



WHAT HAPPENED TO THE WOMEN?

*Gender and Reparations
for Human Rights Violations*

EDITED BY RUTH RUBIO-MARÍN

INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE

Advancing Transitional Justice Series

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ADVANCING TRANSITIONAL JUSTICE SERIES

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EDITED BY RUTH RUBIO-MARÍN,
INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE

FOREWORD BY COLLEEN DUGGAN

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Heidy Rombouts is a legal and social scientist with a Master of Law and Master in Social and Political Sciences from the Catholic University of Leuven. For several years she has conducted research on transitional justice, human rights, and post-conflict situations on which she did field research in South Africa and Rwanda. Since 2000 she has been involved in a joint research project of the Catholic University of Leuven and the University of Antwerp on reparations for victims of gross and systematic human rights violations. In 2004 she obtained a PhD in social and political science for her research, published as *Victim Organizations and the Politics of Reparation: A Case Study on Rwanda* (Intersentia, 2004).

Ruth Rubio-Marín is professor of constitutional law at the University of Seville, Spain, and part of the Hauser Global Law School Program at New York University. She is author and editor of several books, including *Immigration as a Democratic Challenge* (Cambridge University Press, 2000); editor of *Mujer e Igualdad: la Norma y su Aplicación* [*Women and Equality: The Norm and Its Application*] (Instituto Andaluz de la Mujer, Sevilla, 1999) and co-editor of *The Gender of Constitutional Jurisprudence* (Cambridge University Press, 2004). She is also the author of several articles and book chapters, including “Women and the Cost of Transition to Democratic Constitutionalism in Spain” (*International Sociology* 18 [2003]) and “Constitutional Domestication of International Gender Norms: Categorizations, Illustrations and Reflections from the Nearside of the Bridge” with M. Morgan (in Karen Knop, ed., *Gender and Human Rights* [Oxford University Press, 2004]). She is currently working as a consultant for the International Center for Transitional Justice managing a major research project on gender and reparations.

Galuh Wandita completed her BA at Swarthmore College in 1988. After working as a reproductive health/AIDS counselor in Philadelphia, she returned to her native home of Indonesia, where she worked in the NGO sector for a decade, focusing on gender-based violence and support for local NGOs working in conflict areas. In 1996, with support from Oxfam, she began working

with local NGO activists in East Timor. In response to the increasing violence around the ballot in 1999, she moved to East Timor to work with Fokupers and Yayasan HAK. Along with thousands of other refugees, she was evacuated to West Timor in September 1999. She returned to East Timor in October 1999 with Oxfam to assist in the emergency response. Between 1999 and 2001 she worked with Oxfam, Fokupers, and the Human Rights Unit of the United Nations Transitional Administration in East Timor (UNTAET). In 2001 she began her association with the Commission for Reception, Truth, and Reconciliation (CAVR), initially, as a member of the steering committee that drafted the legislation, and later as a member of the selection panel established to nominate commissioners. After the commission was established in 2002, she worked as program manager and advisor to the executive director, after a six-month period as deputy director.

Acknowledgments

Given the immensity of the unexplored territory covered in this book, from its very inception it became clear that this endeavor would have to start from the voices of victims. I would like to begin by thanking the men and women who agreed to be interviewed in the different countries to help this book see the light of day: moving from victims to agents of change.

Committed to both normative theorizing and empirical information, the International Center for Transitional Justice (ICTJ) has served as the optimal institution to develop this project. Indeed, the ICTJ's institutional setting and operational work has facilitated the identification of the right authors, people who have been engaged in actual political processes in the various countries and in different capacities, and profiting from the highest level of scholarship and policymaking expertise.

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The authors of the volume are of course the protagonists. They deserve both my gratitude and respect. My gratitude for their patience in bearing with the many rounds of editorial comments and suggestions; my respect for being able to put time aside to do so, often in the midst of their busy and politically engaged lives.

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it, I would like to mention Colleen Duggan for her enthusiasm, unconditional support, and practical collaboration at different stages of the process. Among the friends of the project, special thanks goes to M^o Bleeker in the Swiss Ministry of Foreign Affairs, which helped finance the publication of the volume as well as organize dissemination activities to share the results of the research.

I would like to dedicate my share of the contribution to this book to the men of my life—Pablo, my husband, and Simon, my son—both of whom challenge me in many ways and on a daily basis, while at the same time encouraging me to become, always more, the person I always wanted to be.

Ruth Rubio-Marín
Seville, 2 October 2006

Foreword

Former Canadian Prime Minister Pierre Trudeau once said that “we can only be just in our time.” Although I am a great admirer of Trudeau, I cannot help but wonder if, over the years, he would eventually have come to alter his opinion. Increasing globalization and the growing practice of “transitional justice” in virtually every corner of the globe suggests that the new millennium may be shaping up to become the age of atoning for the past.

Skeptics would have us believe that international justice is at best an ephemeral concept invented by out-of-touch international lawyers, and at worst a new form of colonialism. Developments in the international arena and in diverse national contexts, however, suggest otherwise. At the time of this writing, the Liberian truth commission was being inaugurated and former President Charles Taylor was on his way to The Hague to answer for his role in the brutality that took place in Sierra Leone during the last years of the 1990s. During the same week, in Canada, the Harper government agreed to compensate Chinese Canadians for the head tax they were forced to pay when they immigrated to Canada during several years of the last century.

This book of case studies, under the intellectual leadership of the International Center for Transitional Justice (ICTJ) and with support from the International Development Research Centre (IDRC), sheds light on as yet misunderstood and under-researched questions: Can governments in new or reforming democracies hope to repair the particular forms of gendered harm suffered by their populations during periods of political violence and repression? Can this be achieved through the integration of gender concerns into the conceptualization of state-sponsored massive reparations schemes?

At IDRC we define *gender* as one of several important social categories, which is also cross-cut by other axes of difference, including age/life-cycle position, marital status, ethnicity, race, religion, class, and caste. We support gender research that explores the relational dynamics between men and women, as well as among different categories of women and among different categories of men. In addition, we understand gender to be shaped by political, economic, social, and cultural relations and contexts.

Over the past seven years, many of the researchers we have supported have focused on issues of governance and examined the opportunities and strategies for re-shaping the construction of women as citizens, including their claim to human rights. Emerging research continues to highlight a growing understanding of the root causes of gender-based violence as a phenomenon often anchored in gendered definitions of masculinity and femininity. These definitions are particularly subject to transformation with the social change and upheaval that accompanies societies undergoing or recovering from violent conflict.

Much of the peace building, human rights, and even feminist literature is littered with blanket statements about the importance of mainstreaming gender into post-conflict public policy planning and implementation. The field of transitional justice, a relative newcomer, is no exception. And yet there is little research on, and even fewer concrete examples of, why or how gender analysis and gender-sensitive policies for reparations might make a difference in societies recovering from mass violence. Indeed, Ruth Rubio-Marín, the research coordinator for this volume, reminds us that although “this is a book about non-responses and weak responses, it is also about contexts that provide clues to interpret both voices and silences.” Seen in this light, the book provides us with new information worthy of inspiring cautious optimism among advocates for both women’s and victims’ rights.

The cases examined in this volume, grounded in empirical research and authored by leading academics and activists, make a cutting-edge contribution to emerging policy and practice. We are presented with numerous examples of how gender-insensitive planning and policy delivery can undermine chances for peace building, reconciliation, and development in the aftermath of violence. For example, Jamesina King illustrates how policymakers in Sierra Leone assumed that victims of war rape who became pregnant would be willing to care for and raise these children. Regrettably, this is one of several instances that illustrate how gender bias and sexual stereotyping can undermine post-conflict policy and development planning, perhaps even sowing the seeds for tomorrow’s conflicts. And yet, the news is not all bad. The book also documents some of the first positive practices of incorporating gender thinking into transitional justice measures and processes. In the case of Timor-Leste, the authors describe how the reparations program recommended by that country’s truth commission suggests the use of a quota system in order to ensure that women victims are not marginalized if and when reparations are implemented.

The above examples remind us that although policymaking for transitional justice is a relatively new (and growing) phenomenon, much can be learned

by studying past challenges and lessons in mainstreaming gender into other public policy spheres. As highlighted by all of the cases presented in this book, services for health and education, judicial and security sector reform, and fiscal forecasting and budgeting all have a role to play, since the broadness of reparations as a concept often means that, in practice, these sectors are directly involved in the implementation of mass reparation schemes.

Those who are involved in the planning and delivery of reparations — human rights groups, victims organizations, activists for women’s rights, and public officials — may also need to take a closer look at emerging analysis on the record of gender mainstreaming into social and economic policy, since a number of the cases in this volume (e.g., Timor-Leste, South Africa, and Rwanda) advocate using social service packages as a form of reparation. The fate of gender mainstreaming into other development sectors remains an open question requiring more research. What is clear is that more than ten years after the Beijing Platform for Action, feminists in both the North and the South are beginning to ask hard questions about the successes and failures in this endeavor. In some circles, there is a growing feeling that opportunities have been lost and gender mainstreaming may have diverted too much energy away from overarching political goals for expanding and deepening policy reforms for women’s equality.

The above considerations deserve our attention and are worthy of deeper reflection, not least because (and as all of the authors in this book readily point out) women are often doubly or even triply marginalized when it comes to post-conflict reparations schemes. For this reason (among others), this study focuses upon the particular forms of gendered harm that disproportionately affect women and girls. So, while gender mainstreaming does have its critics, the research in this book suggests that mainstreaming continues to be a viable strategy. All of the cases reviewed present indisputable evidence of the importance of using gender analysis for crafting truly effective public policy, including reparations policy.

The book’s emphasis on the need for special forms of reparation for women victims of political violence may generate skepticism in some quarters. The activists and academics featured here leave no doubt that specific reparatory policies and measures for women victims constitute genuine gender justice and underpin the sort of full and equitable citizenship that should be the cornerstone of any genuine democracy. But the book also poignantly reminds us that, although it is important to craft transitional policies that advance women’s rights and strengthen their position from one of subordination, it is equally important to understand the complex psychology and myriad effects that

gendered violence has upon gender-based relations. The shame and stigma that often accompany gender violence and are experienced by both women and men are underscored by all of the authors in this book, perhaps most vividly by Claudia Paz y Paz Bailey and Julie Guillerot in their accounts of the struggle for reparations in Guatemala and Peru. In the same vein, in the context of Sierra Leone, Jamesina King reiterates the need to provide psychological support to male spouses of victims of sexual crimes. Evidently, support to affected males should not overshadow the suffering of or undermine assistance for female victims. What these accounts do suggest, nevertheless, is a need for further research on how men deal with their own compromised masculinity in the face of adversity, since this has a direct impact upon women's long-term chances for recovery and empowerment.

This collection of studies on gender and reparation, the first of its kind, raises a host of unanswered questions that merit further consideration by victims, advocates, and policymakers in transitional societies and situations. After reading all of the studies, I found myself coming back to the same question time and again: Is it possible (or realistic) to use reparations to compensate female victims of gender violence without drawing arbitrary distinctions between past and present violence? Policymakers' commitment to nonrepetition and the due diligence responsibilities of post-conflict States have always been the weak link in transitional justice processes. The high incidence of "apolitical" gender violence against women in countries such as Guatemala and South Africa suggests that prevention and protection continue to be the invisible dimension of reparation.

Without doubt, the cases presented in this book confirm that, amidst progress, a number of formidable challenges remain for victims of gender violence. Although some of these developments are encouraging, one raw reality remains unchanged: In most countries in both North and South, compensatory or reparative justice continues to arrive too late, or not at all, for women. Clearly, atoning for the past, while admirable and important, should not eclipse the urgent need to put in place measures to protect women and girls from gender violence in the future. Prevention may be the single most important legacy that we can leave for our mothers, sisters, and daughters.

Colleen Duggan
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INTRODUCTION

The Gender of Reparations: Setting the Agenda

Ruth Rubio-Marín

[After separating the men from the women,] twelve women were then divided into pairs. Each pair had to remain with five soldiers in each one of the 6 entry boxes at the gates of downtown Cuarto Pueblo. They were forced to cook and bring water for the troops. The soldiers were raping them for 15 days. On March 15, they finished off killing the old women and the pregnant women. Only the young ones remained . . . they took turns so that each woman was raped by 15 soldiers.¹

My house was burned by UDT in 1975 during [the] coup d'état. I never saw my husband again after he joined the Falintil [uprising] on August 20, 1982. After the referendum in 1999, my house was burned by the Mahidi militia.²

What happens to the voices of these women once they find their day in court or a truth commission, and what happens to the women who speak and to the truncated lives that they talk about? More importantly, what happens to the thousands of others who will never have a chance to access a court or a truth commission and whose lives have nevertheless been equally disrupted by violent conflict or years of political repression?

This book shows the manifold ways in which women are victimized under authoritarian regimes and during violent conflict. It testifies to how women suffer as a result of operations randomly targeting the civilian population, but also to how they are detained, executed, imprisoned, tortured, and raped for fighting in resistance movements or for engaging in the search for and defense of their relatives and loved ones. It provides examples of how women are victimized because of their family or communal ties, as when they are harassed, sexually assaulted, or detained for being family members of men involved in the conflict or for coming from communities suspected of collaboration. The stories of women in times of political turmoil and in its aftermath also reveal how women bear the brunt of the consequences of violent actions that target “their” men (husbands, sons, brothers, etc.), as when they become the sole

bread-winners and protectors of their families once those men are killed, detained, or disappeared.

Some forms of violence that women are subject to, and that are described in this book, are similar to those that men are subject to. Others are more specific to women, as when they are subject to systematic patterns of sexual or reproductive violence, or to different forms of domestic enslavement. The book's authors explain how in different settings some crimes tend to be perpetrated mostly by state forces while others are used mostly by subversive groups or civilian self-defense groups as tools to recruit and exploit women for their cause. More importantly, the accounts of women's experiences in conflict show that, even when women are subject to the same violations as men, their pre-existing socioeconomic and legal status, as well as the cultural meanings around the construction of the male and the female in patriarchal societies, may imply that the ensuing harms for men and women are not the same. They also demonstrate the manifold ways in which violence affects families and communities and thus the forms in which violence perpetrated against men also victimizes women and the structures they rely upon in their daily lives.

The increasingly rich literature on women under authoritarian regimes and women in war describes these issues in depth.³ This recent trend to render women and their experiences of armed conflict and political repression, echoed in UN Security Council Resolution 1325 on Women, Peace, and Security,⁴ is to be celebrated. In spite of this, the starting point of the quest that motivates this book is the need to redress a history of double marginalization: the marginalization of victims within the framework of the larger debates that take place in transitional and post-conflict societies, and within it, the marginalization of women. As the most comprehensive study of reparations in post-conflict or transitional countries up to this date shows, although a good number of these countries have reflected upon the needs of victims and how these could be addressed through reparations, and although many have actually implemented reparations legislation or programs, the focus of analysis and political debate around transitional issues has been more on prosecutorial than reparative venues.⁵ The transitional justice debate has been overwhelmingly more about what to do against perpetrators than about what to do for victims, in spite of the increasing awareness of the limits of criminal justice in scenarios of massive and systematic violations of human rights. Truth commissions, which may help provide victims with some of the truth they need for closure and grant them voice and public visibility in the collective effort of

unveiling and reconstructing the country's past, do little more to help victims face the concrete consequences of war and authoritarianism in their truncated lives. In the end, reparations may be the "most tangible manifestation of the efforts of the state to remedy the harms victims have suffered."⁶

If victims, for the most part, have been less in the picture than perpetrators or ex-combatants (who often receive benefits through disarmament, demobilization, and reintegration programs), among victims women have been especially neglected. Although women have been known to play a crucial role during periods of violence and its aftermath in searching for victims or their remains, trying to sustain and reconstitute families and communities, and carrying on the tasks of unveiling the past and demanding justice, reparations programs to help victims of gross violations of human rights have not focused on the forms of victimization that women are more commonly subject to, nor are they designed with an explicit gender dimension in mind.

Indeed, discussion on the difference that gender should make when conceptualizing, designing, or implementing reparations has been practically absent up until now.⁷ This gap is noticeable in view of the different reparations programs⁸ that have been implemented around the world in transitional democracies including those in South Africa,⁹ Germany,¹⁰ Chile,¹¹ Brazil,¹² and Argentina.¹³ This gap applies, with some rare and recent exceptions,¹⁴ not only to debates on reparations in the aftermath of conflict or authoritarianism¹⁵ but also to those about other past systems of domination that have given rise to reparations claims (such as colonialism, apartheid, slavery, and segregation).¹⁶

There may be a very incipient trend to reverse this both in the discussions and in the practice of reparations. For one thing, sexual violence against women during times of conflict and authoritarianism is increasingly being discussed not only in relation to prosecutorial mechanisms¹⁷ but also in relation to reparations.¹⁸ Moreover, there is a growing sense that including sexual violence among the violations deserving reparations is not all that is at stake, and that concerns with gender justice should somehow be "mainstreamed" in the discussions and design of reparations.¹⁹ Still, there is little general understanding of what mainstreaming gender in reparations programs may require.²⁰ In discussing whether and how gender justice has played or could play a role in reparations efforts by taking a close look at six country experiences, namely those of Guatemala, Timor-Leste, Peru, Rwanda, Sierra Leone, and South Africa, these studies are a first attempt to start a much-needed conversation. But first a word on reparations.

