the Past: Compensation for Victims of Human Rights Violations," in *The Reparations Handbook*, *supra*, pp. 2-18.

numerous, heterogeneous, fragmented, often marginalised politically, under-funded and frequently lacking in the kind of formal structure that provides for clear representation. At the same time, many victims do not belong to an organization. In the Peruvian case, a study following the publication of the CVR's report<sup>9</sup> identified 118 existing victims' organizations of diverse geographic coverage and focus, in 11 of 24 departments (political sub-divisions). According to the study, there were significant difficulties in transmitting information to, and in consulting with, their constituents, both within groups and across groups when they worked together. These factors had an enormous impact, complicating efforts to identify or create consistent, manageable and effective lines of representation and communication.

Even when representatives are identified, there is not always a clear incentive or capacity to establish ongoing joint action. The Peruvian human rights movement made efforts to link up the victim organizations to heighten their direct agency and strengthen their unity as one of the crucial social actors involved in the struggle for the design and later implementation of the Comprehensive Reparations Program (PIR for its Spanish acronym). Through national meetings of representatives of victim organizations, on several occasions, a "national coalition of people affected by political violence" was pulled together. These coalitions quickly fell apart, evidencing the real difficulties inherent in ensuring legitimate representation and leadership within the victim movement at a national level. The short-term work of the coalitions for the purposes of one-off events was nonetheless important. And, despite the tensions it may generate from time to time, since human rights NGOs often cannot claim to represent the victims themselves, NGOs can still serve as an important channel for approaching victims and creating avenues of participation.

There are any number of other factors that complicate the identification of victim organizations and their participation through effective representation within what may optimistically be described by policymakers or advocates as "the victim community." These may include, for example, tensions between claims of national representation and the role of those more locally circumscribed; between organizations formed around a specific shared experience (disappearances or displacement, for example) whose interests may diverge or who may have more or less political pull; or tensions that fall along political lines or relations to parties of the conflict (including "perpetrator groups," though this terminology oversimplifies what can be a gray area between victims and perpetrators); along with factors such as cultural differences, varying degrees of political experience, or styles of negotiation.

In some cases there may be no existing victim-identified organizations at all, as tends to be the case in Liberia. That means that when seeking input from victims one has to look for other expressions of joint action – such as women's organizations, or social development groups – or develop new civil society groups for channels of communication with victims.

It is not easy for victims' organizations themselves to resolve their differences harmoniously and create internal channels of participation that ensure representativity of their leaders and, in turn communication by leaders with their constituents. Neither is it easy for truth commissions or government bodies charged with designing and implementing reparations policy to respond

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<sup>9</sup> Oxfam-Great Britain, "Mapeo de las organizaciones de afectados por la violencia política en el Perú," Lima, April 2004.

adequately to the need to consult victims and establish legitimate mechanisms for participation at the various stages of the process. A frequent temptation faced by these bodies is to create links primarily with groups closest to themselves politically, giving the process the appearance of participation and legitimacy without being adequately inclusive. Or they may relate primarily to those who have the louder voice and greater presence in the media, in order to protect themselves from public criticism. Both responses reinforce the marginalisation of other groups with less political weight or victims who are not affiliated with any organization.

Another difficulty that may be faced by truth commissions and government bodies is the need for a constant flow of information from the victim groups, making sporadic meetings or the publication of a periodic bulletin inadequate. Given the experience of distrust and the need to fill the vacuum of information on fundamental aspects of the lives of victims or the situation of policy development or implementation, for example, the tendency for rumours to take hold is frequent.

Informed policy decisions about victim participation need to consider all of these factors and dynamics. A mixed strategy of smaller and larger representative channels, forms of direct communication to the larger constituencies, and different avenues of formal and informal participation that are transparent and evaluated periodically to adapt to evolving conditions, may be the best practice in the face of significant obstacles. Imperfection is likely, but is not a reason to discount the importance of finding a way to implement participatory policies. Governments need to be aware of the advantages that participation offers and not see only the obstacles they must confront to establish this type of channel.<sup>10</sup>

The reality varies from one context to another. But some other general lessons about representation and victim groups may be summarised as follows:

- Victim heterogeneity should not be ignored, even while space for communication across groups should be encouraged where possible;
- Support should be offered to strengthen victim groups' organizational capacity and to facilitate communication;
- Victim groups need information that is accessible and trustworthy;
- Channels of communication and participation need to be both local and national;
- Human rights organizations and other NGOs play an important role as advocates for victim rights and should be involved, with the understanding that they may well have similar challenges in ensuring that their communication to and from victim groups is effective;
- Participation that is flexible in terms of representation and that takes place over time will have a better chance of reflecting growing capacity of victim groups.

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<sup>10</sup> At the time of writing, the debate on the creation of a National Institute of Human Rights in Chile proved to be an interesting situation to watch with respect to institutionalising forms of participation. Of the 9 members of the Board of Directors of the body defined in the proposed legislation, 2 were to be designated by civil society organizations working in the defense and protection of human rights, which includes the victim organizations. In addition, a National Consultative Council was to be created, in which social and academic bodies dedicated to the promotion and defense of human rights were to be represented. Among the victims' organizations the proposal generated debate about whether it would be appropriate and beneficial for them to participate in these bodies or whether it would be preferable to maintain their autonomy.

### 3. *The benefits of a common conceptual framework*

The design and implementation of reparations policy is an exercise in bringing diverse interests into agreement, even when all the parties involved share the principles at the heart of reparations and are all talking about the same thing. But it would be wrong to assume that there is a conceptual framework common to all. Many victim organizations and human rights organizations have some experience with development projects or litigation of cases, but most have not been involved in the design of comprehensive reparations programmes or the execution of public policy on a large scale.

Likewise, governments are usually more familiar with massive responses to natural disasters and humanitarian needs, planning development projects, or responding to court judgments, than with structuring a rights-based reparations programme. Governments tend to lack the sensitivity required in order to incorporate important symbolic and subjective elements into the design and implementation of these policies, an omission that can seriously affect the victims' perception of the measures as effectively reparative. Governments also tend to want concrete and quantitative measures of social profitability of projects, while indicators of victim satisfaction may be much more ephemeral and diverse.