REPARATIONS : THE LEGAL AND POLITICAL FRAMEWORK

In international law the right of individuals to reparation for the violation of their human rights has been increasingly recognized. Affirmed initially as a principle of interstate responsibility linked to the commission of an internationally wrongful act,²¹ we can observe a shift of focus to national arenas and away from international disputes. The contours of the obligation to provide reparations to the individual whose rights have been violated remain, however, far from clear. A look at the most relevant international treaties on the protection of human rights provides some textual support but does not allow for any conclusive evidence.²² Moreover, these are conventional instruments that do not necessarily reflect international practice, which would be required as the factual basis for a rule of customary law.²³

There are, however, promising signs. For one thing, the international bodies of human rights adjudication seem to be embracing an increasingly broad interpretation of their own remedial powers.²⁴ Also, since 1989, the UN Human Rights Commission and its Sub-Commission on the Promotion and Protection of Human Rights²⁵ have been discussing *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. These were finally approved in April 2005.²⁶ The principles present themselves as grounded in the recognition of a right to remedy for victims of violations of international human rights law (found in numerous international instruments) and of international humanitarian law, and emphasize that they do not entail new international or domestic legal obligations but rather identify mechanisms, modalities, procedures, and methods for existing legal obligations. They refer to restitution, compensation, rehabilitation, and guarantees of nonrepetition as forms of reparation for victims of “gross violations of international human rights law” or “serious violations of international humanitarian law.”²⁷ What constitutes either is not defined in the principles themselves.²⁸

Beyond the question of the unclear confines of the right to reparation for victims of human rights abuses in general, there is an increasing sense that reparations in the aftermath of gross violence should be conceptualized as a problem of political and not only juridical dimension. Indeed there is something problematic about endorsing a notion of reparation that focuses on (mostly) individual types of remedy aimed at full restitution or compensation of the harmed person to cope with a legacy of massive and gross violations of human rights in societies torn by either politically authoritarian regimes or large-scale civil strife in failed or absent states. When confronted with this legacy of

widespread violations, the act of reparation by the new regime should not be thought of merely as a means to provide individual remedy to the victims of the rights infringing. Rather, reparations should be intended as acts of assertion of the rights themselves, and thus, collectively speaking, as an exercise of creation (and not just of validation) of the basis of legitimacy of a given political order that claims to be grounded in the respect for such rights and the recognition of its citizenry as equal rights holders. In other words, reparations in those scenarios are best conceived as modest acts of creation of the democratic state. This is why it has been rightly argued that in such contexts the actual dynamics of reparations arrangements must be taken as an expression of the moral and political forces at work to address the specific circumstances that exist in particular states.²⁹

Conceived in this way, as opposed to aiming to address every consequence of the breach of a person's rights and trying to revert her to the *status quo ante* (the situation prior to the violation),³⁰ reparations become measures that promote a minimal degree of both interpersonal trust and trust in the institutions of the "new state" as well as in its overall legitimacy and efficacy.³¹ Reparations become an expression of recognition to the victims as human beings and as equal citizens in the new political order, an admission of past and/or future responsibility for certain types of conduct or omissions and, at the same time, a symbolic expression of the deontological code of the new political system. In this lies their potential, however modest, for contributing to democratic state building. Framed in these terms, the project becomes one of spelling out how, in their modest contribution to democracy building, reparations measures can help to either reinforce or subvert some of the pre-existing structural gender inequalities that are commonly built into the social tissue of civil society resulting in women's systematic discrimination.

THE METHODOLOGY OF THE BOOK

The methodology chosen for the book expresses a commitment to the idea that only empirically grounded research can allow us to move forward in our effort to understand what "engendering reparations" can be about in both a theoretical and a practical way. All of the chapters are organized around a common structure. Authors provide a wealth of information not just about the conflicts and transitions in each case, but about the gender dimensions of both. The chapters open with a description of the conflict or authoritarian repression in the country, the milestones of the transitional processes and the status quo

on the debate on reparations for victims. They then describe women's experiences during the conflict, both as agents and victims, setting these experiences within the broader picture of women's socioeconomic, political, and civil status in the country. The studies proceed next to the analysis of women's agency in the reparations debate and in the articulation of reparation policies, whether directly as victims, as organized members of civil society associations, or as officials of the agencies in charge of recommending and designing reparations programs.

From there, the chapters move into a detailed examination of the proposed, designed, and/or implemented reparations mechanisms in each country, with a clear focus on reparations programs more than on judicial venues for reparation awards. They elucidate the ways in which gender can play a role in decisions that are critically important for purposes of reparations, including the definitions of the harms, crimes, or violations around which reparation programs are articulated, the definitions of beneficiaries in reparations programs, the definitions of benefits and reparations measures, and the actual or planned implementation policy of reparation programs.³² Each of the studies closes with a section that sets the gender and reparations discussion within the larger picture of the transitional process in the country and concludes by underscoring the lessons, both positive and negative, that can be drawn from the case for the broader theoretical debate on gender and reparations.

All of the studies, except for one, were done in-country and relied not just on secondary sources but on interviews (based on a common questionnaire attached in the appendix) with relevant actors, including victims organizations, human rights NGOs, women's organizations, public officials, and victims themselves. The authors include both activists and academics from a variety of disciplines working in the field. All of them benefited from a meeting organized in July 2005 for the discussion of their drafts as well as from the prior suggestions of a group of experts that convened in New York in December 2004 to identify relevant themes and countries to be analyzed.

The choice of cases deserves explanation. It represents an attempt to include countries from different geographical regions of the world and countries that represent different typologies of post-conflict or transitional scenarios. However, with the exceptions of South Africa, the very modest urgent reparations scheme implemented in Timor-Leste by the Commission on Reception, Truth, and Reconciliation and some assistance funds provided in Rwanda to genocide survivors in special need,³³ virtually none of the reparations measures discussed or even approved in the different countries analyzed in this book have

actually been implemented. This selection then calls for justification, especially in view of the fact that there are cases of reparations schemes that have been implemented and that could, in theory, have been the subject of better analyses, such as those of Argentina, Brazil, or Chile.³⁴ However, all of these had the great disadvantage that, at the time of their initial conception, gender was not even part of the conversation. In contrast, in all of the more recent cases that the book focuses on, there has been some sense that a special effort, however vague or broadly defined, should be made to understand the forms of victimization of women and, to a more modest extent, their specific needs for redress as well. Because the book's ultimate aspiration is to broaden the imagination and suggest ways of conceptualizing forms of redress tailored to women, it seemed important to rely on those attempts to frame reparations that followed an effort to understand and spell out women's experiences during the conflict and their needs in the aftermath, whatever the actual degree of success in translating such an understanding into concrete reparations policies, and however uncertain the future implementation of the proposed or approved reparations measures. So, in a way, this is a book about nonresponses and weak responses, but it is also about contexts that provide clues to interpret both voices and silences in a way that can be conducive to move the status quo forward and gather lessons that can be used in ongoing and future cases. It represents an effort to bring gender to the area of reparations for mass violations of human rights before the area itself is too firmly consolidated in a way that would doom a project seeking to understand "gender and reparations" to being one of a primarily deconstructive nature and one that might come too late to make a difference in the real world and in the lives of many victims.

Finally, a word on the mechanism of reparations that the chapters have focused on: reparations programs or schemes. Although there is brief discussion of women's judicial venues to reparations in some of the chapters, authors were asked to focus on large-scale reparations programs. There are two main reasons for this. One is the very practical reason that this is becoming an increasingly common form of handling reparations in the context of massive violations of human rights. The other is that, to the extent that large-scale reparations programs in post-conflict or post-dictatorship regimes are conceptualized not only as aggregated efforts to give individual victims some form of redress for their violated rights but also as an essential part of a political project of reconstituting new (more legitimate, democratic, and inclusive) political orders,³⁵ assessing the specific efforts made to include women as equal citizens provides insight about the aspirational ethos of the new regime in a way that

the case-by-case and often inconsistent judicial venue does not. This having been said, the challenge of avoiding gender bias is just as present when reparations are decided in courts or compensation tribunals, and the hope is that whatever insight is gained from reading this book can contribute to understanding reparations through the lens of gender, broadly speaking.

THE GENDER OF REPARATIONS : THE QUESTIONS

WOMEN'S AGENCY IN THE ARTICULATION OF REPARATIONS

Rather than starting out from a preconceived list of items that a gender-sensitive reparations program has to abide by, it would seem that, in order to claim that women have been taken into account, a policy of reparations must begin by including the voices of women. Women (also) must own the reparations process, especially when it is conceived as a way of giving due recognition to victims, both male and female.

There may be different answers that women and groups of women give to the why, what, and how questions of reparations, depending on many factors including: the types of conflict; the boundaries of the imaginable in a concrete scenario; past or present experiences of subordination; the overall amount of resources available; the existence of competing needs; the specific forms of violence and victimization that men and women have been subject to in each case; and the cultural meanings that provide the context for interpretation of the ensuing harms and losses. As the reader of this book will see, the degree to which victims or civil society groups are included in discussions on reparations varies from case to case. However, one of the most interesting commonalities that the chapters point to is the fact that although women tend to be quite active in movements for justice and reparations, they generally rely on structures that do not encourage them to think about the manifold ways in which they have been victimized. Women tend to speak about and act in response to the victimization of others (usually close family relatives) more than of themselves. They typically channel their participation through general human rights organizations, or organizations of victims or families of victims, only occasionally and more recently organizing around gender-specific aspects of their victimization (such as when they mobilize through widows organizations).

For a variety of reasons, until fairly recently, feminist organizations and women's rights organizations have been largely absent from the discussions

of reparations and, even more broadly, from those about how to deal with the past. Some of these reasons might have to do with the different social extraction of victims groups and women's rights groups or with the fact that women's groups are often too busy facing the challenges of the present to care about the past: official peace does not usually mean peace for women, who, after the political turmoil has ended, continue to be subject to many forms of violence, often in the private sphere. Also, in times of transition women often and understandably look to the future and put their energy into seizing the window of opportunity for structural and institutional long-term reforms. Although there are no good reasons to think that many women's interests cannot be well represented by broader organizations, there are good reasons to think that not having any participation in discussions about reparations may introduce gender bias into the shaping of reparations policies. This book provides plenty of examples of this result.

WHAT REPARATIONS ARE ABOUT

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

It has been argued that the ideal of *restitutio in integrum* (restoring the victim to his/her status prior to the violation) or even that of compensation in strict proportion to harm may not be the best ways to think of reparations when one has a large pool of victims of gross violations of human rights.³⁶ The very real difficulties associated with satisfying the material consequences of this criterion, particularly under conditions of general scarcity, and the manifold competing needs in societies facing reconstruction are just some of the reasons why. The unequal awards and the attendant disaggregation of both victims and reparations efforts that would result from the application of this criterion are additional reasons.

Once the tidy—however unachievable—idea of trying to erase the consequences of the violation is given up, the notion of reparation opens itself up to an array of competing meanings. For instance, should reparations then still be primarily conceived as compensating victims, however minimally and

imperfectly, for harms or losses endured? Should the emphasis be placed on rehabilitating victims and facilitating a sense of closure on their part so as to allow them to move forward with their lives? Should reparations be conceived as a way of giving recognition to victims for what they have endured or for their condition as equal citizens and rights holders? Should the emphasis be laid instead on reassuring victims that they will no longer have to face similar violations in the future? Because the competing underlying rationales may affect the specific way reparations programs are designed to allocate material and symbolic resources (either on an individual or collective basis), there are legitimate reasons to inquire whether women, or most women, would want to privilege one of these goals over others. Just as important seems understanding the reasons that may account for differences in expressed preferences. Let us look at one example.

The fact that so many female victims seem to privilege access to basic services when asked about forms of reparations might be an indicator of women's overall levels of poverty and destitution and of the fact that women simply seize whatever opportunity is provided to them to have their most basic needs addressed. It may also be an expression of their lack of consciousness of rights entitlement or information—if women knew that these basic goods are goods they have a right to as citizens, and that as victims of violations of other human rights they are entitled to other benefits, for instance in the form of compensation, they certainly would claim such benefits. Alternatively, one could make the argument that the future-oriented notion of rehabilitation or reintegration of the victim (which is defined around the aspirational notion of a functional life) is indeed better suited to reflect the complex and diffuse nature of the harms women experience before, during and after the conflict, than are the notions of compensation or restitution, which seem to require the identification of discrete and easily quantifiable losses and/or the idealization of the status quo ante.

IDENTIFYING HARMS

The notion of reparations brings to the fore that of victim and the harms s/he has suffered. Tellingly, the definition of victims of gross violations of inter-national human rights law, as it has been consolidated over time, refers to “persons individually or collectively *harmed* through acts or omissions that constitute gross violations of international human rights law” (emphasis added).³⁷ Thus, although the violation of a right is a condition of the right to reparation, the relationship between the right and the violation, for purposes

of reparation, is mediated through a notion of victim that is to some extent harms-based and thus goes beyond that of the right holder to the benefit of those who, like close family members, are also affected by a certain violation.

This mediated relationship between rights and harms that reparations propose frames some of the challenges, but also some of the opportunities, that reparations, as a form of redress, present for women. For one thing, if adequately used, the rights framework is broad enough to provide women some essential tools to reflect their experiences of victimization. For instance, one of the most promising recent evolutions in the field, which the country studies point to, is that of including gender-specific forms of harms, such as the use of rape and other forms of sexual violence as political tools among the violations that trigger reparations.³⁸

Having said this, to the extent that there may be a gender bias in the way a certain rights system (including that of international human rights law) is conceptualized, reparations—conceived as redress for the violations of such a system of rights—will inevitably reproduce such bias. For instance, some of the authors in this volume regret that many forms of violence that target or affect women’s reproductive function or capacity have not been adequately conceptualized in the reparations debates because they have either been left out or lumped together under the common banner of sexual violence, even if the offense is not strictly the same and the ensuing harms for the victim are not necessarily the same either. Arguably, a more generalized recognition of women’s reproductive rights and freedoms as human rights could make a difference.³⁹ Forced “marital” unions and forced “domestic labor,” which may also not have been adequately recognized as human rights violations, have also commonly been left out of reparations schemes.

Be that as it may, the harms-based extension of the notion of victim (which takes it beyond that of the right holder) has great potential for engendering reparations. Indeed, the need to identify who, beyond the right holder, has been individually or collectively affected by the violation and deserves redress allows movement beyond the rights paradigm in one concrete way that may be fundamental to women, namely by bringing to the fore the interrelatedness of the harms and the ways in which the diffuse nature of harms affects women specifically. For instance, although, strictly speaking, there is no human right not to be widowed, the harm done to women whose husbands are executed or disappeared can nevertheless find adequate recognition through this harms-based notion of victim.⁴⁰

The potential of this expanded notion of victim is highlighted by all of the authors of this volume when they describe the ways in which violence and

authoritarian repression affect families and communities, and not just individuals, as well as the ways in which women, as primarily responsible for and dependent on these family and communal network systems, end up bearing the brunt of those harms. However, when it comes to assessing whether this potential will be actualized, the concretely proposed or approved reparations policies in the countries analyzed give us reason only for cautious optimism. One promising sign is the increasing tendency to supplement individual with collective forms of reparation that try to restore some of the public resources and the social tissue that women so heavily rely upon in their ordinary lives. Other signs are less promising. For instance, the dominant tendency seems to be to formally recognize family members of those whose rights have been violated in the notion of victim, but to recognize them as beneficiaries of reparations measures only when the right holder is no longer living. This lumps together access to reparations as a “successor” of the victim and access to reparations for one’s own moral and material damages linked to the violation perpetrated against the victim as a result of close family ties. In practice, this means that, for example, widows may be in, but typically spouses of political prisoners who have not died or are not missing are out.⁴¹

MEASURING HARM AND IMAGINING FORMS OF REDRESS

Beyond the broader question of what reparations are or should fundamentally be about, there is the more specific question of how to imagine forms of redress that fulfill the specific needs of women, that steer away from reproducing gender subordination, and that advance towards a more egalitarian society in terms of opportunities given to both sexes. The chapters in this volume provide plenty of examples of the kind of concrete challenges involved.

For instance, even if one were to agree that reparations should primarily strive to give victims a sense of recognition, there is still legitimate scope for debate as to how this can best be achieved and whether the discussion has specific gendered dimensions. Many reparations programs include symbolic measures of redress, some of which can indeed be best framed as providing victims some due recognition, but very few seem to have addressed the question of whether women may require specific forms of symbolic redress in general or for certain types of violations, such as those of a sexual nature. The fact that sexual violence has traditionally been considered “private” would encourage seizing the opportunity of reparations to restore victims of sexual violence to their status of citizens whose rights have been violated. On the other hand, given that part of what harms sexually assaulted women has to do with the

system of collective meanings attached to the experience of having been subject to sexual abuse, the particular forms of recognition and redress that are specifically called for in an instance like this are far from clear.⁴²

Similar challenges would be encountered by a reparations policy focused on the rehabilitation of victims. Because the notion of rehabilitation inevitably presupposes a concept of health and a “functional” life that has been disrupted, the question becomes one of what has been or may be the implicit or explicit gender bias in the definition of this concept and the likely consequences of such bias when designing reparations. Presumably many of the practical decisions that a reparations program aiming to rehabilitate victims will need to address hinge on this question, including how to prioritize, among the many physical or psychological traces that war and authoritarianism leave behind, those that should be addressed for remedial action (i.e., what categories of sickness or physical or mental impairment should be used when thinking about reparations — amputees, war wounded, disabled, bodily harmed, etc.) and which of the many possibly affected functions will be targeted for recovery purposes in order to restore victims to a functional life (i.e., their ability to work, to generate income, to reproduce, to [re]marry, etc.). Also, although medical and psychological services might in principle be chosen to play a crucial role in the psychosocial rehabilitation of victims, they may arguably also be problematic for a number of reasons, including the fact that they often rely on existing service infrastructure which is often weak and gender biased (for instance, much less suited to respond to the medical and psychological needs of women than of men).