Further, in situations of transition, the priorities of victims are almost always a mix of reparations and other demands for social justice, including the satisfaction of basic social and economic rights. Governments in post-conflict contexts may be focused instead on reconstruction and development issues rather than recognition of human rights violations. Identifying what agenda is on the table at any one time can be difficult. Sorting out which strategies correspond to which agenda and channeling an appropriate response to each can help enormously to make the participatory process productive.

The process of building a conceptual consensus in Peru was fundamental to moving the reparations process forward in the earliest stages. We referred earlier to a research project undertaken by the ICTJ and the Association for Human Rights (APRODEH), as an aid to *knowledgeable* participation. The paper that emerged from that research,<sup>11</sup> later taken up in large part by both the CVR and an assembly of victim groups and NGOs, helped to establish *common ground for the debate* on reparations more generally. It allowed the debate to focus on substantive matters and not become sidetracked. It also helped, to some degree, to clarify expectations and the challenges that implementation of a reparations plan would entail.

In South Africa, despite eventual agreement early on in the process of truth-seeking as to what reparations meant, there was an enormous gap between the vision of victim groups and government on this issue. While there was some consultation by government after intense pressure from the principal victims' organization, the Khulumani Support Group, the consultation was criticized by the Center for the Study of Violence and Reconciliation (CSVR)

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<sup>11</sup> International Center for Transitional Justice (ICTJ) and Asociación Pro Derechos Humanos (APRODEH), "Parameters for the Design of a Reparations Program in Peru." Lima, 2002. The impact of this paper was furthered by the role the ICTJ played in providing technical assistance to both sectors, which allowed it to help foster debate on this topic, and by a concerted advocacy effort of both human rights NGOs and victim groups.

as not broad enough, and government failed to follow through on promises to provide Khulumani with a government policy document.<sup>12</sup> According to a CSVR researcher, "...many survivors felt that government was reluctant to implement a clear reparations policy. In the public debate on the issue of reparations survivors and civil society on the one hand and government on the other assumed increasingly adversarial positions. Government started construing demands for reparations as opportunistic and as debasing the noble nature of the anti-apartheid struggle by demanding financial recompense for it. ... This variance of views concerning the meaning of reparations precipitated an often-acrimonious relationship between government and survivors."<sup>13</sup>

Clearly, a number of dynamics were involved in this situation, but the difference in conception of reparations – and its role in the transition – between government and the survivor group are a stark reminder of how this issue can frustrate the trust that reparations should build between victims and government. It is difficult to know what the impact of a better dialogue between these groups could have produced, but it seems likely that greater openness by government to victim participation on this issue would have been helpful.

In brief, having a clear conceptual framework for debate on reparations that is shared by the various actors in the process – no matter how divergent their agendas on the topic may be – is crucial to moving forward on this issue in a positive way. Besides having a shared view of what reparations means, including its objective of recognizing wrongs, harms, responsibility, and victims as rights-holders, it is important for all actors to have a clear picture of how this issue fits into a broader agenda of transition, including larger questions of nation-building, development and reconstruction.

#### *4. Effective impact of the participation*

Participation should not only be seen as a means of understanding victims' situations and needs, nor as simply an opportunity to explain to victims the good intentions behind reparations efforts. It should be something that contributes, in a definitive way, to ensuring that the persons receive real benefits that are a help to them in their lives; that is, victims should derive a substantive benefit from participation. They should be able to see their experience reflected there, at least in some way. The intervention of victims should contribute as well to linking their experiences with the rest of society, as a way to help (re)build trust among victims, and with the rest of society, including government. Dialogue, consultation, devolution of information in both directions makes it easier for victims to feel recognised not only as actors and allies but also as full rights-holders with capacity to make proposals and contribute.

The CSVR's report on reparations in South Africa provides some insight: "...by failing to consult with survivor groups before deciding on the final amount for reparations, government wasted an opportunity to learn about the different survivor needs, which would have helped in

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<sup>12</sup> Oupa Makhalemele, "Still not talking: Government's exclusive reparations policy and the impact of the R30,000 financial reparations on survivors," Centre for the Study of Violence and Reconciliation (CSVR), Braamfontein, South Africa (2004), pp 6-7; and Christopher J. Colvin, "Overview of the Reparations Program in South Africa," in *The Handbook of Reparations*, p.177-.

<sup>13</sup> Makhalemele, *supra* at p. 5.

designing a more comprehensive reparation policy with potential to optimize its effectiveness. The report also characterizes that failure as a lost opportunity for government to mend a difficult relationship between itself and survivor groups, including NGOs and other stakeholders lobbying for reparations.”<sup>14</sup> This report also concludes that participation must be planned strategically in order to ensure results. Campaigns to demand a reparations policy were overly focused on monetary compensation, relegating to a secondary level the importance of responding to other impacts of violations on the lives of survivors.

Reparations frequently constitute a long-term commitment that necessarily extends beyond one period of government. To the extent that truth commissions have a temporary mandate, the construction of a reparations proposal in which a truth commission consults and communicates effectively with NGOs and victim organizations allows these other actors to own it and, once the truth commission’s mandate expires, to defend it and demand its implementation. This requires forging strong alliances that cut across the political spectrum and establishing stable measures, through legislation, to guarantee the sustainability of the policies. It is often a slow and difficult process for society as a whole to understand the importance and need for these policies, the reasons why they are the State’s responsibility and why they are owed to victims as of right. All of this means, effectively, that even the best openings for victim participation will not be adequate if the process does not engage the broader society as well.

#### *D. Three key moments for participation*

We turn here to a more in-depth look at victim participation in the context of truth commissions at three key moments: when the scope of truth-seeking and crimes that would give rise to reparations are defined; when reparations are on the table and must be tailored into a policy; and when recommended reparations measures must make the leap from a statement of intended policy to a practical reality.

##### *1. Setting the terms of the debate*

When a truth commission is created victim organizations and human rights groups often play an important role by exercising pressure and influence. Likewise, it is these actors (or the courts, in response to litigation by these groups) who put reparations on the agenda in other contexts and press the authorities to deal with human rights abuses. The initial framework for any process of truth-seeking and reparation for victims is the mandate of the truth commission or, in other cases, the scope of the debate about human rights violations more generally. These commissions are created by an act of authority in which their scope of action is defined, particularly the type of violations to be covered, the period in which these occurred, the investigative powers, expected products (reports, recommendations on reparations, etc.), the weight to be given to any recommendations, the period for the execution of the mandate and the commission’s composition.

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<sup>14</sup> Oupa Makhalemele, *Still not talking: Government’s exclusive reparations policy and the impact of the R30000 financial reparations on survivors* (Center for the Study of Violence and Reconciliation, 2004).

One of the important aspects in defining the crimes that will be considered by a commission, and in turn by a reparations programme, is the inclusion of violations that tend to primarily affect women. Given the silence and denial that often surrounds them, for various reasons, the forms in which women are affected by violence are often omitted in a truth commission mandate, reiterating this negation. The participation of feminist organizations or organizations that defend the rights of women, as well as women victims, in the definition of the mandate and the operations of a truth commission can help ensure an appropriate framework and establish from the beginning the methodology and criteria that can ensure inclusion of the forms of victimisation suffered by women.

In South Africa, for example, women's organizations did not prioritise working with the TRC of that country in its initial stages, but rather focused their energies on other areas of work. As a consequence, they did not have sufficient influence in the definition of legislation that established the Commission, which ended up being "neutral" on gender. This translated into a lack of recognition of the specifics of gender in the way in which individuals and groups suffered during Apartheid and in the determination of the differentiated needs of the victims depending on their sex. Women's organizations began to advocate around this issue only once the Commission had started work.<sup>15</sup> Timor-Leste offers a more positive example. There, the mandate of the Commission for Reception, Truth and Reconciliation (CAVR) provided explicitly that a gender perspective be incorporated throughout its work and this was accomplished through female commissioners, staff and engagement with women's groups during the process. Two women's NGOs were involved in helping the Commission design its collective reparations program.<sup>16</sup>

Two additional examples of the importance of mobilising civil society at the moment of creating truth commissions can be found in the case of Ghana and in Chile with regard to the National Commission on Political Prison and Torture (also known as the Valech Commission). In Ghana, some 20 organizations joined together to form the Civil Society Coalition, playing an important role in ensuring the effectiveness of the National Reconciliation Commission (NRC). Even before the legislation creating the NRC was passed, this group met with the Attorney General to discuss the framework for the Commission. According to one Coalition leader, the group was consulted extensively and in the end the process of drafting the framework legislation was "open, consultative and participatory."<sup>17</sup> As a result, the NRC's mandate covered a wide range of victim experiences, including such crimes as wrongful dismissals and mock executions.<sup>18</sup>

In Chile, the Valech Commission was created 13 years after the recovery of democracy and 12 after the conclusion of the work of the initial Truth and Reconciliation Commission. It was established largely as a consequence of a growing political and social mobilisation. As the 30<sup>th</sup>

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<sup>15</sup> Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa," in Ruth Rubio-Marin, Ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council, New York (2006), p. 53.

<sup>16</sup> Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims," in Ruth Rubio Marin, Ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations*, *supra*, pp. 294-96.

<sup>17</sup> Nahla Valji, "Ghana's National Reconciliation Commission: a Comparative Assessment," ICTJ Sept. 2006, at p. 42, citing E. Gyimah-Boadi, *National Reconciliation in Ghana: Prospects and Challenges*, Accra: CDD-Ghana, 2002.

<sup>18</sup> *Ibid.* p. 17.

anniversary of the coup of 1973 approached and the torture survivors' sense of abandonment by government increased, organizations of former political prisoners and other human rights groups began to put an enormous pressure on government. This was reinforced by the use made by one opposition party, strongly identified with the dictatorship and its legacy, of the discontent on the part of some family members of the disappeared who were from outlying areas and who were barely surviving on the reparations provided for them a decade before.

As a result of these pressures, President Lagos convened a broad process of collecting input from human rights organizations and political parties, culminating in his proposal, "There is no tomorrow without yesterday."<sup>19</sup> This proposal included, among other measures, the creation of a commission that would investigate cases of torture, identify victims and propose reparative measures for these victims. In three months that commission was established and started its work.

Institutions charged with revealing the truth about human rights violations may uncover truths that later stimulate participation, so even if there is a lack of foresight or participation early on, these shortcomings may stimulate further efforts to ensure that reparative justice is achieved. In this regard, the case of the inclusion of girls and boys as victims of political imprisonment and torture by the Valech Commission of Chile is instructive. That commission, like South Africa's, had a neutral definition of victim in terms of gender and age, referring only to persons who had been deprived of their liberty or tortured for political reasons.

The outreach performed by the Commission to explain its mandate also referred only generally to "all persons" without specifying categories of victims who might feel invisible. Of the 27,255 victims who were recognised individually as victims by the Commission in its first report, 1,080 were under 18 years of age at the moment of their detention and 88 of these were younger than 13. The Commission dedicated a special section to describe their profile and the consequences they suffered. When the Commission's report was made public, complaints arose from others who, having suffered similar situations claimed not to have been asked to speak to the Commission. During a reconsideration phase that followed the report, the Commission realised that it received testimonies about minors who were detained with their parents and were mentioned in their parents' testimonies, but that the Commission had failed to adequately explain that the children themselves could also come in to give a statement. It was through this review that another 164 cases were added, making a total of 1,244 minors who suffered deprivation of liberty or torture, out of the total of 28,459 victims recognised as such by the Commission.<sup>20</sup> Nevertheless, despite this effort, many individuals who were boys or girls at the time of their

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<sup>19</sup> See [http://www.archivochile.com/Derechos\\_humanos/doc\\_gen\\_ddhh/prop/hhddprop0001.pdf](http://www.archivochile.com/Derechos_humanos/doc_gen_ddhh/prop/hhddprop0001.pdf) for full text (in Spanish). (Accessed 10 January 2008.) Other measures proposed included: the increase by 50% of reparation pensions for family members of the disappeared, the allocation of a fund for memorials, and the establishment of procedural benefits for lower ranking perpetrators whose collaboration effectively led to the location of remains of the disappeared (an element of the proposal that was opposed by human rights organizations and ultimately rejected by the Congress).