Finally, a reparations policy making the material compensation of victims its primary aim should not escape a gender-sensitive analysis. Let us mention three concrete examples. First, loss of land or property in general is one of the clearest identifiable material harms suffered by victims and one that can be remedied through either restitution or compensation; but placing too much emphasis on or provisioning too many of the scarce resources to compensate victims for this kind of loss might have a disparate impact on women, who tend to be underrepresented among land or property owners. Second, as this book shows, there seems to be a broad range of variation among different programs in the degree to which different victims should be prioritized in the distribution of material benefits depending on their pre-existing or continuing vulnerability or on their situation of need. Given women’s overall subordination to men, it is not surprising that the decision has a gendered dimension. Some of the practical gender implications of opting for this approach are shown by the fact that, as in the reparations program recommended in Sierra Leone

by the Truth and Reconciliation Commission, war widows, victims of sexual violence, and children are among those given relative advantage when vulnerability is taken into account and that, as in South Africa's interim reparations measures, the number of dependents can be one of the criteria relied upon to assess the degree of need of the victim for reparations purposes. Beyond this, and as a final example, there is the broader question of the yardstick used to assess the harm or lost opportunity for the purpose of material compensation and whether or not it incorporates or reproduces gender biases. For instance, one recurring theme in some of the chapters in this book is how employment disability insurance schemes that are sometimes relied upon to assess loss of income generation potential may be ill suited to assess the material destitution of victims of sexual abuse who are abandoned by their partners, ostracized by their communities, or rendered unmarriageable.⁴³

REACHING OUT TO FEMALE VICTIMS

Although the actual implementation of the reparations programs discussed in this book would be essential to draw retrospective conclusions about the main procedural and implementation challenges to ensuring that reparations benefits reach women, virtually all of the chapters point to some of the foreseeable obstacles. The one lesson that can be drawn from the past is that tying the access to reparations of female victims to participation in truth-telling mechanisms means depriving many women of reparations. Both the South African experience and that of Timor-Leste, with the urgent reparations implemented by the truth commission, show how forcing women to "come out" as victims to qualify for reparations may have a largely inhibiting effect, especially for victims of sexual violence who hold back because of shame or fear.⁴⁴

Beyond this, all the chapters raise broader questions of access for women, and not only for victims of sexual violence, having to do with women's greater difficulties in complying with formal requirements (such as identification, certificates, official documents, etc.); their greater difficulty in accessing information (linguistic barriers, illiteracy, etc.) or having a bank account; their degree of involvement in civil society organizations that function as intermediaries in either the identification and registry of victims or the delivery of services; and their geographical distance from the agencies that decide on reparations or deliver services. The most recently recommended reparations program of those analyzed here, that of Timor-Leste's truth commission, comes up with two innovative ways of surmounting some of the obstacles of this kind. One is linking the delivery of services to women with the access to benefits for chil-

dren (to ensure that women care about themselves and not only about their children). The second is earmarking a 50% quota of the resources for reparations for female victims to make sure that the mechanism in charge of implementation makes a sufficiently strong effort to reach women. Along these lines, it may be worth thinking about ways of distributing the benefits, such as providing pensions rather than lump-sum payments, to ensure that more families and more women actually touch the benefits. In short, whether the limited resources that any given country is willing to devote to redressing victims at any given point in time will actually reach women will often have less to do with fancy conceptualizations about the ultimate goal of reparations than with the much more rudimentary issues of process and implementation.

PUTTING THE WOMEN BACK IN

To conclude, there may be a very incipient trend to reverse the traditional absence of gender in the discussions on reparations. The reparations program recommended in the *Final Report* of the Timor-Leste Commission for Reception, Truth, and Reconciliation, which just became public, includes gender as one of the five guiding principles that inspires its conception. As more and more truth commissions come into being and are tasked with either providing reparations and/or making recommendations that the government should then take up and act upon, it is likely that this trend will be consolidated. For one thing, truth commissions themselves are internalizing the need to mainstream gender justice in their overall way of operating.⁴⁵ Also, past experience shows that new truth commissions are often molded according to previous experiences. The many questions raised already in this very cursory agenda and the many more that the chapters in this book bring up show that we may find ourselves in one of those instances in which the results of previous political struggles by feminist movements have borne fruit before serious reflection has been given to the concrete ways in which this can be adequately capitalized upon. It is time to address this vacuum both for the sake of feminism, which is hereby provided with the opportunity to show in concrete ways the difference that “difference” makes, and for the sake of women victims of human rights violations.

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NOTES

- 1 Comisión para el Esclarecimiento Histórico (CEH). *Guatemala, Memoria del Silencio*. Tomo III: *Las violaciones de los derechos humanos y los hechos de violencia* (Guatemala: UNOPS, 1999), 23; cited by Claudia Paz y Paz Bailey in the chapter on Guatemala in this volume, referring to testimony gathered by the CEH about the massacre of Cuarto Pueblo (Ixcan, Quiché), perpetrated by the army on 14 March 1982.
- 2 "MF," Statement Summary, prepared by the Commission for Reception, Truth and Reconciliation (CAVR) from the interview with "MF," Mau'ulo, Ainaro, 8 March 2003, for the CAVR Public Hearing on Women in Conflict, Dili, 28 April 2003; Human Rights Violations Database (HRVD) Statement 02183, cited by Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira in the chapter on Timor-Leste in this volume.
- 3 See, for instance, Meredith Turshen and Clotilde Twagiramariya, eds., *What Women Do in Wartime: Gender and Conflict in Africa* (London and New York: Zed Books, 1998); Sheila Meintjes, Anu Pillay, and Meredith Turshen, eds., *The Aftermath: Women in Post-conflict Transformation* (London and New York: Zed Books, 2001); Susie Jacobs, Ruth Jacobson, and Jennifer Marchbank, eds., *State of Conflict: Gender, Violence and Resistance* (London

and New York: Zed Books, 2000). See also Margaret Randolph Higonnet, Jane Jenson, Sonya Michel, and Margaret Collins Weitz, eds., *Behind the Lines: Gender and the Two World Wars* (New Haven and London: Yale University Press, 1987). On women under apartheid, see Diana E. H. Russel, *Lives of Courage: Women for a New South Africa* (New York: Basic Books, 1989). On women under the Pinochet dictatorship in Chile, see Marjorie Agosin, *Scraps of Life: Chilean Women and the Pinochet Dictatorship*, translated by Cola Franzen (Trenton, NJ: The Red Sea Press, 1987). On women under fascism, see Victoria de Grazia, *How Fascism Ruled Women: Italy 1922–1945* (Berkeley, Los Angeles, and Oxford: University of California Press, 1992).

- 4 UN Security Council Resolution 1325 expresses “concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements.”
- 5 See Pablo de Greiff, “Introduction. Repairing the Past: Compensation for Victims of Human Rights Violations,” in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006) (hereafter, *The Handbook*), 1–2.
- 6 *Ibid.*, 2.
- 7 Tellingly, UN Security Council Resolution 1325 calls “on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction.”
- 8 I use the term “reparations program” broadly speaking to encompass both state initiatives that are designed from the outset as a systematically interlinked set of reparations measures (of the kind that truth commissions are increasingly including among their recommendations) as well as reparations efforts that consist of more isolated initiatives that come about incrementally. On the distinction see de Greiff, “Introduction,” 16, fn. 4; 17, fn. 22. Looking back it seems that in many situations reparations policies have taken place in a piecemeal way rather than as part of an encompassing plan decided once and for all. Argentina is a good example: from 1984 to the present day the government has been giving reparations under a sequence of different legislative reparations initiatives, each covering a distinct set of victims (see María José Guembe, “Economic Reparations for Grave Human Rights Violations: The Argentine Experience,” in de Greiff, *The Handbook*). The same is true of Chile (see Elizabeth Lira, “The Reparations Policy for Human Rights Violations in Chile,” in de Greiff, *The Handbook*). Chile has undertaken a series of efforts to redress different types of crimes by means of different legislative initiatives. Initially the reparatory efforts were focused on the crimes that resulted in the death of victims (such as political executions or disappearances). For decades the greatest omission in Chile’s reparations policy was the exclusion of victims of illegal detention and torture. Only recently was the omission tackled by the creation of a Commission on

- Illegal Detention and Torture, which submitted a comprehensive report, along with recommendations on reparations, at the end of 2004.
- 9 See Christopher J. Colvin, "Overview of the Reparations Program in South Africa," in de Greiff, *The Handbook*, and Beth Goldblatt's chapter on South Africa in this volume.
 - 10 See John Authers, "Making Good Again: Compensation for Nazi Concentration Camp Inmates," and Ariel Colonomos and Andrea Armstrong, "German Reparations to the Jews after World War Two: A Turning Point in the History of Reparations," in de Greiff, *The Handbook*.
 - 11 See Lira, "Reparations Policy."
 - 12 See Ignacio Cano and Patricia Ferreira, "The Reparations Program in Brazil," in de Greiff, *The Handbook*.
 - 13 See Guembe, "Economic Reparations."
 - 14 See Carolyn Benson, "Further Trouble for Unsettled Waters: Attention to Gender in the Context of Black Reparations Debate" (unpublished manuscript).
 - 15 See K. De Feyter, S. Parmentier, M. Bossuyt, and P. Lemmens, eds., *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations* (Antwerpen and Oxford: Intersentia, 2005) (hereafter, *Out of the Ashes*); Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: Norton & Company, 2000); Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 119–48; Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).
 - 16 On the different sources and types of reparations demands see John Torpey, "Making Whole What Has Been Smashed: Reflections on Reparations," *Journal of Modern History* 73, no. 2 (2001): 333–58.
 - 17 See, for instance, Kelly Askin, *War Crimes against Women: Prosecution in International War Crime Tribunals* (The Hague: Martinus Nijhoff, 1997).
 - 18 See Colleen Duggan and Adila Abusharaf, "Reparation of Sexual Violence in Democratic Transitions: In Search of Gender Justice," in de Greiff, *The Handbook*. Also, the single most organized and well-documented (though still largely unsuccessful) movement for reparations for women is that for the so-called comfort women. During Japan's World War II colonial period, some 200,000 women from across Asia were enslaved by and for the Japanese military, forcefully taken from their homes and homelands to be raped daily by soldiers. See Gay J. McDougall, *Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict. Update to the final report submitted by Ms. Gay McDougall*, UN Doc. E/CN.4/Sub.2/2000/21, June 6, 2000, para. 71. Almost nothing was known about these women until the late 1980s. Since then, survivors have come forward to bear witness and mobilize international public opinion, asking for an official apology and reparation from the Japanese government. It was not until 1990, 45 years after the end of World War II, that a Japanese official offered an apology for the acts perpetrated

by the military against the comfort women. More recently the Japanese Diet, although refusing to issue an apology, has allocated money to administer a Fund for Asian Women. Money contributed to the fund is used to aid comfort women in need and support projects addressing contemporary women's issues. In fact, the fund is financed by donations from private individuals and organizations in Japan. Nevertheless, survivors have rejected these gestures as inadequate and reiterate their desire for a formal apology from the Diet and individual compensation through public funds rather than a welfare- or benevolence-type of assistance based on socioeconomic need. See Karen Parker and Jennifer F. Chew, "Compensation for Japan's World War II War-Rape Victims," *Hastings International and Comparative Law Review* 17 (1994): 498–510.

- 19 Thus, the reparations program recommended in the final report of the truth commission in Timor-Leste, which was handed down to members of parliament on 28 November 2005, includes gender as one of five guiding principles that inspire its overall conception (see the chapter by Wandita, Campbell-Nelson, and Leong Pereira in this volume). Similarly, Morocco's Equity and Reconciliation Commission, set up in 2004 and with a mandate that lasted until December 2005, held a National Forum on Reparations in Rabat in October 2005 announcing that gender mainstreaming would be one of the priorities in its reparations policy. See the final report of the *Instance Équité et Réconciliation* (IER), available in Arabic, French, and Spanish at <http://www.ier.ma>.
- 20 Although this article focuses on reparations programs because they are becoming an increasingly common form of handling reparations in the context of massive violations of human rights, the challenge of avoiding gender bias is just as present when reparations are decided on a case-by-case basis by courts or compensation tribunals. The insight provided in this piece aims to contribute to understanding reparations through the lens of gender broadly speaking. This is not to say that it may not be worth discussing whether or not there are gender justice–related reasons to prefer judicial venues to reparations over reparations through legislative and administrative programs or vice versa. For instance, it has been argued that reparations programs obviate some of the difficulties and costs associated with litigation, including high expenses, the need to gather evidence that in some cases may be unavailable, the pain associated with cross-examination, the lack of trust on the part of victims when the judicial system of the country has remained largely unaffected by the transition in the short run, and so on (see Pablo de Greiff, "Justice and Reparations," in de Greiff, *The Handbook*, 10; and Heidy Rombouts, Pietro Sardaro, and Stef Vandeginste, "The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights," in De Feyter et al., *Out of the Ashes*, 488). Presumably some of these considerations can have a negative disparate impact on women in general or especially with regard to some forms of violations, such as those of a sexual nature.

- 21 The Treaty of Westphalia of 1648 already includes reference to reparations, in particular restitution. The conclusions of the wars of 1830 and 1870 and of World War I also provided for extensive reparations paid for by the defeated parties. The basic principle of reparation as an automatic consequence of the commission of an internationally wrongful act was laid down by the Permanent Court of International Justice in the *Factory at Chorzów* case (1928). The contours of the obligation to provide reparation in the context of interstate disputes have since been codified in the Draft Articles of the International Law Commission (ILC) on Responsibility of States for Internationally Wrongful Acts adopted in 2001. The ILC approach to remedial or corrective justice was based on distinguishing among restitution (defined in Article 35 as the effort “to re-establish the situation which existed before the wrongful act was committed”), compensation (understood as compensating the value attributable to whatever was lost, including loss of profits) and satisfaction (which refers to “reparation in particular for moral damage such as emotional injury, mental suffering, injury to reputation and similar damage suffered by nationals of the injured state”) (see Max du Plessis, “Historical Injustice and International Law: An Exploratory Discussion of Reparation for Slavery,” *Human Rights Quarterly* 25 [2003]: 631, quoted in Richard Falk, “Reparations, International Law and Global Justice: A New Frontier,” in de Greiff, *The Handbook*).
- 22 There are not many explicit affirmations in international instruments for the protection of human rights of the principles that international responsibility for human rights violations entails liability to pay damages or, more generally, to offer reparation. Reference to the substantive duty to provide reparation is contemplated only in two very specific cases: unlawful arrest or detention and wrongful conviction (see, for example, Article 9.5 of the International Covenant on Civil and Political Rights). Thus the argument of those who defend the existence of a remedial right to reparation generally call on a seminal norm to be found in all general human rights instruments generically requiring states to establish effective domestic remedies in case the rights recognized are violated (see, for example: Article 8, Universal Declaration of Human Rights [1948]; Article 23(a), International Covenant on Civil and Political Rights [1966]; Article 6, International Convention on the Elimination of All Forms of Racial Discrimination [1965]; Article 13, European Convention on Human Rights [1950]; Article 25, American Convention on Human Rights [1969]; and Article 7, African Charter on Human and Peoples’ Rights [1981]. Interestingly, the Convention Against All Forms of Discrimination Against Women (CEDAW) does not contain an equivalent provision.
- 23 See Christian Tomuschat, “Reparation for Victims of Gross Human Rights Violations,” *Tulane Journal of International and Comparative Law* 10 (2002): 157.
- 24 See Rombouts et al., “The Right to Reparation.” Both the European and the American conventions contain an article dealing with the remedial powers of the two courts, respectively Article 41 and 63. The former expresses itself rather timidly (the court

“shall, if necessary, afford just satisfaction to the injured party,” provided that a violation is found and the internal law of the state concerned “allows only partial reparation to be made.”) Although there may be a trend toward an expansive interpretation, this provision has long been interpreted in a rather restrictive way: the remedial power to make an order has been regarded for the most part as limited to financial awards for which there are still no clear and consistent criteria of calculation, and the power has been interpreted as discretionary with the result that oftentimes the court has decided that the finding of the violation “constitutes in itself sufficient just satisfaction.” See, for all, Christian Tomuschat, “Just Satisfaction under Article 50 of the European Convention on Human Rights,” in Paul Mahoney, ed., *Protecting Human Rights: The European Perspective. Studies in Honour of Rolv Ryssdal* (Koln: Heymann Cologne, 2000), 1409. In the inter-American system the consequences of the finding of a violation, and particularly redress for the victims, receive a far more thorough consideration. Article 63.1 of the American Convention provides that when a violation is found the court “shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.” In many cases the court has decided monetary awards for pecuniary and nonpecuniary damages, as well as other measures including specific performances (such as restoration of the infringed rights, performances of redress and even measures of prevention). See Douglas Cassel, “The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights,” in De Feyter et al., *Out of the Ashes*, and Arturo Carrillo, “Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past,” in de Greiff, *The Handbook*.

- 25 Until 1999 the “Sub-Commission on the Prevention of Discrimination and Protection of Minorities.”
- 26 Resolution 2005/35, UN Doc. E/CN.4/2005/L.48 (hereafter, the *UN Principles on Reparations*). For a discussion of the development of these principles, see Dinah Shelton, “The United Nations Draft Principles on Reparations for Human Rights Violations: Context and Contents,” in De Feyter et al., *Out of the Ashes*.
- 27 According to the *UN Principles on Reparations*, the notion of reparation encompasses: *restitution*, as those measures to restore the victim to his/her original situation before the violation including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property; *compensation* for any economically assessable damage as appropriate and proportional to the gravity of the violation including physical or mental harm, lost opportunities including employment, education and social benefits, and material and moral damages; measures of *rehabilitation* including medical and psychological care as well as legal and social services; measures of *satisfaction* including, among others, the

verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and *guarantees of nonrepetition* including measures to contribute to prevention, such as ensuring effective civilian control of military and security forces, protecting human rights defenders, providing human rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law.

- 28 M. Cherif Bassiouni, who, together with Theo van Boven, was tasked with the study on the right to reparation for victims of human rights violations that eventually led to the *UN Principles on Reparations*, argues that the term “gross and systematic violation” was employed not to denote a particular category of human right violation per se, but rather to describe situations involving human rights violations by referring to the manner in which the violations may have been committed or to their severity” (M. Cherif Bassiouni, *Report on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms*, UN Doc. E/CN.4/1999/65). Different authors have supported competing interpretations of the expression; see, for instance, Rombouts et al., “The Right to Reparation,” 351, endorsing the following definition: “those violations of human rights, perpetrated in such quantity and in such manner as to create a situation in which the life, the personal integrity or the personal liberty of large numbers of individuals are structurally threatened.”
- 29 See Falk, “Reparations, International Law and Global Justice,” 485.
- 30 It has been noted that the attempt to provide full restitution or even compensation in strict proportion to harm in the aftermath of episodes of gross and systematic violations of human rights would inevitably be doomed to fail for many reasons. These include the incommensurability of some of the harms typically suffered in those scenarios, such as the loss of a loved one, the scarcity of resources and competing needs in societies facing reconstruction, the large number of victims, as well as the unequal awards and the attendant disaggregation for both victims and reparations efforts that would result from the application of the ideal of full restitution or compensation in strict proportion to harm. See: Tomuschat, “Reparation for Victims”; de Greiff, “Justice and Reparations”; Naomi Roht-Arriaza, “Reparations in the Aftermath of Repression and Mass Violence,” in Eric Stover and Harvey M. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004); and Falk, “Reparations, International Law and Global Justice,” 485.
- 31 De Greiff, “Justice and Reparations,” 11–15. Clearly, the expression “new state” should not be taken here in its literal sense, for only some of the large-scale violent political conflicts have the creation of a new state, strictly speaking, as an end result. However, it is precisely the reassertion of the basic legitimacy of the state apparatus or its aspiration to have, for the first time, the effective monopoly over the legitimate use of force that

- allows us to identify a transitional moment moving between a “before” and an “after” in a foundational sense and hence to talk about a “new” state.
- 32 Reparations programs can be structured around some common elements including: (1) the definition of victim (generally around the selection of certain harms endured or rights violated for which it is decided that there needs to be reparation) or the selection of a list of violations for which there will be reparations; (2) the definition of beneficiary (which can serve several purposes including: deciding who is to access reparations benefits if the victim is not alive; expanding the notion of victim to cover those family members who, other than the victim him/herself, were harmed by a certain violation; or prioritizing some victims over others for the purpose of allocating benefits according to some additional criteria, such as the situation of need or vulnerability of the victim); and (3) the definition of benefits. Regarding the latter, reparations programs have been said to distribute material and symbolic benefits of either an individual or a collective nature. Material reparations can take different forms, including compensation, restitution of material goods, or access to services such as education, health, and other measures for the rehabilitation of victims. Symbolic reparations may include official apologies, the change of names of public spaces and the establishment of dates and places of commemoration, among others.
- 33 See the chapters by Rombouts (on Rwanda), Wandita et al. (on Timor-Leste), and Goldblatt (on South Africa) in this volume.
- 34 De Greiff, *The Handbook*.
- 35 The fact that truth and reconciliation commissions (TRCs) are more and more commonly tasked with either providing reparations or at least making recommendations on reparations for victims supports this perception of reparations as constitutive elements in the broader project of social reconstruction that inspires the overall work of such commissions.
- 36 See de Greiff, “Justice and Reparations,” and Roht-Arriaza, “Reparations in the Aftermath.”
- 37 *UN Principles on Reparations*. The *Principles* explicitly mention that “where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependents of the direct victim.”
- 38 In South Africa it was provided that reparations would be awarded to victims of “gross violations of human rights” defined as “the killing, abduction, torture or severe ill-treatment of any person.” Although sexual violence was not explicitly mentioned, in the end several forms of it were included under the concepts of “torture” and “severe ill-treatment,” including assault on genitals and breasts, rape, beating leading to miscarriage and sexual abuse (see the chapter on South Africa by Goldblatt in this volume). More recent (and mostly as of yet unimplemented) reparations programs or laws that explicitly include some forms of sexual violence among the list of violations include the one

in Peru (which refers to rape) (see the chapter by Julie Guillerot in this volume) and the one in Guatemala (which refers to rape and sexual violence) (see the chapter by Paz y Paz Bailey in this volume). The reparations programs recommended by the Sierra Leone and Timor-Leste truth commissions also include victims of sexual violence (see the chapters by Jamesina King and Wandita et al. in this volume).

- 39 Another example would be how most reparations programs have largely focused on violations of more traditional civil or political rights to the detriment of socioeconomic rights, expressing the lesser status that such rights are accorded under the current international human rights order.
- 40 Alternatively, one could consider that the same conduct, such as forced disappearance, entails several violations of rights of different rights holders. The Inter-American Court of Human Rights has on many occasions followed this line of reasoning relying on the right to physical, mental, and moral integrity under art. 5.1 of the Convention to consider that the extraordinary harm done to family members of people disappeared, tortured, extrajudicially executed, or detained under abhorrent conditions entails a violation of their rights to integrity under art. 5.1. See, for instance: *Case of de la Cruz Flores*, judgment of 18 November 2004, paras. 135–136 and *Case Villagrán Morales*, concurring opinions of Judge Antonio Cancado Trindade, paras 6, 8, 39 and 40.
- 41 Notice that, even when the access of family members is limited to those instances where the targeted victim is dead or missing, the question of how reparation is conceptualized can make a difference. For instance, on the grounds that the benefits were reparations and not inheritance, Morocco's Equity and Reconciliation Commission has been able to bypass shari'a-based inheritance law to secure widows a larger share of the reparations amount generated by the killing or disappearance of their husbands than they would have otherwise received. Interview with Mme Commissioner Latifa Jbabdi, Rabat, October 2005.
- 42 See Duggan and Abusharaf, "Reparation of Sexual Violence."
- 43 One could of course raise similar questions regarding the gendered analysis of other competing aims of reparations, including providing victims a sense of closure or satisfaction or guarantees of nonrepetition. For instance, although finding out the fate of one's loved ones seems to be a priority among family members of the disappeared, the major political movements behind this cause have been led by women. Also, the issuance of death certificates may be especially important for the social rehabilitation of women in those societies in which their social status is tied to their marital status.
- 44 Similarly, all authors raise the issue of the need for adequate rules of evidence and confidentiality for victims of sexual violence in the process to decide and implement reparations.
- 45 Some examples of this evolution include: the holding of TRC thematic hearings dedicated to women (as in South Africa, Peru, Sierra Leone, and Timor-Leste), which seem

to have offered wonderful opportunities to give women voice but also to ensure that this voice transcends and reaches the public; the formation of special research teams in truth commissions dedicated to women (as in Timor-Leste); the consecration of some of the chapters in the commissions' final reports to recording violence against women and/or the different impact of violence on women's lives (as in Peru) or the explicit attempt to mainstream gender throughout the entire report (as in Timor-Leste). There are other ways to operationalize gender mainstreaming in TRCs' work including: ensuring that TRCs have a gender-balanced composition; that gender justice is explicitly made part of the commissions' mandates; that commissioners have adequate gender training; and that there is adequate coordination and communication among the truth seeking, investigation, testimony taking and recommendation making tasks inside of TRCs. Ensuring that there is adequate involvement of victims groups and women's groups in the process also seems relevant, as is the reliance of the commission on gender-sensitive devices of testimony taking, including providing adequate psychological assistance to the victims and creating supportive environments for testifying, especially with regards to crimes of sexual violence. On gender and truth commissions see Vasuki Nesiiah, "Truth Commissions and Gender: Principle, Policies and Procedures," International Center for Transitional Justice, unpublished manuscript; and Debra L. DeLaet, "Gender Justice: A Gendered Assessment of Truth-Telling Mechanisms," in Tristan Anne Borer, ed., *Telling the Truths: Truth Telling and Peace Building in Post-conflict Societies* (Notre Dame: University of Notre Dame Press, 2006).

CHAPTER 1

Evaluating the Gender Content of Reparations:
Lessons from South Africa

Beth Goldblatt

South Africa was colonized by the Dutch, and later by the British, in a brutal manner. The racist laws that were established under colonialism were consolidated into a system known as apartheid by the National Party, which ruled from 1948 to 1994. Apartheid divided society into racial groups and gave preference to “whites” over “blacks” in every aspect of life—place of residence, schooling, job opportunities, and so on. Blacks were separated from whites in public amenities and were provided with inferior services. They were denied the right to vote and many other basic human rights.

From the start, apartheid was strongly opposed. The struggle was led by liberation movements, the most significant of which was the African National Congress (ANC), which later became the ruling party in the first democratic government. The liberation struggle was initially nonviolent, but soon became an armed conflict. The struggle was waged on a number of fronts: liberation armies were trained outside of the country and led by an exiled movement; an international effort was made to isolate the apartheid government; within the country, community groups battled security forces; and nonviolent protests were carried out in the form of strikes, marches, church services, distribution of pamphlets, and so on. The apartheid government responded to all forms of resistance with violence and repression. During the 1980s, the struggle heightened, involving tens of thousands of people around the country. By the early 1990s, the government, realizing its demise was imminent, began negotiating with the liberation movement.¹ Ultimately (and after some terrible bloodletting that punctuated the negotiations), a new constitution was drawn up and the first democratic elections were held in April 1994.

The negotiated settlement included an agreement to establish a Truth and Reconciliation Commission (TRC). The TRC operated between 1995 and 1998, with some aspects of its mandate continuing after this period. Perpetrators of human rights violations during the conflict (designated in the TRC’s mandate as 1960–94) would be given amnesty in exchange for full disclosure of the acts

they committed. Victims were encouraged to make statements about the violations they had suffered. The TRC was also tasked with making recommendations on reparations measures to the president. The president would then advise the parliament on subsequent reparations regulations.

Reparations were to be provided to those people designated as victims by the TRC. A person could be designated as a victim either by approaching the TRC to make a statement or by being referred to during an amnesty hearing. Urgent interim reparations (small payments) were provided relatively quickly, but the decision on final reparations was a drawn-out process that fostered significant frustration among victims. For a number of years, the government failed to respond to the TRC's recommendations on reparations. When a decision was eventually made by the government in 2003, the amount of individual reparation grants was much lower than that proposed by the TRC. This led to anger and disappointment among many of the victims. Since then, almost all of the 19,000 designated victims have received payment as reparations.

**WOMEN BEFORE, DURING, AND AFTER THE CONFLICT :
VICTIMIZATION AND AGENCY WITHIN A CONTINUUM OF
GENDER-BASED VIOLENCE AND OPPRESSION**

Colonial rule in South Africa was very repressive to women. From the earliest times, it was racist, sexist, and violent. There are records of the rape of indigenous women by the first colonists. In one tragic example, Sarah Baartman, labeled the "Hottentot Venus," was captured and exhibited in Europe as a curiosity and freak. African customary law was codified by colonial governments, sometimes with the support of African chiefs, to subjugate and control African women. Married women, black and white, were accorded the status of minors under a system of patriarchal family and property laws. The historical legacy of centuries of racism, economic exploitation, and patriarchy is one of highly gendered patterns of poverty and inequality in South Africa today. Women are less likely to be employed and hold the lowest paid and least skilled jobs in an economy where unemployment is rampant. Women assume the major responsibility for child care and household labor. Related social problems include epidemic levels of domestic violence and rape, as well as the disproportional impact of HIV/AIDS on South African women. Furthermore, violence against women today must be understood, in part, by looking at the way in which the political conflict of apartheid redefined masculinity and gender relations in society. Violence against women within that conflict is part of

a continuum of gender-based violence and oppression that has shaped South Africa's history and present reality.²

WOMEN'S PARTICIPATION IN AND EXPERIENCE OF THE CONFLICT

Apartheid had both a destructive and a repressive impact on South African society. It destroyed African people's ways of life by forcing them off their land and out of their homes,³ and by restricting their education, movement, and many other basic rights of citizenship.⁴ It profoundly impaired the dignity of people categorized as non-white and resulted in significant material deprivations. Women experienced particular forms of suffering as a result of apartheid. The system of migrant labor, for example, involved transporting working-age men to mines and industrial areas; women and other family members were left in rural areas to survive without the men and to support these men during their annual visits home. Women were thus faced with a greater burden of responsibility for the maintenance of the home and family, or were forced into urban areas to support themselves and their children. In these areas, they had to seek employment as domestic workers and live in white people's homes, usually without their husbands and children.⁵

The general repression prevalent during apartheid included injuring and killing protestors, torturing and murdering activists, detention without trial, imprisonment, harassment, and many other variations of abuse. As agents, women were actively engaged in the struggle against apartheid, though in smaller numbers than men and with their protests often taking different forms. Women also went into exile to join the liberation movements and their armies, were active in the underground movement within the country, and joined protest actions and other forms of organized opposition to the apartheid government. Both rural and urban women were affected by their participation in the political conflict, although sometimes in different ways. Rural women faced the wrath of Bantustan police in protests over removals of people, land and other issues. Urban women were more likely to be engaged in street protests and struggles with police and soldiers. In the 1980s and early 1990s, women were sometimes abducted by rival factions in townships around Johannesburg and in the province of KwaZulu-Natal. Women activists and freedom fighters met with brutal treatment that was both similar to and different from that encountered by men. The gender-specific forms of torture used by the security forces included: assault and electric shocks on pregnant women; inadequate medical care leading to miscarriages; rape; flooding of fallopian tubes with water, sometimes leading to infertility; and many forms of psychological

torture. One of the women giving evidence to the TRC described the response of white policemen to her attempts to fight back: “When men stood ground against the physical abuse there was a sense of respect But when a woman refused to bow down . . . then that unleashed the wrath of the torturers, because in their own discourse a woman, a black ‘meid,’ a ‘kaffirmeid’ (kaffir servant girl), had no right to have the strength to withstand their torture.”⁶

Extreme repression, however, was not just targeted at experienced opponents of the government. Police and soldiers would detain and harass school children, elderly women, and others, for example, because they happened to be present at a protest or at the home of an activist. At the height of the 1980s states of emergency, repressive tactics were sometimes used indiscriminately to terrorize the public.⁷ During violent ethnic and regional conflicts fueled by the state women were abducted and impregnated. When South Africa invaded some of its neighboring countries, there were numerous reports of the rape of women in the local population by soldiers.⁸ There was also some evidence of rape, sexual harassment, and abuse of women in the ANC camps (and within the underground movement) during the conflict.⁹ Moreover, the liberation organizations set off bombs, robbed banks, and engaged in similar actions that caught ordinary people, including women, in the crossfire.¹⁰

Women also experienced the conflict as dependents and family members of the victims. Mothers and wives had to endure intense anxiety, and live with uncertainty about the whereabouts or treatment of their husbands and sons. They often lost breadwinners and status within their communities. There were severe effects on children and family life, compounded by poverty and apartheid structures. The TRC’s final report acknowledges that “the social pressures caused by apartheid and repression associated with it have resulted in changes to the family structure in South Africa. Some families have been unable to withstand the pressure, whilst others have harnessed support and nurture from extended family networks to ensure their survival.”¹¹ Women joined parents’ groups and other support groups when detentions became rife and this sometimes led to their further harassment.

WOMEN’S PARTICIPATION IN THE TRANSITION AND TRC PROCESS

Once there was an agreement between the National Party and the ANC to hold democratic elections, the negotiations around the content of the new constitution were opened up to a wider range of groups.¹² It was at this point (during 1992 and 1993) that women’s organizations became very active.¹³ A progres-

sive constitution enacted a far-reaching right to equality and established an independent commission on gender equality. Large numbers of women were elected to parliament. Women within political parties, women's organizations, and women in the new government and parliament were very involved in drafting new laws and policies to address gender inequalities. There was now a very gender-sensitive legal and rights framework in South Africa.¹⁴

However, the TRC—the transitional justice mechanism that operated between 1995 and 1998—was not seen by women's organizations as a priority in the years following the first democratic elections. Instead, women focused their energies on the task of building a new society. It is possible that the TRC was seen as a somewhat backward-looking project, when so much had to be done around reconstruction and social transformation. Women's organizations and activists were not central to the creation of the TRC or the drafting of the legislation that governed it. As a result, a "gender-neutral" law was drawn up in which the "male norm" was the "unacknowledged standard."¹⁵ The mandate of the TRC, very broadly, was to investigate past abuses of human rights and to restore the dignity of victims. From a gender perspective, the wording of the mandate failed to spell out the gendered differences in the experience of the conflict and the possible gendered differences in the needs of victims (in relating their violations and in reparations measures).

Women only actively lobbied the TRC to address gender issues in 1996, once it had already begun its work. The women who were most vocal on issues of gender were members of existing human rights, peace, and victim support NGOs.¹⁶ In December 1995, just before the TRC took up its mandate, a human rights organization, Lawyers for Human Rights, held a public meeting titled "Does Truth Have a Gender?" The following year, the Centre for Applied Legal Studies, a university-based human rights organization, held a workshop on gender and the TRC. A submission was prepared on this topic and presented to the TRC a few months later.¹⁷ The submission made a number of recommendations on gender-sensitive mechanisms for human rights violations hearings, approaches to amnesty hearings, gender and reparations, and the final report of the TRC.¹⁸ Some of these suggestions were taken up, notably the holding of women's hearings, but many of the ideas were not followed. The submission had argued that the final report should offer an integrated history and analysis of the conflict from a gender perspective. This was not done, and as a result, most of the gender issues that emerged during the TRC process were covered only in a short chapter on the women's special hearings. Quite early on, and in response to the submission and the calls by other organizations, the TRC

convened a number of workshops on the issue of gender and invited various women's organizations to attend.¹⁹ These workshops played some role in informing the TRC's work.