<sup>20</sup> Informe Complementario de la Comisión Nacional sobre Prisión Política y Tortura. At [www.comisiontortura.cl](http://www.comisiontortura.cl), accessed 10 January 2008.

detention could not present their statements to the Commission and felt they had been discriminated against.<sup>21</sup>

Defining the debate in terms of who are considered victims sets the stage for later debate on reparations. As these examples demonstrate, participation is not always a given, but when it does not occur, there will likely be a need later – in the short or long term – to rethink the question of who are victims and survivors for the purposes of eventual reparations. Even in cases of reparations defined outside of a truth commission context, the lessons mentioned above can be applied. Victims’ organizations might exercise pressure directly to the institutions in charge of defining the scope of the reparations programme and to those implementing it, to guarantee that the crimes and resulting harms they suffered are not overlooked.

## *2. Defining reparations policy*

During the operation of a truth commission whose tasks include recommending reparations, the participation of victims and their organizations is crucial, especially to ensure that proposed reparations respond to the interests of victims and are perceived by them as adequate. It is precisely in this stage when greater possibilities for participation exist and thus there can be greater impacts from participation, though it is also a time with increased risks of generating unrealistic expectations.

A first step is to know the experience, situation and needs of victims. It is very important to gather this information directly from the victims, without prejudice to additionally organising consultations with the victims’ organizations. The direct testimonies from the victims about their condition are a fundamental input for designing a reparations programme. This is information that victims are well-placed to give, whereas they may be less able to offer concrete policy suggestions about how to define specific measures or policy directives.

Participation does not mean simply responding to what victims say when they speak before a truth commission; it also demands later consultation, so as to ensure the utility and reparative meaning of measures that are recommended.<sup>22</sup> In Ghana, the recommendations on reparations made by the NRC apparently coincided with the violations raised by victims in their statements. Nevertheless, in some cases the reference was almost too literal. For example, victims testified that soldiers had burned down a market installation and the Commission recommended that it be

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<sup>21</sup> As a result of the pressure from victims’ organizations, an amendment to the bill (being debated at the time of this writing) which creates the Chilean National Institute of Human Rights establishes, in its transitional articles, the reopening of the Valech Commission. If appointed this would open up the possibility that excluded victims could be recognised. The Peruvian experience also reinforces the notion that while neutral definitions may seek inclusivity, they can lead to feelings of exclusion because victims need to feel recognised. In order to achieve inclusive participation it may be important to be as explicit as possible in communications on the subject.

<sup>22</sup> When we speak about consultation and participation during the life of a truth commission, this does not mean that the commission process should be necessarily linked to reparations or that statement-givers should be asked what their expectations are in this regard, since this can skew the dynamics of truth-seeking. Each commission will find the best way to balance the competing interests of getting insights on what victims need and how to ensure that testimonies are not just seen as stepping stones to reparations. Rather, we are referring to engaging with the commission staff that is charged with developing recommendations on reparations.

rebuilt, years after the events and when its reconstruction might not have the same relevance for the victims in terms of reparations.

During the first year of operations of the Peruvian CVR (2002), the Commission made essentially no progress on reparations recommendations. The CVR's silence on the issue inevitably led to tensions with victims' organizations and human rights NGOs who were demanding information and a participatory process in reaching recommendations on this issue. The NGOs and victim organizations' strategy was key: on the one hand, they never stopped pressuring the technical teams of the CVR to open up the debate on the reparations proposal and, on the other, they worked to build agreement on the conceptual basis of reparations, allowing expectations to take concrete form rather than remain idealised demands.

Effectively, once the dialogue on reparations was established, first between the NGOs and the CVR, it became obvious that there was a need to develop and maintain direct relations with victim groups, since they not only were to be the ultimate recipients of any reparative measures but would also be the CVR's principal allies in demanding and ensuring implementation of reparations policies once the CVR's work was done. As a result, a framework for including the victims in the process was developed.

Workshops were organised with victims in various parts of the country, under the joint leadership of the CVR and a group of human rights NGOs, with the aim of learning about the harms suffered by victims, collecting information about their expectations of reparations, drafting joint proposals for reparations and committing to work toward their implementation by the State.<sup>23</sup> This process of local workshops culminated in a national meeting at which 25 institutions made up of NGOs and victim groups approved a document of "Basic criteria for the design of a reparations programme in Peru."<sup>24</sup> These would serve as a basis for the CVR's design of a reparations programme that could satisfy its proposed beneficiaries, that is, the victims and their family members.

Later, and under pressure from the NGOs who believed it was essential that the beneficiaries themselves could learn about the progress toward a reparations plan, the CVR agreed to convene a consultative workshop on their draft proposal, bringing together some one hundred people from victim organizations and NGOs. The confrontation of the CVR's proposals and the victims' expectations was not an easy process. A number of times tensions erupted between, on the one hand, the responsibility of the CVR team to draft a document that responded to criteria of political, legal and financial viability and, on the other, the frustrations, immediate needs, hopes and also differences among those who loosely represented thousands of victims. Nevertheless, the debates produced positive effects both in sensitising the Commission to the priorities of the victims (adding a new programme on access to education), as well as sensitising victims to the Commission's own difficulties in defining the appropriate measures to recommend.

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<sup>23</sup> Between September and October 2002, 19 workshops were organised in 6 different departments of the country, with the participation of 846 victims, family members of victims and representatives of victim organizations. Julie Guillerot, Humberto Ortiz and Rolando Pérez, "Hacia la reparación integral de las víctimas. Memoria del II Encuentro Internacional «Sociedad Civil y Comisiones de la Verdad»,» Lima: Asociación Paz y Esperanza, 2002, p. 9.

<sup>24</sup> Guillerot, Ortiz and Pérez, *supra*, pp. 17-23. This document is also reproduced in the annexes of Guillerot and Magarrell, *Memorias de un Proceso Inacabado*, *supra*, pp. 329-33.

In this way, the Comprehensive Reparations Plan (PIR) finally approved by the Commission is the expression of a political process of negotiation and consensus-building that to date enjoys the support of both the NGOs and the victim groups because they felt that their opinions were not only heard but reflected in the final recommendation. The Peruvian experience likewise demonstrates that, to the extent that victims' organizations are often spread out and unarticulated or facing problems with leadership and representation issues, the role of NGOs can be crucial, given their privileged relationship with victims' organizations.

The Chilean Commission on Political Prison and Torture accorded victims less space for participation in the drafting of reparations proposals, limiting itself to hearing suggestions. The Commission met with all the political prisoner groups and all of the human rights organizations at the beginning of its operations. Later, in its travels to the provinces, the Commission met with representatives of all the regional groups. In these meetings Commissioners heard the proposals of the organizations on how to conduct the process, their complaints and concerns about how it was being carried out or on the limitations of the mandate, and their demands with regard to reparations. Likewise, the Commission arrived at agreements with these groups on forms of collaboration, such as the dissemination of information about the work of the Commission and gathering background data that would help provide the evidence needed to make determinations about reported cases. The Commission also maintained constant communication with the leaders of groups both for the purpose of verifying and analysing testimonies and for receiving demands and proposals on the issue of reparations.<sup>25</sup> Nevertheless, the Commission abstained from organising mass meetings on the issue of reparations or presenting transparently its preliminary conclusions. This would have allowed for greater – and reciprocal – sensitisation for victims and Commissioners, as was the case in Peru. It might also have prepared the victims' groups to present a united and realistic front when reparations were discussed in Congress. However, the possibilities for such a discussion were limited by a number of factors: the maximalist posture of the organizations; the perception of the Commissioners that these organizations were not representative of the thousands of victims who had given their statements to the Commission; and the conviction that the Commission's proposal to the President should leave in his hands the final terms of a reparations bill and the task of ensuring it would be amply debated in Congress. The Commission knew that its recommendations did not reach the high level of compensation demanded by victim groups, though as it turned out, these groups did not publicly express opposition to the Commission on that point.

In Morocco, a National Forum on Reparations was held in October 2005. The initiative was part of the work of the Equity and Reconciliation Commission<sup>26</sup> and allowed for broad participation,

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<sup>25</sup> This was a massive process, but the statement form itself did not prompt the interviewer to ask specifically about reparations. This would have made it easier to process opinions, though questions about reparations can also skew the truth-seeking process, as we noted earlier. Instead, the Valech Commission's recommendations drew on demands or proposals offered spontaneously by people giving their statements; given the large universe of testimonies – 35,000 – there were a fair number of such spontaneous suggestions despite the failure to systematically inquire about this issue.

<sup>26</sup> “In a bid to include the national general public, the Commission took note of the opinions put forward by national non-governmental organizations, working at a national level or abroad, and this, by holding direct meetings with some of these organizations or through the memorandums and suggestions presented to the Commission.” Instance Équité et Réconciliation, *Summary of the Final Report*, Edition spéciale Conseil Consultatif des Droits de l'Homme,

particularly on the debate about issues of gender, health, memory and development of the regions affected by the violence.<sup>27</sup> One of the results of the forum was the announcement of the priority that the Commission would give to the gender component in its reparations measures. Thus, in its recommendations, the Commission was able to avoid applying Moroccan laws of inheritance, conceding to widows a greater share of compensation than they would have received under the law as a consequence of the death or disappearance of their spouse.

The culmination of the work of a truth commission and its ensuing dissolution creates a change of scene which, in turn, leads necessarily to a redefinition of the roles and functions of the civil society actors involved in the reparations process. One of the characteristics of this new context is that suddenly the range of topics and agencies with which one must engage to achieve advances on the reparations front expands enormously: it no longer is a matter of simply influencing a truth commission so its recommendations on reparations come out of a participatory process or so it adopts a particular conceptual approach, but rather a question of how recommendations become official policy.<sup>28</sup>

Another aspect of this new context is that once again the natural allies of the reparations process – the human rights NGOs and victims’ organizations – have to work on building consensus so they can present clear and united messages to the various State actors involved and, in so doing, increase the effectiveness of their lobby. In these initial processes of building consensus among natural allies, prior to carrying a message to policy-making and implementing bodies of the State, the Peruvian experience shows that relations can wear thin and one can lose sight of common interests, especially because the final work and final decision are not taken in spaces occupied by civil society.

In this stage, the capacity and will to engage directly on the topic on the part of victims’ organizations also tends to increase. This is explained in the Peruvian context by the positive impact of the experience of participating with the CVR on the development, visibility, and agency of the victim organizations. Notably, the work of the CVR revitalised existing organizations and in many cases motivated the creation of new ones.<sup>29</sup> This led to victims’ organizations developing awareness of their rights and how these were violated, of the State’s direct responsibility or failure to protect its citizens and, overall, their status as rights-holders in society.<sup>30</sup>

The increase in the will to participate and the direct engagement of victims at this stage is also explained by the expectation that material benefits are on the way. Relying on interlocutors (whether a regional or national organization of victims, a coalition of victims’ organizations or a

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Rabat, 2007. English section, p.21. In considering the question of communal reparations, the IER held seminars in a number of cities and regions. Its national forum on reparations had the participation of over 200 organizations and 50 national and international experts. Id, at 28.

<sup>27</sup> See [http://www.ier.ma/article.php3?id\\_article=1312](http://www.ier.ma/article.php3?id_article=1312) (accessed 10 January 2008).

<sup>28</sup> On the Peruvian experience in this regard, see Julie Guillerot and Lisa Magarrell, *Memorias de un proceso inacabado. Reparaciones en la transición peruana*. Lima: APRODEH-ICTJ-OXFAM, 2006, p.108.

<sup>29</sup> Between 1980 and 1990 three victims’ organizations were created, while between 2000 and 2004 some 120 were identified. (The CVR operated from mid-2001 to the end of August, 2003.) See, Oxfam-GB (ed), *Mapeo de las organizaciones de afectados por la violencia política en el Perú*, Lima, April 2004.

<sup>30</sup> See Guillerot and Magarrell, p. 112.

human rights NGO) can be seen by some groups as a risk, as each starts to focus on its share of whatever is coming. Along with new or rising expectations, there is often a legitimate suspicion that reparations measures will not be applied equally to all. The dynamic becomes much more infused with all the doubts, distrust, and needs that come when things like money, health, education, or infrastructure hang in the balance.<sup>31</sup> As a result, what may have been a unified front in relation to what reparations should be recommended, can become splintered and fraught with tensions when it comes to turning this into explicit policy. This lessens the lobbying force of victims and opens the process up to interest-driven manipulation.