Women participated in the TRC process in large numbers by giving evidence of human rights violations in statements to the commission; in fact, 54.8% of the participants were women. Of the participants who came to speak about their own experiences, the majority were men (56.1%), but a large number of women also did.²⁰ The TRC's official finding on women²¹ reads as follows:

Many of the statements made to the Commission by women detail the violations inflicted on others—children, husbands, siblings and parents—rather than what they themselves suffered. Undoubtedly the violation of family members had significant consequences for women. However, women too suffered direct gross violations of human rights, many of which were gender specific in their exploitative and humiliating nature. The commission thus finds that:

- The state was responsible for the severe ill-treatment of women in custody in the form of harassment and the deliberate withholding of medical attention, food and water.
- Women were abused by the security forces in ways which specifically exploited their vulnerabilities as women, for example rape or threats of rape and other forms of sexual abuse, threats against family and children, removal of children from their care, false stories about illness and/or death of family members and children and humiliation and abuse around biological functions such as menstruation and childbirth.
- Women in exile, particularly those in camps, were subjected to various forms of sexual abuse and harassment, including rape.

The TRC, in its final report, notes that many women who had suffered terribly underplayed their own experiences when talking about what had happened to men.²² It seems likely that many women were unwilling to come to the TRC to talk about their experiences for a range of reasons. One of the most important of these was the difficulty of talking about sexual abuse. The TRC referred to incidences of rape in 140 cases but it is highly likely that this reflects only a small number of the rapes that occurred in the period of the TRC's mandate. Other reasons for women's silence included their unwillingness to betray comrades, their inability to face the pain of their experiences, their wish to move on, and, for some of the prominent women who were assuming important

positions in the transitional society, fear that their stories would bring shame to them.²³

Women tended to downplay or omit their own harsh treatment at the hands of the authorities when talking of their relatives. Women's groups encouraged the TRC to probe these issues and ensure that women's own experiences were validated even where the evidence was not necessary for the formal purpose of defining them as victims. Gender activists called on the TRC to encourage the media to give prominence to women's own suffering. The TRC responded to this suggestion and tried in some instances to encourage women to talk about their own suffering when discussing what had happened to their loved ones. Some of the women were themselves victims according to the TRC's definition, since they were detained, beaten, and so on.

There is no official evaluation of women's overall participation in the TRC process. As mentioned, there is a chapter in the final report on the women's hearings that discusses the role of outside organizations in raising gender issues to the TRC. The final report is, in the end, an inadequate reflection of women's experiences under apartheid.²⁴ This was primarily a result of the lack of gender expertise in the research and IT team that would have enabled it to provide a "disaggregated and targeted analysis."²⁵ However, despite this, the TRC process led to the articulation, development, and implementation of a reparations mechanism in which women participated in a number of different ways. Some women were employed as part of the TRC, others were members of organizations that interacted with the TRC process, and still others came to testify as part of the TRC and further informed its work. This participation and the impact of efforts to engender reparations in South Africa are discussed in the following sections.

WOMEN'S INVOLVEMENT IN THE ARTICULATION OF REPARATIONS : A LIMITED IMPACT

The discussion of reparations mechanisms in South Africa was located largely within the TRC. The Reparation and Rehabilitation Committee of the TRC was tasked with making recommendations to the president on a reparations policy. The committee's recommendations included urgent interim reparations, for victims who might need urgent medical treatment or other assistance, and final reparations. The president was required to establish a President's Fund and an administrative agency in government to disburse monies to victims.²⁶ Seven of the 17 TRC commissioners were women, all of whom had good human rights

track records and had exhibited independence and commitment to reconciliation. Not all of them, however, had been directly involved in women's organizations, nor would they all have identified themselves as feminists. Some demonstrated gender sensitivity in early statements on the issue of gender and the TRC. Others were less aware of and less committed to gender issues during their work with the commission. Many of the commission staff were also women. The chairperson of the Reparation and Rehabilitation Committee, Hlengiwe Mkhize, was a woman, as was the vice-chairperson, Wendy Orr. In fact, four of the five members of this committee were women. The President's Fund, which administers reparation payments, was headed by a man, but he worked with Hlengiwe Mkhize, who has since been appointed by the government to deal with outstanding TRC issues. In interviews, Orr said that women were probably given the reparations portfolios because it was seen as "touchy-feely women's stuff."

Initially, the TRC gave no thought to gender, but certain women commissioners saw gender justice as important and were able to redirect some of the commission's approaches and policies. When the hearings began and many women came to give evidence, some of their issues emerged more clearly. The involvement of women's activists in lobbying the TRC helped the women commissioners put gender issues on the commission's overall agenda.²⁷ Not all women in the TRC supported the attempts to put gender issues in the foreground, however, and some of the seemingly progressive men were quite dismissive of the effort. Women had to "bargain" for gender issues and felt that they were "humored."²⁸ It seems clear that gender justice as a guiding principle should have been written into the TRC legislation from the outset. This would have strengthened the hand of gender advocates inside and outside of the commission.

Women also participated in the reparations discussion as members of various organizations and as individuals. Women's organizations themselves, however, were not central to the TRC process. It was mainly human rights organizations, individual women activists, and victims support groups (made up of a majority of women) that were involved with the TRC and reparations, and only once it had begun to operate. This happened probably for two reasons: first, the TRC was not seen as a priority by the women's movement at the time because the focus of most work was on developing gender policy and structures in the government; and second, as discussed above, there had been a certain degree of demobilization of women's (and other civil society) organizations during the transition. The Reparations and Rehabilitation Committee did

consult quite widely through a number of workshops and meetings. Women's organizations dealing with violence against women, women within human rights organizations and trade unions and gender activists attended some of these meetings. Although some of these organizations' staff and members were sensitive to the gender issues, for the most part their recommendations did not focus on gender specifically. Moreover, there was an urban bias in the work of the TRC: its offices were located in urban centers, which meant that rural women had less opportunity than urban women to contribute to this process.²⁹

Women have been quite central to victims support groups in particular. For example, most of the members (70%) of Khulumani Support Group,³⁰ the largest victims support group, are women. And while this has not led to a particular emphasis on gender issues in the group's work,³¹ it has given many women the space to speak and an opportunity to have their voices heard. One reason behind the role played by women in victims groups may be that women in need often group together to assist each other. In South Africa, women's savings clubs, burial societies, and church and community groups are very widespread. Although involvement of large numbers of women has been important in raising issues around the need for family support and social services, women have tended to articulate their needs rather than their strategic interests as a social group facing deep-rooted discrimination. At the same time, children and youth organizations were not central to the struggle for reparations, and the evidence given at the TRC's children and youth hearings did not focus in any depth on gender issues.³²

Women's participation led to a number of examples of gender-sensitive interventions in the reparations discussion, albeit with limited impact. The Centre for the Study of Violence and Reconciliation (CSVR)—an NGO working on transitional justice—for example, asked parliament, when it was considering the TRC reparation recommendations, to ensure that women be recognized in all symbolic reparations projects since women's "compounded burdens" had been marginalized by the TRC.³³ The CSVR suggested that research be funded on the impact of the struggle on women and that symbolic reparations highlight the direct role of women in the struggle through the renaming of public spaces. This was a rare symbolic effort in a process that revolved largely around financial reparations.

In another example, a small group of academics and NGO activists met regularly during 1996 and 1997 to discuss gender issues in the TRC's work and to develop strategic responses. These included submissions on reparations made

to the TRC.³⁴ The recommendations took into account the fact that it might take many years for some women to feel ready to speak of their experiences and that mechanisms for future statement making should be provided. The TRC's reparation proposals, however, did not reflect these ideas.

Another gender-specific intervention on reparations policy also came from CSVR, which made submissions on gender to the TRC in 1996. These submissions made the following suggestions:

- The reparations policy must be carefully considered with due regard to a gendered understanding of past abuses and the impact of such abuses. Women must be encouraged to come forward and must be asked about their needs. The policy must be forward looking in its approach and must provide for the building of a human rights culture in which all forms of discrimination and abuses against women are unacceptable. Women's organizations and other NGOs should be involved in the formulation of the reparations policy.
- If some of the reparations are quantified according to the approach used in civil damages claims, research must be conducted into the way in which gender bias tilts this standard away from rewarding women fully for their losses.
- The TRC should assist women by directing them towards existing programs and resources in communities aimed at providing assistance of all kinds, e.g., pensions, housing, education and counseling.
- A memorial list of the women who were killed and the circumstances of these deaths should be considered. This could be just one of the aspects of a process of preserving collective memory of past abuses.
- A Peace Institute should be established, which would house a museum and research facilities. It should ensure that gender is an integrated focus of all projects undertaken there.³⁵

As with the other gender and reparations recommendations, however, these appear to have had a limited impact on the ultimate approach taken by the TRC and the government, which remained largely "ungendered."

Victims who gave evidence of violations to the TRC were asked how they would like the TRC to assist them.³⁶ Women were able to give some suggestions, although many focused more on the harms done to others, including close family relatives, than to themselves. Neither women nor men victims generally accepted the argument that the government was responsible for rebuilding the whole society and therefore could not privilege victims. Women have

not, however, linked their arguments for reparations to their unequal position as women in society. They have tended to blame apartheid for their misfortune rather than unequal gender power relations and social structures. The women's movement (inasmuch as there is one in South Africa) has not drawn sufficient links between gender justice and the need to heal the harms of the past.

Many women asked for psychological support³⁷ and for information about their loved ones who had disappeared.³⁸ In interviews with a largely female support group, most members explained that they needed financial support because they had lost a breadwinner (son or husband) and because they were responsible, as older women, for the support of many dependents. One of the interviewees explained that her two daughters had died of AIDS, leaving her to care for all her grandchildren (a common situation in South Africa today). All of the traditional reasons for claiming reparation (material compensation, acknowledgment of suffering, information about the deaths of family members, burials, support services such as counseling, education, and houses) lead women to become involved in the organizations that lobbied for reparations. Many of these needs are common to both men and women. However, women often have greater responsibilities for dependent family members and therefore focus on the benefits that will help them to meet these responsibilities.³⁹

In the end, the TRC did not differentiate statistically between men and women in its requests for different types of reparations. Its final report noted that 38% of victims requested financial assistance to improve the quality of their lives and 90% asked for services such as education, medical care, and housing.⁴¹ The chapter on the women's hearings refers to the evidence of a woman who was disabled in an attack by the police. She asked for help with her eight-year-old child, as she was physically unable to do many chores.⁴¹ Unfortunately, the chapter does not cover any of the other requests for assistance nor does it discuss recommendations for reparations.

The TRC handed over its report in 1998, but the president tabled it in parliament in 2003. During those years, victim support groups and NGOs became frustrated at the lack of response by the government. An NGO working group on reparations was set up to pressure the government. It prepared statements, tried to meet with the government (with little success), held workshops and tried to lobby key actors, made submissions to parliament, and developed a media strategy. The relationship between the government and these organizations became very strained. One interviewee suggested that it was because victims support groups were largely women-run that the government was able to avoid dealing with the issue for so long.⁴²

ENGENDERING REPARATIONS : PROBLEMATIC DEFINITIONS OF VIOLATIONS, BENEFITS, AND BENEFICIARIES

DEFINITIONS OF THE VIOLATIONS THAT TRIGGER REPARATIONS

The way in which the TRC process unfolded meant that the human rights violations hearings occurred prior to the development of a reparations policy. Reparations were intended for those who had been named victims by the Human Rights Violation Committee or the Amnesty Committee. The Promotion of National Unity and Reconciliation Act (Act 34 of 1995) defined “victims deserving of reparations” in the following way:

- (a) Persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights
 - (i) as a result of a gross violation of human rights; or
 - (ii) as a result of an act associated with a political objective for which amnesty has been granted;
- (b) Persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and
- (c) Such relatives or dependents of victims as may be prescribed.⁴³

Thus the notion of victim for the purposes of reparations was based on “gross violations of human rights” or an “associated act” emanating from conflicts of the past and committed by a person acting with a political motive. “Gross violations of human rights” were then defined as “the killing, abduction, torture or severe ill-treatment of any person.”⁴⁴ The act did not define “harms” or “crimes deserving reparation” beyond this definition of “gross violations of human rights,” which was used both in relation to amnesty and for the purpose of identifying victims to be repaired. Crimes against children were included as violations deserving of reparations. These include all the same violations adults suffered, such as murder, abduction, and torture, as well as many of the sexual violations, such as rape and sexual abuse, that have been interpreted as falling under the “other forms of severe ill-treatment.” Gender activists were concerned with a number of aspects of the definition of gross violation of human rights.

APARTHEID'S SYSTEMIC CRIMES AND THE IMPACT ON FAMILIES

The first issue concerned the emphasis in the definition on individual crimes of political violence, which meant that the systemic crimes committed in the name of apartheid would not be covered by the TRC.⁴⁵ Thus, forced removals of whole communities from their homes, closing down of schools and the imposition of purposefully inferior education, pass arrests and many other violations of human dignity, equality, and freedom were not seen as “gross violations of human rights.” That clearly they were such violations was an observation made not by women’s groups alone, but by other human rights organizations as well.

It is unclear why the act was limited in this way, though one can speculate that for political reasons the former government did not want apartheid on trial as a system. Rather, it wanted to individualize the crimes that occurred in order to avoid assuming collective responsibility for them. There were probably also reasons of practicality for limiting the mandate, as well as moral presumptions about the relative severity of crimes of repression versus crimes of oppression. The TRC debated the issue of the structural violations of apartheid, but ultimately decided that it was bound by the act that governed its work to remain within a limited mandate. It did, however, recognize that evidence of apartheid violations should inform an understanding of the broader context within which the specifically defined gross violations took place. This context was related in the final report of the TRC, which acknowledged the exclusion of people from recognition and access to reparations and that “many people remain aggrieved.”⁴⁶

A second problem with the definition of gross violations of human rights was its failure to address some of the issues faced by women as family members and by families in general. Many women who suffered fear and anxiety, when, for example, the police arrived looking for their husbands or sons, were not covered by the TRC’s definition of victim. Although the notion of “other forms of severe ill-treatment” was interpreted from a gender perspective to include sexual violence, other forms of violence related to the gendered family structure should also have been included. The ensuing harms of loss of fertility, pregnancy following rape, widowhood, mutilation, loss of livelihood and others, while acknowledged by the TRC, were not specifically taken into account in the design of reparations.⁴⁷ These harms had severe consequences for South African women and those in neighboring countries. Abortion was not legal or available at the time. Loss of fertility, mutilation of genitals, and rape all have severe cultural implications for women in South Africa, as does widowhood.⁴⁸

Financial reparations were seen as assisting people who had lost a livelihood or a breadwinner and urgent medical treatment was part of the interim measures provided, but generally reparations recommendations were not detailed responses to these types of harms.

However, despite these particular problems in the TRC's definitions, gender activists gave the systemic violations of apartheid a gendered meaning. The control of movement and the loss of livelihoods under apartheid led to the breakdown of families, often leaving the burden of care on mothers and grandmothers.⁴⁹ Apartheid intervened overtly and insidiously in the intimate relationships between men and women through laws that controlled movement in the urban areas, the Prohibition of Mixed Marriages Act,⁵⁰ and others. Customary law, as codified by the government, limited the capacity of African women to contract, own property, and enter into commercial transactions.

DIRECT/INDIRECT VICTIMS

Another issue regarding the definition of gross human rights violations arose early on when women started coming to the hearings to talk about their sons, husbands, and other male relatives. Gender activists argued that the act governing the TRC correctly defined victims as including relatives or dependents of victims.⁵¹ This meant that these women should be seen as primary and not secondary victims, since their suffering was a direct result of the gross violation. The mothers of children who were tortured or killed experienced psychological pain and harm that needed to be repaired and compensated. There was also economic loss suffered by the families of those killed, abducted, detained, tortured, and so on. Breadwinners were lost, families had to care for disabled members and there was the "cultural" loss of children who might have supported the family and women having to assume the inferior status of widowhood.⁵²

The act did not distinguish between primary and secondary victims. In its final report, the TRC accepted that the distinction between victims and relatives/dependents should not be based on the notion that relatives/dependents suffered less;⁵³ and the TRC accommodated this in its approach to the victims who presented themselves to the Human Rights Violations Committee. However, the Reparation and Rehabilitation Committee did use a distinction based on such a notion: secondary victims were defined as relatives or dependents of primary victims.⁵⁴ Because of this, relatives/dependents were entitled to grants only when and if the "primary" victim had died. Thus, the system does not recognize the harms suffered independently by women whose sons and husbands

were imprisoned, tortured, and so on, and who suffered loss of income and status, pain and stress.

GENDERED NATURE OF HARM/CRIMES

Finally, there was the issue of the gendered nature of the crimes committed under apartheid. When women were directly affected by political crimes, gender activists stressed the need to unpack the gendered nature of the harms suffered. While the TRC defined various acts as constituting torture, for example, it did not discuss the gender-specific differences in the way these acts were experienced, nor did it reflect these different experiences in the proposals for the provision of reparations benefits. Gender activists pointed to the variety of sexual and biological methods of torture used in detention and prison. The point was made that even when torture took the same form for men and women, it was experienced and should be understood in a gendered way.

Gender activists also noted the particular forms of violation that women suffered and asked that these be included in the definition of harms/crimes. The TRC did include many such violations in the list of definitions of torture and severe ill-treatment. Under torture, the list includes:

- Assault to genitals/breasts,
- Beating if the victim is pregnant or miscarries,
- Electric shocks to genitals/breasts,
- Disinformation (e.g., telling a person that a loved one is dead),
- Genital mutilation, and
- Sexual torture including rape, sexual abuse, threats of rape, touching, nakedness, sexual comments or insults, sexual incitement and deprivation of sanitary facilities for menstruation.⁵⁵

These acts were considered to be torture in all circumstances under which they occurred, not just in detention or prison. All crimes were treated as equivalent for the purpose of defining victims and for reparations. The fact that some crimes such as rape were listed as “severe ill-treatment” and torture reflects a positive understanding by the TRC of the nature of sexual violence as complex and wide ranging. It would have been politically valuable if rape or sexual violence had been separately listed as one of the “gross violations.” However, the TRC’s inclusion of a range of forms of sexual violence within the definition meant that such harms could not be easily overlooked within the TRC process. The inclusion of the term “severe ill-treatment” in the definition was a useful catchall as it allowed the commission to carefully consider a number of harms

that might not have been conceptualized by the drafters of the TRC legislation at the outset. Under severe ill-treatment, the list includes:

- Beating of genitals/breasts,
- Genital mutilation,
- All forms of sexual attack (including rape and many other forms).