Although truth commissions are frequently charged with making recommendations, the definition of reparations measures does not ultimately fall on them, but rather requires the will of government and, in many cases, of legislative bodies. While this may provide a guarantee of transparency and public debate about reparations, sometimes it can have an impact contrary to the goals outlined by a commission and even result in a step backwards in terms of recognition of victims and their right to reparations. This is something that victims' groups and human rights defenders need to have clear from the beginning, so that their planning (as well as actions the Commission might take) contemplate the later need to develop a political consensus around reparations legislation or administrative action.

An example of this is what happened with the passage of a law on reparations for victims of political imprisonment and torture in Chile, in which the Government drafted a bill much more restrictive than what the Valech Commission had recommended, and then submitted it to debate in Congress, utilising its prerogative to establish a two-day time limit for approval. The limitation imposed kept the groups of former political prisoners from creating a united front to defend the Commission's recommendations. The pressure by government to get the bill approved and its insistence that it was impossible to commit more resources to financing the reparations package led to approval of legislation that later, both victims and members of Congress said were unsatisfactory. The measures approved not only involved a significantly inferior amount of compensation as compared to that recommended by the Commission, but effectively ignored the Commission's findings on the impact suffered by family members of victims.<sup>32</sup> The Commission itself was excluded from the debate and understood that because of its role as an advisory body to the President, it was not appropriate to publicly criticise the law as approved.

Despite the negative aspects of this experience, the legislative passage of reparations measures can offer an opportunity to broaden the debate, incorporating other actors such as the legislators and the broader political class and giving more visibility to the violations committed and the situation of victims. An example of this is also found in the Chilean context some years earlier, where the legislative debate on the law for reparations for family members of the victims of forced disappearance and killings incorporated positive aspects of the recommendations made by the Truth and Reconciliation Commission in that country. In this case, the bill was not subject to pressures by Government to be approved within an unreasonably short time frame, and study of

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<sup>31</sup> In Peru, tensions between NGOs and victim groups have been accentuated in this phase.

<sup>32</sup> The reparations approved by Congress applied only to direct victims and rejected pensions for widows and widowers of victims and educational grants for the victims' children, which the Commission had recommended.

the law in Congressional commissions included victims' organizations, human rights organizations and members of the TRC.<sup>33</sup>

### *3. Making reparations real*

Victory on the legislative front does not mean that the struggle to see reparations delivered to victims is over. In general, the implementation of reparations represents a serious challenge in its own right. It is often here that even the most participatory of processes can fail if victims' reasonable expectations are frustrated by inaction and inefficiency. Reparations programmes often are made up of various measures that need to be delivered individually to victims recognised as having that right. In addition to institutional challenges of capacity to provide services or distribute benefits to individuals, one must consider the complicating factor of needing to incorporate symbolic elements of reparation to the delivery of goods and services. Implementation serves as an excellent test of the degree of realism built into the design of the measures and the extent to which victims were heard as to how to best reach them and produce a real impact in their lives.

Even collective reparations measures, which may be thought to be easier to implement because identification of individual victims may not be required, can be quite complex undertakings. Participation may still be crucial for verifying decisions about which collectives are to be served, in what order of priority, and by what projects appropriate to the group. When collective reparations projects are to be defined by the communities entitled to receive them, the demands of participation must take into consideration group dynamics which may still be influenced by the conflict and may make some victim groups invisible.

Two clear avenues of victim participation at this stage include consultation as implementation begins to take shape, and provision of information about victims and their needs.<sup>34</sup> In the execution of individual reparations, the participation of victims can lend a fundamental contribution to disseminating information so that those who live in isolated areas can access reparations. On many occasions and especially in rural or marginalised areas, information obtained early on about the domicile and location of victims may turn out to be insufficient or to have changed.<sup>35</sup>

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<sup>33</sup> See Law 19.123 and the record of debate on it in the Nacional Congreso at <http://sil.congreso.cl/pags/index.html> in Bulletin No. 316-06

<sup>34</sup> Of course it should be clear that it is the State's responsibility to identify victims and gather the information required to implement reparations; victim participation is an aid to this process.

<sup>35</sup> This was definitely the case in Peru, where the CVR's database and interview form were the first technical tools that were designed for collecting testimonies, shortly after the Commission was installed. They were designed well before the creation of the CVR's internal Working Group on the Comprehensive Reparations Plan and before this group could identify its information needs with regard to victims and family members. As a result, the database did not systematically include information on the family members of victims, number and ages of widow/widower/s and orphans, number of victims left disabled as a result of the violation of their human rights, socioeconomic data about victims, or other data that would help to define the "profile" of the beneficiaries. All of this meant difficulties later in designing a reparations plan that was in tune with the realities of the violations and the victims, but combined with a decision that reparations would not be limited to victims identified by the CVR, it also meant that a lot of work needed to be done to implement the reparations law.

Consultations with communities for the implementation of community-based collective reparations should include in some special way (perhaps in separate meetings in addition to full community consultation meetings) groups of persons who because of their condition were exposed as a group to special forms of victimisation, such as women, ethnic groups or members of other minorities. The projects that the community finally selects and executes should reflect not only the majority's vision, but also these other realities.

Truth commissions often fail to identify all the victims – whether collective or individual – who might have a right to reparations measures. When the commitment on reparations extends beyond that already-documented universe, new efforts must be carried out to identify and certify the status of victims so that reparations can be made and delivered.<sup>36</sup> That task gives some indications of what would be required in cases of proceeding to identify victims for the purpose of reparations without a prior truth-seeking process.<sup>37</sup> Organizations and individuals can play an important role in this process. In Peru, the Reparations Council (CR, for its Spanish acronym)<sup>38</sup> is charged with registering and certifying both collectives and individuals to establish their eligibility for reparations. At the time of this writing, the CR is in the process of verifying the status of pre-existing lists of victims and filling in gaps so that it can identify both groups and individuals entitled to reparations under the law. Its pilot experience in the province of Satipo (an eastern jungle area in the Department of Junin with a number of indigenous communities who were displaced and extensively affected by violence) illustrates the role of consultation. According to the CR, it “has visited the area and held meetings with leaders and representatives of the principal native organizations and federations and with civil society organizations, seeking to generate participatory mechanisms to ensure the appropriate collection of information in a context characterised by poverty, low levels of education and difficulties with transport and communications.”<sup>39</sup> Through meetings in 8 local districts of the province, the CR conducted interviews of leaders and other representatives, identifying a total of 163 communities as “collective beneficiaries” and using individual or focalised consultations in communities to identify individual victims.<sup>40</sup>

Victims and their organizations can also be a valuable source of information for the implementation of reparations programmes, providing important feedback about the effectiveness of distribution and the quality of service provided by the agents in charge of reparations. The legacy of human rights abuse, as lived experience of victims and their families implies an additional effort in terms of delivery style and, for certain services, such as health care, it may require special measures to provide appropriate service and convey a reparative

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<sup>36</sup> South Africa is an example of a case where reparation was deemed to be restricted to those victims who had been identified by the TRC, despite indications that many more victims had never provided their testimony to that body, for a number of legitimate reasons. A “closed list” such as this makes reparations easier to implement but may well be more unfair to victims across the board.