The TRC report, in its Code Frame for Gross Violations of Human Rights, stated that in addition to the four types of gross violations (killing, abduction, torture, and severe ill-treatment), there was a fifth category of associated violations. These were not defined as gross violations (for the purpose of reparations), but the category was “important for the understanding it provides of the context in which violations could and did take place.”⁵⁶ Associated violations included, among others:

- Sexual harassment,
- Rape,
- Touching,
- Nakedness,
- Sexual comments or insults,
- Sexual incitement,
- Deprivation of sanitary facilities for menstruation.

The TRC received 446 statements that were coded as sexual abuse, of which 40% of those that specified the sex of the victim were women. Rape, which was always categorized by the TRC as severe ill-treatment, was mentioned in 140 cases. It seems likely, based on the small number of victims who presented themselves in these categories, that many more did not come forward to the TRC to talk of their experiences.

DEFINING BENEFITS AND BENEFICIARIES OF REPARATIONS

Gender-related problems carried over from the definition of crimes and harms to the determination of reparations benefits and beneficiaries. The TRC report came up with a number of recommendations for the government on reparations, including:

- Delivery of urgent interim reparations to victims in urgent need in order to enable them to access services;
- Individual reparation grants;
- Symbolic reparations including assistance with exhumations, burials,

- memorials, etc.;
- Community rehabilitation to rebuild communities, provide health services, education, housing, etc.;
- Institutional reform to ensure that human rights violations do not happen in the future.⁵⁷

These recommendations were based on the following goals: focus on development; be simple and efficient; be culturally appropriate; be based on the community; and promote capacity development, as well as healing and reconciliation. These principles, although not explicitly gendered, could have been used to ensure that gender was taken into account in the recommendations. However, a reading of the draft and final recommendations on reparations reveals little evidence of gender awareness.

FINANCIAL REPARATIONS

In order to receive financial reparations, a person had to be found to be a victim of a gross violation of human rights. All victims received the same amounts of interim and final reparations regardless of the particular violation they suffered; victims of severe ill-treatment received the same as victims of abduction, killing, and torture. There was no distinction made on the basis of the type of harm suffered or the consequences for the person⁵⁸—thus, the grants were provided on a gender-neutral basis. Obviously, this meant that the particular needs of women were not taken into account when determining the amount of reparations. A reparations policy that allows for different amounts to be paid for different harms could, for instance, provide a greater amount to a woman who has lost a breadwinner than to a person who has been tortured but suffered no long-term financial disadvantage.

Urgent Interim Reparations. The TRC defined urgent interim reparations as “the delivery of reparative measures to victims who are in urgent” medical, emotional, educational, material, and/or symbolic need. The TRC recommended that all applicants be considered for this grant while awaiting final reparations. Urgency would be determined according to a detailed set of criteria.⁵⁹ Since a large majority of victims were paid these grants, it seems likely that urgency was understood in broad terms, and not limited to the needs of men or women in particular. The urgent interim grants were intended to provide financial assistance to victims to help them access the services they needed. Victims were also provided with referrals to appropriate government services such as social welfare counseling, social assistance grants, and health care services.

The cash sum ranged from US\$250 to US\$713, based on the number of dependents, with a maximum of five dependents counted for each victim. The urgent interim reparations were provided directly to the victim; in a case where the victim was deceased, the reparations were given to a relative/dependent who became the beneficiary. The relative/dependent was defined as any one of the following (this was not regarded as being in any particular order):

- A parent of the victim (or someone who acted/acts in place of a parent); or
- A husband, wife, or partner of the victim (according to customary, common, religious or indigenous law); or
- A child of the victim (either in or out of wedlock and/or adopted); or
- Someone the victim has/had a customary and/or legal duty to support.⁶⁰

The relative/dependent was also asked to list other relatives/dependents of the victim. Although there was only one beneficiary per household, when another relative/dependent lived in a separate household, that person was also provided with interim reparations.⁶¹

The first payments of urgent interim reparations were made in July 1998. By the time the process was completed in 2003, 14,000 victims (more than three quarters of all victims) had been paid. Most victims felt that the amount paid was negligible. For those with serious material needs, the urgent interim reparations were found to be least helpful symbolically, and were disappointing. Conflicts over the monies received were reported within families.⁶² As discussed below, men tend to use money more individually, while women tend to use it for the benefit of others. When men receive money, women are unlikely to have much say over how it is spent because of patriarchal and cultural assumptions.

Final Reparations. The TRC proposed that a sum of approximately US\$2,713 per year be paid to victims for six years (in installments every six months). According to the TRC, the amount should vary according to location (urban or rural) and according to the number of dependents. Rural people would get a greater amount on the assumption that accessing services in rural areas is 30% more expensive than in urban areas. This grant would serve to acknowledge suffering, provide for access to services and pay for some of the victim's living costs.

In April 2003, the government agreed to a one-time payment of US\$3,750 to each victim, a considerably smaller amount than that recommended. The gov-

ernment did not indicate on what basis this amount was calculated. The president simply said that the grants, together with community reparations and other government services, would acknowledge the suffering of those individuals and offer some relief.⁶³ The amount would not vary according to location, nor would it increase according to numbers of dependents. It is unclear why the government decided on this approach, although there was probably a need to simplify reparations payments for administrative purposes. However, this process does not recognize that rural residents—women in particular—are generally poorer. It also fails to recognize the added needs of individuals with several dependents, compared to those with no dependents, which will likely have a negative impact on women since they tend to take greater responsibility for looking after others in South African society. Beyond this, there are no measures specifically intended to address the harms suffered by women as a category. In particular, women who lost breadwinners, and face a lifetime of impoverishment, are not compensated in any greater sum than those victims who suffered no material disadvantage.

The disjuncture between the TRC recommendations and the government's ultimate decision angered and disappointed many. The lengthy delay in providing the final reparations grants also compounded frustrations. Furthermore, the failure to provide distinct state services or even to deliver promised existing state services for many has angered some victims and caused grievances. The philosophical debates about reparations have informed this issue. The president implied in his speech to parliament that there was some doubt in his mind about whether people should be rewarded for their sacrifices.⁶⁴ Members of the government have also implied that people did not join the struggle for reward, that reparations should not punish the new democratic government, that all people who suffered under apartheid should be assisted with government services, and that privileging those identified as victims creates a hierarchy of suffering.⁶⁵

Unlike the urgent interim reparations, the final reparations only provided one grant per victim, the size of which was the same regardless of the number of households s/he supported or the number of her/his dependents. As in the case of urgent interim reparations, however, the amount was provided directly to the victim, unless the victim was deceased, in which case it was provided to the relative/dependent who was identified for the purposes of interim reparations,⁶⁶ and, if that person was deceased, to the spouse or spouses in equal shares.⁶⁷ If there were no spouses, the money would go to the children in equal shares, the parents or other relatives of the victim. The identified victim was

defined as the person found by the TRC to be a victim of human rights violations. Women who applied to the TRC to report the death of a husband or son were designated as relatives and dependents of victims and were entitled to reparations because the victim had died.

This approach to family seemed to assist women, as spouses were given first preference. In terms of its regulations,⁶⁸ the President's Fund had the discretion to substitute the person who had received urgent interim reparations with a relative/dependent higher up the hierarchy. For example, even if the son of a man killed had received interim reparations, the fund might pay the wife the final reparations. Where children were paid, practically speaking, the money went to the adult who cared for them, usually a woman. This was also a positive step for reparations for women.

The regulations define "spouse" as "the person married to an identified victim under any law, custom, or belief." This allows the fund to take account of religious and customary marriages even where these are not legally recognized. This is important in South Africa, where there is a wide plurality of marital forms. The term "spouse" in South Africa is somewhat complicated in the law, since it applies to those married in terms of civil law, customary law, and certain religious laws. Domestic partners and same sex partners, however, are not yet included in this term; the legislation therefore seems to be framed around a conception of family that does not fully reflect the lived reality in the country. Where a direct victim left a wife and domestic partner (a common situation in South Africa), the latter woman would not benefit from reparations. Women in domestic partnerships in South Africa are generally discriminated against legally and socially, and are financially vulnerable.⁶⁹ On the other hand, there was some indication from the President's Fund that "girlfriends" were in practice accommodated.⁷⁰

Despite the TRC's recommendations for reparations in installments, both the urgent interim reparations and final reparations grants were made in one-time payments. They were provided without means testing and were not specific to the needs of victims; they were only conditional on the TRC's identification of the victims. The single payment, being a small amount, was used up very quickly by most victims, and they did not have the effect of providing for the maintenance of families.

Women victims bemoaned this fact as they were struggling to meet the ongoing needs of their households. In an interview with representatives of the victims group Khulumani (mainly women), it was agreed that while money could not bring back a loved one, it would help with daily survival.⁷¹ They explained that the loss of a husband or child created a gap in their expected

support system, and this gap had not been closed by the small monetary reparations. One interviewee said she had spent the money on a burial and on erecting a security wall around her house. As mentioned above, another woman said she had used the money to support the children of her daughters who had died of AIDS. These two examples point to the pressing issues facing families in South African society today.

Reparations have assisted women when they have been able to access the money—by acknowledging their particular suffering, and when they have been able to control the money—by giving them some status. It has also allowed them to use the money for the support of households, since poor women are generally responsible (and developmental) spenders. The problem, however, is that the small size of the individual reparations has not achieved much for the families of victims. Interviewees described the money as “peanuts” and “nothing,” and said they had spent it all on debts.⁷² Their ongoing worries were for information, exhumations, tombstones and issues related to the burials of their loved ones, as this process had not been concluded for some of them. They were also concerned for fellow community members who had not managed to get to the TRC and could not benefit from it. In a study looking at how victims have spent their reparations grants and what they still need, the common desires were for housing, jobs, health care, education for children and counseling services.⁷³ The study was not gender-differentiated, however.

Some women have not received the reparations that they were entitled to for two reasons. First, the designation of the person who went to the TRC (e.g., the mother of a man killed) as the main relative/dependent beneficiary, rather than some other relative/dependent (e.g., his wife), has caused conflict in some families. This difficult situation is compounded by the poverty faced by most of the victims and their families—here, money introduces conflict between family members.⁷⁴ There are no specific mechanisms in the regulations for dealing with conflict between family members, including tension between a mother and a child’s interests. Second, financial reparations have not assisted those women who felt unable to come forward and talk about their experiences of sexual violence. Other forms of reparations, however, are also unlikely to help them since they do not specifically address the needs of victims of gender-based violence.

SYMBOLIC REPARATIONS

The TRC report saw symbolic reparations as measures to restore the dignity of victims and to facilitate the communal process of commemoration. Some of the suggested individual measures included issuing death certificates,

exhumations, reburials and ceremonies, and providing headstones and tombstones. The suggested community interventions included renaming streets and facilities, building memorials/monuments, and having culturally appropriate ceremonies. The suggested national interventions included renaming public facilities, building monuments and memorials, and establishing a day of remembrance. The government accepted these recommendations, which contained no specific gender focus.

There have been certain symbolic reparations measures for women and some general symbolic acknowledgments of women's role in the struggle (e.g., the restoration of the women's jail in Johannesburg, which now houses constitutionally created independent bodies such as the Commission for Gender Equality; the renaming of streets and towns after famous women, etc.). However, a lot more could be done in this regard.⁷⁵

Symbolic reparations work is being undertaken by the Freedom Park Trust, an independent agency led by writer Wally Serote, after being handed over by the Department of Arts and Culture. According to one victims support group, there has been very little community participation in the symbolic reparation process and women have had even less voice. This is the case in rural areas, for example, where male chiefs are considered (incorrectly) to speak on behalf of the community as a whole. Hlengiwe Mkhize, a former TRC commissioner who attended workshops of the Freedom Park trust, felt, however, that the trust was doing good work and that it was informed by the TRC's recommendations and not gender insensitive.

For many women, as wives and parents, proper burials, information about their loved ones' deaths, and the clearing of their names were central demands relating to closure, ritual, and status. For many, this has already occurred through the TRC or with the help of individual reparations grants. For others, however, this has not yet happened. The National Prosecuting Authority (NPA) has been tasked with following up on cases of disappearances, prosecutions, and exhumations. One person in the government is working on disappearances research.⁷⁶ Prosecutions are a somewhat fraught issue politically, but investigations are going ahead in certain cases. Some exhumations have occurred, but the main work is still to research possible cases. Yasmin Sooka, a former TRC commissioner, pointed out that despite exhumations in certain cases, the victims were unlikely to find out to whom the bones belonged since the costs of sending them to the United States for DNA testing were too high.⁷⁷ Hlengiwe Mkhize noted that the NPA has capacity problems. Moreover, the main evidence guiding these issues comes from perpetrators who are often unreliable witnesses.

COMMUNITY REPARATIONS

The TRC report also recommended community rehabilitation measures at the local and national levels to address the systematic abuse experienced as a result of the conflict. The report recommended that general service rollout by the government should be informed by the need for rehabilitation and reconciliation. The suggested areas included demilitarization, dislocation and displacement, local treatment centers, rehabilitation for perpetrators and their families, mental health services, establishment of survivor support groups, skills training, specialized trauma counseling services, family-based therapy, transformation of education, and provision of housing for displaced communities or where property was destroyed. Although accepted by the government, these recommendations make no specific reference to the particular needs of women. Obviously, if the recommendations are implemented with gender sensitivity, these services may assist women significantly.

The Department of Justice recently contracted Hlengiwe Mkhize to assist with the implementation of reparations, including the social benefits aspects of the program.⁷⁸ The other departments involved in this issue include health, education, and housing, but little has been done by them in specific response to the position of victims. The government's approach has been that the social programs and benefits are necessary to uplift millions of South Africans, and are not just for TRC-designated victims. However, according to Mkhize, the setting up of trauma centers, the introduction of community health workers and rehabilitation facilities, and many other such services were ideas put forward by the TRC that the government has introduced or is committed to introducing as part of the reparations process. Victims and organizations working on transitional justice issues are less convinced that anything has been or will be done.⁷⁹

In interviews, victims felt strongly that they should have been "put at the front of the queue" for government services such as housing. For women who experienced direct violations, counseling was a common request. The material claims were often related to the caring role that women play, and included financial support for their families, housing, and education for their children. In South Africa, older women are often responsible for many dependents from a number of generations, since they receive state pensions. In a research study looking at the impact of reparations on victims, it was found that the government had done little to help victims or to realize the other aspects of the reparations package beyond monetary payments.⁸⁰ Victims' health, housing, and educational and psychological needs had not been adequately met.

INSTITUTIONAL REFORMS

Finally, the TRC report recommended institutional reforms for the government, the media, the judiciary, and a range of other sectors to prevent the recurrence of human rights abuses in the future.⁸¹ These included a detailed set of recommendations regarding the promotion of a human rights culture, the need to address poverty and crime, accountability by the state, and improvements in the health sector, prisons, the justice system, policing, and many others. Again, apart from brief mention of the needs of women as a disadvantaged group and incidental reference to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁸² the report is curiously gender-blind.

The government accepted these recommendations, and institutional transformation programs are underway in all departments. There has been training in human rights and democracy in many areas of the government, including the police.⁸³ Although some would argue that these would have been undertaken in any event because they are constitutionally mandated, Mkhize says that the TRC's recommendations strongly influenced government policy, and, while many might be disappointed with the government's apparent failure to implement the TRC recommendations, they are in fact being followed in many areas. Mkhize also notes that while the recommendations that appeared in the final report might not seem to take gender into account, the TRC did submit reports (including the evidence from women to the TRC) and recommendations (including the NGO submission on gender and the TRC) to all government departments during the TRC's period of operation. Some gender units in the government wrote back to say they were just being set up and could not do anything yet; however, Mkhize believes that other government departments incorporated the TRC issues into their programs and policies.⁸⁴

Janine Rauch, in a study on the transformation of the police in South Africa and the TRC, has concluded that the "TRC had little impact on the process of police reform, which pre-dated the TRC and ran parallel to it. Instead it was the policies and actions of the new democratic government which directed the massive changes in policing in South Africa since 1994."⁸⁵ It seems possible that this is the case in most other areas of government as well.

THE CHALLENGE OF GENDER-SENSITIVE IMPLEMENTATION OF REPARATIONS : ACCESS TO BENEFITS

After parliament had considered the TRC reparation recommendations, the various aspects of the reparations program were allocated to different govern-

ment departments. The Department of Justice was the lead department. The processing of applications and the payment of individual reparations grants were the responsibility of the President's Fund, which was set up to house the money. A male official at the deputy director level in the Department of Justice, Farouk Hussein, was tasked with administering the fund. In addition, the fund has a small staff of six people (three males and three females), all holding clerical positions. As discussed above, the major feature of the South African reparations program recommended by the TRC and accepted by the government is the financial grants. The implementation of the program will be discussed here, and specifically whether it was gender sensitive.

Most of the 19,000 people who were listed by the TRC as victims applied for reparations; about 1,300 people have not applied. The President's Fund has no gender breakdown of those given payments.⁸⁶ Generally, the payment of reparations seems to have gone quickly and smoothly. NGOs and victim support groups often assisted their members to get information, to complete forms and in other ways to enable them to apply for reparations. There were two problems, however, that should be noted.