<sup>37</sup> Reparations without revealing the truth about victims, the violations and harms suffered, and about who was responsible are likely to be seen as a ploy to “buy” victims’ silence. Sufficient information about what happened should already be public or revealed through the reparation process itself in order to turn to reparations in a positive way, though the truth need not come out through a truth commission.

<sup>38</sup> Some information about this process and the methodology for registering collective and individual victims can be found on the Council’s website (in Spanish): <http://www.registrodevictimimas.gob.pe/>

<sup>39</sup> [http://www.registrodevictimimas.gob.pe/ruv\\_registro\\_satipo.html](http://www.registrodevictimimas.gob.pe/ruv_registro_satipo.html), accessed 3 January 2008. (Authors’ translation.)

<sup>40</sup> Ibid. Whether over time this methodology will prove itself is still a question, since it relies extensively on community leaders rather than more objective sources.

message to victims. The constant demand of victims' organizations that these services be provided through persons sensitized on the subject reinforces this conviction.

Depending on the characteristics of the victims' organizations and their leaders, these should help to satisfy the often difficult bureaucratic steps required in order to receive reparations, such as filling out claims forms, presentation of documentations and other steps that may be especially difficult when victims are illiterate or must travel to local population centers to carry them out. The contribution of victims' organizations can be a big help to those in charge of reparations in not only spreading information but lending advice to claimants. This can be a valuable contribution as well to victims who live in exile, and with whom communication is difficult. Nevertheless, this is also a terrain ripe for abuse, and cases have often been reported of "facilitators" springing up and charging for their services; safeguards need to be in place to ensure that victims' access to reparations is free of charge and that local political entities and their own organizations do not usurp the victims' right to reparations.

Perhaps the most difficult question about the role of victim organizations during the implementation phase is whether their representatives should shoulder some of the responsibility for implementation by participating directly in decision-making bodies and implementing agencies. Experience is mixed.

In Peru, the CVR had proposed the creation of a National Council of Reconciliation to follow up on the CVR recommendations, and this plan included creating a "consultative committee of victims of the violence" whose seven members were to be designated by the President based on proposals of the victim organizations. Nevertheless, the idea did not gain traction and was discarded. In February 2004, the government created a high-level follow-up commission, CMAN (for its acronym in Spanish),<sup>41</sup> which ultimately was also tasked with overseeing implementation of the reparations law. While civil society obtained 4 seats out of 14 members (the other 10 are representative of various ministries and government agencies),<sup>42</sup> none of the four directly represents victims' organizations and only the representatives of human rights organizations and a civil society development network see themselves as representing victim interests.

During the first years of CMAN's operation, during the Toledo government, a group of NGOs that had been working on the reparations issue since early in the CVR process took on the task of facilitating communication between CMAN and victim groups by means of a monthly meeting space for dialogue, with progress reports and reactions. The ideal would have been for CMAN itself to convene this type of informational meeting and to collect opinions, or at least to take the initiative to establish a direct dialogue with victims' organizations. While a few victims' organizations did relate directly to CMAN, this has not been the case generally. Later, under the government of President García (in office as of the time of this writing), forms of communication between CMAN and civil society organizations in general and victims in particular have been limited to private dialogue with some organizations, without an institutional framework.

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<sup>41</sup> Its full name is High Level Multi-Sectoral Commission in Charge of the Follow-up of State Actions and Policies in the Fields of Peace, Collective Reparation and National Reconciliation.

<sup>42</sup> CMAN is composed of a representative of the President, who presides; representatives from each of the Ministries of Interior, Economy & Finance, Justice, Defense, Women & Social Development, Education, Health, and Labor; and a representative of the National Council on Decentralization, in addition to the 4 civil society representatives.

The most effective arenas of participation for victims in Peru has occurred at the regional and district level. A number of factors led the human rights movement fairly early on to adopt organizing strategies focused on participation at this level: the difficulty of identifying national leaders recognized by the universe of victims; problems in putting in place a functional channel for direct dialogue between CMAN and the victim groups; and national government's apparent lack of political will to fully implement the reparations as recommended by the CVR. Peru was in the process of regionalizing government structures, so this was a new opportunity for participatory activism.

In fact, the process of follow up and implementation of reparations has had a special status at the regional level thanks to these strategies. Municipal governments have primarily adopted measures of symbolic reparations. Regional commissions have been set up that generally include regional authorities and representatives of relevant sectors of government, as well as members of civil society, including NGOs and victim groups. The main objective of these groups has been to craft regional reparations plans. One assumes that one of the reasons that local and regional governments are more susceptible to the demand for victim participation is precisely their proximity and a resulting empathy for victims' situation.<sup>43</sup> The regional and local activity allows the particularities of the experience of violence and local priorities to come to the fore. These forms of participation also offer an important opportunity to ensure that the voices of the victims are heard nationally. Unfortunately CMAN's current collective reparations programme fails to integrate these prior regional efforts, though community-level input is required.

In Guatemala, victims' organizations had played a crucial role in producing public policy on reparations.<sup>44</sup> The Executive Decree that established the National Redress Commission (Comisión Nacional de Resarcimiento) provided that it would be made up of five representatives of different government bodies and five delegates from human rights, women's, victims' and Mayan organizations. Later, civil society representation was raised to seven members, and government six. This structure put a premium on civil society capacity to develop government policy on technical matters that were also outside of the control of these delegates. Exacerbated by divisions and disagreement among the civil society delegates, which extended respectively to the various fragmented groups they represented, and by ambivalence on the part of government representatives, the process stalled.