First, in order to receive reparations, applicants had to have a bank account. In South Africa, however, many poor people do not have such accounts. In addition, until 1998, women married under customary law were regarded as minors for the purpose of certain commercial transactions. Furthermore, even when there are no legal impediments, poor and illiterate women often defer to husbands and other men on business issues. The fund urged the banking council to allow people to open accounts or reopen the accounts into which their urgent interim reparations had been paid. The fund also assisted applicants by writing letters to the Department of Home Affairs asking it to provide people with temporary identity documents in order to open bank accounts. Alternatively, the applicant would have to use someone else's account. There were a number of cases in which a woman with no bank account had to sign an affidavit to have the money put into her husband's account. The head of the fund acknowledged that it was quite possible that the women might not be able to exercise control over the money. In two cases where women gave their sons' bank account details, the women returned to the fund to say that those sons had used up the money without their permission. The fund advised them to report the matter to the police. Interestingly, the implementing body responsible for reparations has tried, in cases where money was for the children of a victim, to give the money to women caretakers in the belief that this money would actually reach the family, because men sometimes misuse it and often

are not the actual custodians of the children.⁸⁷ This sentiment was confirmed by a former TRC commissioner and a victims support group in interviews.

A second problem with implementation was that only those who were able or prepared to approach the TRC benefited from financial reparations. Many people were not aware of the implications of not approaching the TRC in relation to receipt of reparations. Poor women in rural areas who lacked information and education about these issues were particularly affected. It is highly likely that many women victims of sexual violence were unable to approach the TRC because of stigma, fear, unwillingness to reopen wounds, and many other reasons. There are very few services in South African society to assist such women, and there has been very little discussion in the reparations debate about how to address these issues. Women's organizations have not often linked past sexual crimes with current sexual crimes, nor has much attention been paid to finding ways to address the crimes of the past.⁸⁸ Neither the TRC process nor reparations have had any significant impact on the unequal position of women in South African society.

GENDER, REPARATIONS, AND TRANSITIONAL JUSTICE: CONCLUDING REMARKS

The South African government failed to recognize the importance of and need for reparations following the apartheid conflict. It grudgingly delivered on its commitment to pay individual reparations grants, but de-linked other reparative measures (community, institutional, and symbolic reparations) from the transitional justice process. Thus, while the TRC served as an immediate post-conflict space for emotional reflection and truth telling, and provided a measure of exposure and justice (for some), it was quickly left behind as the government located the rebuilding of society, reconciliation, and rehabilitation as part of its ordinary business.

Many important developments have occurred in the reconstruction of new South Africa. Some of these include a land redistribution process; the scrapping of numerous racist laws and the introduction of affirmative action; the requirement that a high quota of women be placed in official positions in the ruling party; the establishment of an independent human rights commission; the delivery to the poor of millions of houses, electricity and water; and new social assistance grants for children. However, these measures have not been linked to transitional justice mechanisms and have not been understood by people as reparations benefits. In this sense, the "external coherence" between

different transitional justice elements that Pablo de Greiff suggests is necessary for effective reparations is largely missing from the South African example.⁸⁹

De Greiff argues that transitional justice (including reparations to victims) should aim to promote recognition, civic trust, and solidarity. It is the first of these that was most compromised by the limitations of South Africa's reparation program. Many victims feel that the rights violations they suffered have not been addressed adequately, since the government's ungracious approach to reparations undermined their recognition as citizens deserving of care and respect. Women victims in particular had faced multifaceted attacks on their full citizenship entitlements, as had blacks under apartheid, inasmuch as they were accorded an inferior legal, social, and cultural status. Additionally, women were disadvantaged due to their status as caretakers of the home and family in a society where families were being torn apart. For women who lost husbands and sons, who lost status and economic support and who faced the task of supporting a family alone, the disappointment at the president's attitude was deeply felt. This lack of recognition has had a negative impact on the perceptions of justice in the South African experience. Because of the inadequacies of the reparation process, the limitations of the reparations themselves, and the problems facing the rebuilding of South Africa, many women remain unhappy and less than fully "repaired."⁹⁰

The South African transitional justice process, and the broader institutional reforms that have occurred, provide positive and negative lessons for other countries wishing to put in place gender-sensitive reparations in the context of transitional processes. I will conclude by recapitulating some of them.

ACCESS TO THE TRC

Aside from the imperfections in the reparations program for those who accessed the TRC, many people could not approach the TRC in order to be classified as a victim or dependent for the purposes of reparations. Many people who wanted to give statements to the TRC were unable to because they went to the wrong venue, they gave statements to a political party instead of the commission, they lived too far away, the TRC operated for too short a time, they were not yet ready to talk, and so on.⁹¹ In an interview, a former TRC commissioner said that while serving on the commission she had pushed the government to help victims, but that she privately agreed that it was unfair to give priority to them. One of the reasons for this was the short duration of the TRC process. She said that many people did not manage to access the TRC, were not ready to deal with their pain, or did not appreciate its significance at the

time.⁹² Lack of access to transport, illiteracy, disempowerment, lack of confidence, and fear of speaking in public may be some of the factors that impacted disproportionately on women who would have liked, but failed, to approach the TRC.

The reparative effect of making a statement about a rights violation was one of the important benefits of the TRC.⁹³ Many people who could not take advantage of this opportunity had no other recourse to this kind of potentially healing process. Furthermore, since many women were not ready to speak about their experiences at the time of the TRC, they were unable to benefit from reparations. This raises the issue of the timing of transitional justice and reparations measures. For many who have suffered trauma, a great deal of time is needed before they can begin to recount their violations. It seems that South Africa was in too much of a hurry to put the past behind it and did not create the space for longer term reparations programs.

THE VALUE OF SUPPORT GROUPS

The lack of reparations mobilized women within victims support groups, and the TRC process as a whole linked women together in small support groups around common issues of loss and pain. Although mutual support and space to talk has been valuable for many family members, these victims groups are often largely comprised of women. Interviewees said that they “empowered each other to go through the TRC process and to access reparations and helped each other in the follow-up work such as exhumations. We counsel each other, maintain contact and communication and have a nice time to forget about things.”⁹⁴ Men are less likely to create the networks that women develop to assist each other, and thus may be less able to find ways to channel the effects of violence and loss in their lives. A gender-sensitive reparations program should bear this in mind and should try to create mechanisms for bringing men together and providing them with the benefits of mutual support and organization.

WOMEN'S REPRESENTATION AND THE PRINCIPLE OF GENDER JUSTICE

The lack of adequate representation of women and women's organizations in the peace negotiations and the creation of the TRC meant that gender justice, as an issue, was not considered. The involvement of women and gender activists in the TRC process, however, meant that an attempt could be made to introduce gender issues into both the TRC process broadly and the reparations policy specifically. Women have been equally interested in the amnesty

process, reparations, and prosecutions following the ending of amnesty. All of these have had healing effects or other important meanings for women at each stage of the process. Women's focus on reparations within the victim support movement had partly to do with the way in which the debate on reparations unfolded, and partly to do with the role poor women play in maintaining and supporting families.

All three TRC commissioners interviewed felt that the inclusion of gender justice as a guiding principle for the TRC would have had an important impact in foregrounding gender issues in the commission's work. The absence of this principle made it harder for gender activists inside and outside the TRC to address gender issues. Wendy Orr said that certain commissioners (some but not all of the women) understood and embraced gender issues. For others, however, gender never really informed their approaches. Obviously, writing on gender justice as a guiding principle cannot on its own ensure that gender issues are considered or addressed. Also, the existence of women in powerful positions does not necessarily mean that they are gender aware or that they will be active in asserting these issues. Thus, public participation in choosing people to sit on transitional bodies might be an important way of ensuring that gender-conscious people are chosen. Beyond this, the role of women's organizations and gender activists becomes critical as a lobbying force throughout the process.

WOMEN'S ORGANIZATIONS AND TRANSITIONAL JUSTICE PROCESSES

In terms of their impact on the TRC process, women's organizations played an important role in raising gender issues and encouraging the commission to rethink some of its approaches. This gender advocacy also contributed to the conceptualization of the reparations policy recommendations. Unfortunately, the conflict between the TRC/civil society and the government over reparations meant that many of the detailed recommendations were not discussed. As time went on, and reparations became a single-issue campaign centered on victims rights, women's organizations became less involved, leaving it to victims support groups and peace/human rights NGOs to take this issue forward. Women's organizations possibly felt it was more useful to direct their energies to more urgent and realizable struggles over women's rights. This may suggest that the content of reparations programs should be formulated earlier on in transitional justice processes; that way, women's organizations could contribute to the programs from the start, and women victims would know what to expect from them before participating in any transitional justice mechanisms.

GENDERED SPACES

Creating the space for women to describe their experiences in an empowering and nonvictimizing environment was an issue facing the TRC's Human Rights Violations Committee rather than in the reparations process. This was because being classified as a victim or dependent by the TRC was a prior condition for application for reparations. Following the above-mentioned submission on gender and the TRC, as well as the other interventions of human rights organizations and women outside and inside of the TRC, the commission agreed to hold three special hearings on women. At the one held in Durban, a woman chose to speak behind a screen to hide her identity. The panel of commissioners was made up of only women and the audience was mainly women.⁹⁵ Although the women's hearings were critical in providing a safe space, additional and more localized hearings might have reached many more women who otherwise did not benefit from them. There is also the problem, mentioned above, of the link between reparations and truth telling. It is likely that some victims, particularly of sexual violence, felt unable to talk about their experiences so soon after they had occurred. Ideally, they should be given future opportunities to tell their stories and to benefit from reparations.

When people approached the TRC, their statements were taken down in private. It was only if they were specifically requested to speak in public that they would appear before the Human Rights Violation Committee. Thus, when statement takers were sensitive and understanding, there would have been some space for women to talk openly. All statements, regardless of whether they were repeated at public hearings, were considered in determining victim status by the TRC. The TRC commissioners generally were very understanding, encouraging, and open towards people making statements. They accepted the fact that there was a subjective dimension to victims' perceptions of events, even where there was some question about the detailed nature of claims.

The form used by the TRC to take statements from the public included the following caution after April 1997:

IMPORTANT: Some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don't forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse.

Statement takers were also briefed on issues of gender-based violence, and some limited psychological support services were provided to those making statements.⁹⁶ Wendy Orr, a TRC commissioner, made the important point

that simply providing public hearings was valuable in giving women a voice in a society where women often have less opportunity to speak.⁹⁷ Women also appreciated that it was an official yet nurturing and safe space—something they had not encountered before.

THE GENDERED IMPACT OF TRUTH TELLING, AMNESTY, AND HUMAN RIGHTS VIOLATIONS

Linking the TRC's violations hearings directly to eligibility for reparations grants in the South African process meant that women were involved centrally in both. In addition, the granting of amnesty to perpetrators was conditioned upon their telling the truth, and the loss of civil claims against perpetrators was understood as being in some ways offset by the provision of reparations. The amnesty cases were important for those women whose lives had been affected by the actions of the perpetrators. However, while some found that the truth telling allowed healing, others became angrier. Moreover, the women who testified in human rights hearings had mixed feelings: they found them useful, important, cathartic, and liberating but also difficult and painful, while making them feel more vulnerable; it was also felt that the process was created for the benefit of others.⁹⁸

The reparatory impact of the hearings cannot simply be judged on the basis of the individual victims themselves. The TRC had an important social impact, and its legacy will shape the lives of future generations. The fact that some women were brave enough to bare their souls, and that the TRC was encouraged by women's organizations to house and highlight this testimony, means that the gendered impact of the conflict on women is now better understood.

REPARATIONS THROUGH A GENDER LENS

The South African experience shows the importance of including gender-sensitive commissioners and other officials in truth-telling and reparations bodies to ensure that gender issues are raised and addressed. When truth-telling mechanisms are in charge of either recommending or implementing reparations, the presence of gender-sensitive commissioners is particularly important. The involvement of strong women's organizations and gender activists within civil society may also be critical in supporting gender-sensitive commissioners and putting pressure on those who are not gender sensitive within official bodies. Also, incorporating gender justice as a guiding principle in the TRC's mandate can force commissioners to acknowledge and deal with gender issues. In South Africa, women TRC commissioners felt that this would have

assisted them in their struggle to raise gender issues within the commission.

However, as mentioned above, the broader question raised by the South African experience is whether reparations *should* be linked to truth telling. In South Africa, the fact that reparations were indeed linked to truth telling created difficulties for those women who felt unready to talk about sexual violence soon after the conflict. These women and others who did not manage to access the TRC (often because of poverty, illiteracy, and lack of information) lost out on the opportunity to benefit from both truth telling and reparations.

For those women who did access the TRC, space was created to talk about sexual crimes committed against them; but their specific reparation needs have not been met through targeted programs of counseling or other forms of assistance. In this regard, the explicit inclusion of sexual violence as a crime deserving reparation (and its further categorization into a range of different harms) is important in bringing to the fore crimes that are often hidden and euphemized. In South Africa, sexual violence was only included in secondary lists drawn up by the TRC. Sexual violence would have been more centrally placed on the national agenda had it been mentioned in the founding legislation of the TRC.

More generally, the definition of human rights violations should be broad and encompass women's experiences more than they were in the South African case. Here, the limited definition of "gross violation of human rights" to extreme crimes of violence meant that many people who suffered other indignities and violations under apartheid and during the conflict were not included in the process of reconciliation. This created a hierarchy of suffering that was also gendered, since more men than women were directly affected in the conflict.

South Africa's definition of victim, which included dependents for the purpose of reparations, should be commended and encouraged elsewhere. However, ideally, a dependent's suffering should be treated as a direct violation, not an indirect one. Otherwise, the distinction between direct victims (such as a man who was detained and tortured) and his dependents (such as a wife who might have suffered anxiety, hopelessness, and despair) ends up deepening the gendered value attached to different types of suffering.

It is important that benefits reach all dependents. In South Africa, final reparations grants did not take into account the number of dependent households or the number of dependents within each household. Where rural people are more disadvantaged than urban people, their benefits should be greater. Furthermore, it is often women who are most disadvantaged in rural areas, and

who have to take responsibility for dependents who are not covered by reparations. Also, it is important to underscore that beneficiaries need both services and financial grants, and that the latter should be distributed in a gender-sensitive way. For instance, adequate medical and psychological support services should be a first step to deal with the effects of gender-based political violence.

The emphasis on cash grants in the South African reparations program left many victims feeling angry that they had not been given special priority in relation to housing and other social benefits. On the other hand, cash payments allowed beneficiaries to choose how to spend their money, whether on burials, educating their children or simply feeding their families. From the point of view of the goals of restitution and compensation, it seems important that both grants and services be provided to victims. Where cash is paid out, women often spend it on the needs of the family. Therefore, where appropriate, grants should be paid to women. Since large sums of money often create conflict in families, smaller regular payments are less likely to be disputed and abused. The South African experience also shows that the way reparations are implemented is crucial. For instance, alternative proof of identity should be accepted in countries where, like South Africa, many poor people, and women in particular, do not have official identification and bank accounts.

Symbolic reparations are also important in showing society and future generations that the struggle was led and fought by women, not just men. Public spaces, scholarships and memorial lectures should be named after famous women. Museums should be lobbied to ensure that the gender content of their exhibits is adequate. Events marking the sacrifices of women victims should be arranged at regular intervals. In South Africa, while progress has been achieved in this direction, it is largely insufficient.

The TRC did not adequately link the culture of political violence to the high levels of gender-based violence in the post-conflict period, something that was highlighted by women's organizations and others, and which poses interesting questions regarding the reparations of harms for the long-term effects of violence.⁹⁹ The chapter on reconciliation in the TRC report¹⁰⁰ did, however, refer to the need to build "a democracy where men and women can be at home," as well as to the clear challenge for all South Africans to pay more than lip service to the constitutional ideal of a society in which men and women can participate fully, and in which human rights are respected.¹⁰¹

In this regard, there has been much policy and legislative work in South Africa to address the gender inequality that arose from pre-existing patriarchal structures and was compounded by apartheid. The difficulty facing society

now is to implement these laws and address poverty (which is also gendered). Lack of resources, lack of official capacity and new social problems like HIV make this a huge task. South Africa is succeeding in certain respects, but the challenges remain massive. Some of the positive measures identified in South Africa, which might assist other post-transitional societies, and which can be conceptualized as either guarantees of nonrepetition (whether through institutional reform or otherwise) or as collective reparations for women, include:

- Laws on prevention of domestic violence and rape;
- Police and military sensitivity training;
- Monitoring of enforcement agencies;
- Improved social services for women, including health and termination of pregnancy services;
- Measures to address women's poverty, land rights, and economic opportunities;
- Strong constitutional and equality protections for women.

Other measures that were not present in the South African experience, but that seem essential to help women cope with the effects of gender-based violence, include the following:

- Community-based efforts to challenge stigmatization and support women. These could include women's support groups for victims, community "speak outs" and nongovernmental service provision of counseling that is sensitive to the specificities of political violence against women.
- Broader campaigns and strategies by civil society and government to end violence against women, which could refer (discursively and practically) to the suffering of women in the struggle. Thus, a campaign to end domestic violence could make links between women who are prisoners in their own homes to the experiences of women prisoners under apartheid/a repressive state; the behavior of abusive and controlling men could be likened to torture; women could be encouraged to resist and to defend their human rights, and so on.
- Future spaces for women to tell their stories, especially those women who were unable to talk about their experiences at the time of the transitional justice body. Human Rights Commissions, museums, and various other bodies could arrange for future hearings.
- Campaigns to redefine masculinity in the schools and in society more broadly.¹⁰²

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INTERVIEWS

- 1 Wendy Orr, Director of Transformation and Employment Equity at the University of the Witwatersrand, Johannesburg; former Truth and Reconciliation Commissioner and member of the Reparations Committee of the TRC. Johannesburg, 14 April 2005.
- 2 Nahla Valji, Polly Dewhirst, Ereshnee Naidu, Oupa Makhalemele, Centre for the Study of Violence and Reconciliation, an NGO in Johannesburg. Johannesburg, 22 April 2005.
- 3 Sheila Meintjes, Politics Department, University of the Witwatersrand, Johannesburg. Johannesburg, 25 April 2005.
- 4 Marjorie Jobson, Tshiamo Moela, Wendy Sadie, Mavis Khumalo, of Khulumani Support Group, an NGO in Johannesburg. Johannesburg, 4 May 2005.
- 5 Farouk Hussein, Fund Administrator of the President's Fund (responsible for paying reparations), Department of Justice, Pretoria. Telephone interview 9 May 2005; follow-up telephone interview, 2 June 2005.
- 6 Hlengiwe Mkhize, independent consultant, Pretoria; former Truth and Reconciliation Commissioner and member of the Reparations Committee of the TRC. Midrand, 11 May 2005; follow-up telephone interview, 2 June 2005.
- 7 Ten members of the Khulumani Support Group, Mamelodi Office. Mamelodi, 11 May 2005.
- 8 Yasmin Sooka, Director, Foundation for Human Rights, a funding organization based in Pretoria; former Truth and Reconciliation Commissioner. Telephone interview 6 June 2005.