According to Gustavo Porras Castejón, the government wanted to start with "reparations packages" of social investment projects for affected communities that would bear the names of victims, cases or important dates. But, "...the proposal was rejected by the victim organizations," he reports, "under the argument that the construction of infrastructure was already a Government task, and so should not be absorbed as redress."<sup>45</sup> Porras argues that it was an error to delegate to the Program not only the design of the reparations measures but also their execution, when only

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<sup>43</sup> Also in play, of course, are many other factors, including the interest in attracting additional resources and attention to these traditionally marginalised areas of the country.

<sup>44</sup> Executive Decree (Acuerdo Gubernativo) Number 258-2003, which created the Commission and National Redress Program. For more information on how victim and human rights organizations participated in this process, see Programa Nacional de Resarcimiento, *La vida no tiene precio: Acciones y omisiones de resarcimiento en Guatemala*, Magna Terra Editores, S.A., Guatemala (2007), p. 31.

<sup>45</sup> Gustavo Porras Castejón, "Introducción," *La Vida no Tiene Precio*, supra, p. 33. (Authors' translation.)

the State was capable of discharging this latter function. Government then unilaterally restructured the programme, eliminating the civil society representation and failing to establish any new channels for formal consultation with these sectors.<sup>46</sup> PNR staff member Rodrigo Carrillo writes, “Constituting the CNR with only representatives of Government made it possible to reduce the time required to take decisions and it sped up the process, but it also lost dialogue as a general feature, and this led to criticisms that are still heard.”<sup>47</sup>

Notwithstanding these problems, some implementation of reparations occurred in 2007, and a newly elected government installed in January 2008 is expected to be supportive of the ongoing process.

At least two lessons can be derived from this example: first, the government responsibility of making reparations work should not be off-loaded onto victim and civil society organizations, especially where these groups are ill prepared to craft and implement public policy; and second, without effective channels for participation and consultation, the implementation process is likely to suffer. These lessons do not suggest that participation of victim representatives in implementing bodies is always inadvisable or impossible; but it is a question that should be considered very carefully, both from a strategic standpoint and from a practical one, in light of the specific context. It may be that, in general, victim groups will best be served by being advocates and pressing for effective channels of communication and bi-directional consultation with implementing bodies rather than taking on a responsibility that should rest solidly on government. Yet each case will depend on the specific dynamics that make each actor effective vis-à-vis the others.

### *E. Lessons and Conclusions*

The objective need for participation is often not matched by an easy parallel of capacity, resources, and forms of participation in the diverse universe of victims. However, by revealing the various challenges inherent in the process of designing and implementing reparations and the different stages involved, it is possible to see how effective policies for participation can generate a positive impact for the process overall.

In particular, the work of a commission or other truth-seeking body can serve to build capacity of victim groups, allowing them to participate effectively not only in relation to the truth commission but also at later stages. A truth commission process is an important time for building the capacity of victim groups to participate effectively and to sensitise policy-makers to the needs and situation of victims. This can help a commission’s recommendations to be implemented and thus serve as guarantees of its legacy following its dissolution.

Some conclusions were offered before in regards to the challenges created by positing a participatory role for victims. The heterogeneity of victims and their organizations makes it difficult or impossible to work with one single organization or just a few delegates tasked to

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<sup>46</sup> Ibid. An advisory council that was to be composed of victims’ representatives had not been set up as of November 2007.

<sup>47</sup> Rodrigo Carrillo, “Programa Nacional de Resarcimiento: Cuatro años hacienda camino al andar,” *La Vida no Tiene Precio*, supra, p. 60. (Authors’ translation.)

represent all victims with a unified discourse. However, establishing different channels of communication and providing support for victims' groups might lead to a positive engagement of these organizations later in the process. Human rights NGOs can help to facilitate victim participation, as in the case of Peru, but they do not themselves take the place of victims and they too have to take care to build victims' space for engagement rather than supplant it.

Establishing a common framework for reparations can help to clarify expectations and the scope of the reparations debate, making it possible for all parties to understand the possibilities and the limitations of a reparations programme. That may lead also to a higher level of satisfaction, as expectations are met and policy is made more realistic. It will also allow victims' groups to build strong and realistic arguments to defend and support the recommendations for reparations as their own.

There is increasing awareness of the importance of ensuring that victims have a voice during the phase of developing a reparations plan. Participation is often weaker or lacking earlier, when the scope of the debate is defined. However, the greatest challenge to participation is probably in the transition from policy to reality: the implementation of reparations. Unless victims have strengthened their voice and political clout, and gained public sympathy through earlier and knowledgeable participation, this will be a significantly difficult period.

Following a truth commission the political space tends to be filled up with other priorities and the policy-makers who must be swayed to support reparations have not been subject to the same level of sensitisation as those involved in a truth commission process would be. At the same time, some opinion leaders can become tired of what they see as "over-exposure" on this issue. In this way, victims tend to lose influence at the implementation stage and often become divided as they seek scarce resources in the face of variable political will. Tensions also arise among those victims groups who enjoy greater political sympathy and those who feel more marginalised, in a new (or continuing) political context. Where governments have not embraced truth commission findings or actively acknowledged the truth about victims, violations, harms and responsibility in some way, this uphill struggle becomes even more fraught. International assistance and support seem to drift away during this post-truth commission phase, when victim groups and human rights NGOs may need more attention and resources than ever. International actors need to be reminded of this lesson and urged to continue to pay attention as implementation gets underway.

Participation at the local level, where local authorities and victim groups have greater access to each other and where there may be greater political sensitivity to victims' situation, can be the most robust. However, without input at a national level, this strength can end up being limited to only those localities where victim groups are strong and there is political affinity with their interests. In some cases, local authorities may have important ties to powerful actors from the period of violence and constitute a greater threat than a support to victims. Participation on a local level may be very relevant, but it is insufficient by itself. Attention to building effective national arenas for participation and two-way communication is critical. Victims' organizations and human rights groups alike will have to consider carefully whether to have their delegates take on a direct role in seeing that reparations are realised.

While more and more information is being made available on reparations policy, we need to pay more attention to this issue and share lessons across experiences. Little has been written with specific attention to the role of victims in these processes. Like policy-makers in contexts where truth and reparations are needed, we who work in this field must be prepared to listen to, and learn from, the voices of victims and survivors, and the experience on the ground.