ACRONYMS

ANC	African National Congress
CSVR	Centre for the Study of Violence and Reconciliation
NPA	National Prosecuting Authority
TRC	Truth and Reconciliation Commission

NOTES

- 1 The transition is defined as beginning on 2 February 1990, when the ANC was unbanned, and ending on 27 April 1994, when democratic elections were held.
- 2 For more information on the status of South African women, see Debbie Budlender, *Women and Men in South Africa: Five Years On* (Pretoria: Statistics South Africa, 2002).
- 3 The apartheid government had a policy of forced removals under which whole communities were taken from an area that was being cleared for whites and placed somewhere else, often in an under-resourced and inaccessible area. Women, as caretakers and reproducers of the home and family life, faced particular difficulties in dealing with this form of violation.

- 4 The TRC findings address the impact of the conflict on children and youth. See Truth and Reconciliation Commission, *Report of the Truth and Reconciliation Commission of South Africa* (Cape Town: Juta, 1998), vol. 1, ch. 5, paras. 159–60 (hereafter, TRC, *Report*). Also see the chapter on the special hearing on children and youth, vol. 4, ch. 9.
- 5 See the description of her life by Lydia Kompe in Beth Goldblatt and Sheila Meintjes, “Gender and the Truth and Reconciliation Commission—A Submission to the Truth and Reconciliation Commission,” May 1996, 23–25.
- 6 TRC, *Report*, vol. 4, ch. 10, 301.
- 7 Jacklyn Cock, *Colonels and Cadres—War and Gender in South Africa* (Cape Town: Oxford University Press, 1991), 215–66.
- 8 Ibid.
- 9 The TRC report refers to a statement by then Deputy President Thabo Mbeki, stating that men in the camps had committed “gender-specific offences” against their women comrades, in “Special Hearing on Women” in TRC, *Report*, vol. 4, ch. 10, 282–316, 295. General Andrew Masedo, also in evidence given to the TRC about the abuse of women in the camps, said: “In Angola there are at one time twenty-two women in a group of more than 1000 people... there was an allegation that... Commanders were misusing women... the law of supply and demand must have created some problems.” Ibid., 307.
- 10 TRC, *Report*, vol. 4, ch., 10, 308.
- 11 Ibid., vol. 5, ch. 4, para. 79.
- 12 The ANC had a relatively strong grouping of women members and leaders who were vocal within the movement on gender issues.
- 13 Catherine Albertyn, “Women and the transition to democracy in South Africa,” in Christina Murray, ed., *Gender and the New South African Legal Order* (Cape Town: Juta, 1994).
- 14 Despite the removal of many of the formal barriers to full citizenship, South Africa remains a highly unequal society divided largely along the lines of race, class and gender.
- 15 Ilse Olckers, “Gender-neutral truth—A reality shamefully distorted,” *Agenda* 31 (1996): 61–67, 62.
- 16 Even then, it was both circumstantial and fortuitous that particular individuals, who were gender activists, saw the TRC as an opportunity for gender work. As discussed above, this may have been partly because the TRC was seen as less important than other immediate challenges facing women in the new democracy. Also, there was an almost immediate demobilization of civil society following the first elections. Organizations struggled to shift from anti-apartheid oppositional politics to new approaches to social change. The women’s alliance that had come together over negotiations quickly lost impetus when its *raison d’être* disappeared. There is some question as to whether South Africa’s disparate groupings of women’s organizations in a variety of sectors actually

- constitute an organized women's movement. Many of the leading feminists from the struggle accepted jobs in government and parliament and began playing less central roles in civil society.
- 17 Goldblatt and Meintjes, "Gender."
- 18 The TRC was made up of a 17-person commission; three committees dealing with human rights violations, amnesty, and reparations; and a staff component.
- 19 The TRC's workshops were the first organized efforts to bring women's organizations into the process. This initiative may not, however, have happened had it not been for the lobbying done by gender activists outside of the TRC. See Hugo van der Merwe, Polly Dewhirst, and Brandon Hamber, *The Relationship between Peace/Conflict Resolution Organisations and the Truth and Reconciliation Commission: An Impact Assessment* (Johannesburg: Centre for the Study of Violence and Reconciliation, 1998), 15.
- 20 TRC, *Report*, vol. 4, ch., 10, 285.
- 21 *Ibid.*, vol. 5, ch. 1, para. 161.
- 22 See the discussion of this issue in Pumla Gobodo-Madikizela (with contributions by Fiona Ross and Elizabeth Mills), *Women's Contributions to South Africa's Truth and Reconciliation Commission* (Washington, DC: Women Waging Peace Policy Commission, 2005), 14–16.
- 23 Yasmin Sooka, a TRC commissioner, approached a number of high-profile women and asked them to speak at the TRC about the violence they suffered. Most refused. Telephone interview by the author with Yasmin Sooka, 6 June 2005.
- 24 This is acknowledged in TRC, *Report*, vol. 7, 8.
- 25 Interview with Yasmin Sooka.
- 26 This body was headed by a male official with three female and three male assistants.
- 27 Interview by the author with Wendy Orr, Johannesburg, 14 April 2005.
- 28 Interview with Yasmin Sooka.
- 29 Rural women are particularly disadvantaged in South Africa because of lack of infrastructure, deep poverty, and patriarchal traditions. However, many urban women live in very poor conditions in informal settlements in urban areas and are also subject to oppression and abuse by men. The differences between rural and urban women came out in some of the statements made to the TRC and the requests for assistance, but these differences should not be overstated, as women's experiences of the conflict often contained many similarities.
- 30 Khulumani Support Group has a national membership of just over 44,000 survivors of gross human rights abuses perpetrated against them and their loved ones. The mission of Khulumani is to assist survivors in the process of restoring their dignity, rebuilding their lives and becoming reintegrated into mainstream society in South Africa, through support and capacity-building programs for their healing and re-empowerment.

- 31 Interview by the author with Marjorie Jobson, Tshiamo Moela, Wendy Sadie, Mavis Khumalo, of Khulumani Support Group, Johannesburg, 4 May 2005.
- 32 TRC, *Report*, vol. 4, ch. 9.
- 33 Centre for the Study of Violence and Reconciliation, *Submission to Parliamentary Joint Ad-Hoc Committee on Reparations*, 19 June 2003.
- 34 Beth Goldblatt and Sheila Meintjes, "Dealing with the Aftermath: sexual violence and the Truth and Reconciliation Commission," *Agenda* 36 (1997): 7–18, at 15–16.
- 35 Goldblatt and Meintjes, "Gender," fn. 2.
- 36 This was not seen as the only information needed to shape a reparations policy, but was regarded by commissioners in the human rights violations hearings as an important source of information on the expectations and needs of victims.
- 37 Interview with Wendy Orr.
- 38 Interview by the author with Khulumani Support Group, Mamelodi office, 11 May 2005.
- 39 See Fiona Ross and Pamela Reynolds' discussion of Veena Das and Arthur Kleinman's idea of "remaking the everyday" in "Voices Not Heard: Small Histories and the Work of Repair," in Erik Doxtader and Charles Villa-Vicencio, eds., *To Repair the Irreparable—Reparation and Reconstruction in South Africa* (Cape Town: David Philip, 2004), 113.
- 40 TRC, *Report*, vol. 5, ch. 5, 184.
- 41 *Ibid.*, vol. 4, ch. 10, 309.
- 42 Interview by the author with Oupa Makhalemele (CSVR), Johannesburg, 22 April 2005.
- 43 Promotion of National Unity and Reconciliation Act 34 of 1995 and Regulations. Statutes of the Republic of South Africa (Durban: Butterworths, 2005), Section 1.
- 44 *Ibid.* Note that female ex-combatants could qualify as victims for the purposes of reparations since the definition of gross violation of human rights covered all acts "emanating from the conflicts of the past" with a political motive. There was, however, limited testimony from women in the liberation army camps.
- 45 Goldblatt and Meintjes, "Gender," 22–26.
- 46 TRC, *Report*, vol. 5, ch. 1, paras. 48–49.
- 47 Although some of these harms were recorded in statements made to the TRC, they were not systematically recorded as harms. Only those that were defined as gross violations of human rights were captured for the purpose of records.
- 48 Under African customary law a widow cannot stand with others in a queue, she cannot sit on a chair but must sit on a mat on the floor, she cannot visit married people because it will bring bad luck, and the end of her mourning period is marked by humiliating cleansing rituals practiced on her.
- 49 TRC, *Report*, vol. 5, ch. 4, paras. 73–134.
- 50 This act prevented inter-racial marriage.
- 51 Goldblatt and Meintjes, "Gender," 26–31.
- 52 See Goldblatt and Meintjes, "Gender."

- 53 TRC, *Report*, vol. 5, ch. 1, para. 34.
- 54 Reparation and Rehabilitation Committee Discussion Document, 1997/04/04, 11.
- 55 TRC, *Report*, vol. 5, ch. 1, appendix 1 (Code Frame for Gross Violations of Human Rights).
- 56 Ibid.
- 57 TRC, *Report*, vol. 5, ch. 5, 180–81.
- 58 However, the number of dependents was taken into account in determining the size of the urgent interim reparations grant.
- 59 This was not outlined in the TRC report but seems to have been very expansive since a large majority of victims received the interim grants.
- 60 Reparation and Rehabilitation Application Form for Interim Reparations (in terms of §28(1) of the act).
- 61 Interview by the author with Hlengiwe Mkhize, Midrand, 11 May 2005, and telephone interview on 2 June 2005; and interview with Yasmin Sooka. Both Mkhize and Sooka are former TRC commissioners.
- 62 See Christopher Colvin's discussion of the research undertaken by Anna Crawford-Pinnerup in "Overview of the Reparations Program in South Africa," in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), 189–90.
- 63 See Thabo Mbeki's speech in Doxtader and Villa-Vicencio, *To Repair*, 22.
- 64 Ibid.
- 65 See Doxtader and Villa Vicencio, *To Repair*; Colvin, *Overview*.
- 66 Note, however, that the regulations allowed the fund to substitute the person who received interim reparations with another relative/dependent if that person ranked higher in the order of preference set out in the regulations.
- 67 Regulations Regarding Reparation to Victims, No. R. 1660, 12 November 2003, Regulation Gazette No. 7821.
- 68 §3(7).
- 69 Beth Goldblatt, "Regulating domestic partnerships—A necessary step in the development of South African Family Law," *South African Law Journal* 120 (2003): 610–29.
- 70 Despite the inferior status attached to "girlfriends" many such women are willing to approach officials to claim their entitlements.
- 71 Interview with Khulumani Support Group, Mamelodi.
- 72 Ibid.
- 73 Interviews with Hlengiwe Mkhize and Yasmin Sooka.
- 74 Interview by the author with Khulumani Support Groups.
- 75 See Ereshnee Naidu, *Memorialisation: A Fractured Opportunity* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2004).
- 76 Madeline Fullard.
- 77 Interview with Yasmin Sooka.

- 78 Mkhize also advises on individual reparations where necessary; telephone interview by the author with Farouk Hussein of the President's Fund, Pretoria, 9 May and 2 June 2005.
- 79 Interview by the author with Nahla Valiji, Polly Dewhirst, Ereshnee Naidu and Oupa Makhalemele, CSV, Johannesburg, 22 April 2005.
- 80 See Oupa Makhalemele, *Still not talking: Government's exclusive reparations policy and the impact of the R30,000 financial reparations on survivors* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2004), 18-20.
- 81 TRC, *Report*, vol. 5, ch. 8.
- 82 The report recommended that South Africa ratify various international covenants and conventions and engage in an internal review of policy, similar to that undertaken after the government ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and attended the Beijing Conference, to determine whether South African law and practice conform to international obligations. TRC, *Report*, vol. 5, ch. 8, para. 112.
- 83 This has included gender-sensitivity training, as well as specific training in a new Domestic Violence Act and on handling of rape. There is, however, doubt as to whether such training has made a significant difference in the way women are treated by the police.
- 84 Interview with Hlengiwe Mkhize.
- 85 Janine Rauch, *Police Transformation and the South African TRC* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2004), 51.
- 86 Interviews with Farouk Hussein.
- 87 Interview with Hlengiwe Mkhize.
- 88 One of the exceptions is the "Aftermath Conference"; see Sheila Meintjes, Anu Pillay, and Meredith Turshen, eds., *The Aftermath — Women in Post-conflict Transformation* (London: Zed Books, 2001).
- 89 Pablo de Greiff, "Reparations Efforts in International Perspective: What compensation contributes to the achievement of imperfect justice," in Erik Doxtader and Charles Villavicencio, eds., *To Repair the Irreparable — Reparation and Reconstruction in South Africa* (Cape Town: David Philip, 2004), 344-45.
- 90 There is some early research looking at the way in which people have spent their reparations grants and the impact this has had on their lives. See Makhalemele, *Still not talking*, and Thloki Mofokeng, "An Assessment of the Government's Compensation Package to the TRC Victims of Apartheid Regime" (Management dissertation, University of the Witwatersrand, 2004). There should be further research looking at gender differentials in the impact of reparations.
- 91 Interviews with Khulumani Support Groups.
- 92 Interview with Hlengiwe Mkhize.
- 93 Gobodo-Madikizela, *Women's Contributions*, 1-47.

- 94 Interview with Khulumani Support Group, Mamelodi.
- 95 Goldblatt and Meintjes, "Dealing," 8–9.
- 96 Brandon Hamber, "The burdens of truth: an evaluation of the psychological support services and initiatives undertaken by the South African Truth and Reconciliation Commission" (Paper presented at the third international conference of the Ethnic Studies Network, Derry, Northern Ireland, 26–28 June 1997).
- 97 Interview with Wendy Orr.
- 98 Goldblatt and Meintjes, "Gender"; TRC, *Report*, vol. 4, ch. 10; Ross and Reynolds, *Voices Not Heard*.
- 99 Goldblatt and Meintjes, "Dealing"; Meintjes, Pillay, and Turshen, *The Aftermath*.
- 100 TRC, *Report*, vol. 5, ch. 9, paras. 124–126.
- 101 The report quotes a senior woman leader, Thenjiwe Mtintso, as saying the following: "As the [Commission] wraps up its formal part of the work, as it publishes its report and as it breathes a sigh of relief for a job well done, we must know that the job continues. The mammoth task that still lies ahead is the continuous and consistent struggle for justice and protection of human rights, especially gender justice and gender rights. The frightening statistics of violence against women and children which has reached . . . genocide levels, have to be addressed . . . We have just come out of this war. Part of the violence against women and children is because of that war. But part of that is the operation of patriarchy itself, because when male control and authority is in any way challenged or threatened, as it is being challenged or threatened every day in our country, it turns itself to the most violent forms. And with women and children, their bodies are being used, once again, as the terrain of anger and struggle." *Ibid.*, para. 124.
- 102 See Meintjes, Pillay, and Turshen, *The Aftermath*; and Graeme Reid and Liz Walker, eds., *Men Behaving Differently — South African Men Since 1994* (Cape Town: Double Storey Books, 2005).

CHAPTER 2

Guatemala: Gender and Reparations
for Human Rights Violations

Claudia Paz y Paz Bailey

The internal armed conflict in Guatemala began in the 1960s and lasted until 1996, when the peace agreements were signed. The death toll of the civil war was estimated to be between 130,000 and 200,000; it also resulted in 50,000 “disappearances,” 1 million internally displaced persons, 100,000 refugees and 200,000 orphaned children.¹

The root causes of the conflict can be traced to economic policies that marginalized the impoverished indigenous population, especially by restricting their access to land. These policies were implemented by a series of authoritarian and military regimes that were run by the nation’s economic elites. When the peace agreements were signed, with the participation of the United Nations (UN), the Commission for Historical Clarification [*Comisión para el Esclarecimiento Histórico*] (CEH)² was established to shed light on human rights violations related to the armed conflict, with the highest degree of objectivity, equity, and impartiality. In 1999, the CEH’s report acknowledged that between the years 1981 and 1983, “the Army identified groups of Mayan people as the internal enemy, because it considered that they constituted or could constitute the basis of support for the guerrilla,”³ and concluded that the acts of the Guatemalan State against the Mayan people amounted to genocide.⁴

Based on the obligations assumed by the State of Guatemala in the peace accords and the CEH recommendations, in 2003 Alfonso Portillo’s government approved the creation of the National Reparations Program [*Programa Nacional de Resarcimiento*] (PNR). This agency was in charge of designing and implementing a national reparations policy for the victims of the internal armed conflict; its executive body was the National Commission for Reparations [*Comisión Nacional de Resarcimiento*] (CNR), an autonomous entity. Both bodies existed until late 2003, but had little success in accomplishing their stated goals. Under Oscar Berger’s government, a new CNR took over in July 2004 and the PNR resumed work in August 2004. In December 2005 the executive changed the structure of the program once again: first, it altered the composition of the CNR—which will now be composed only of members of

the executive, civil society members having been relegated to a consultative council; second, the regulations to implement the PNR that had been approved were derogated, which means that the modest steps towards implementation have been taken back.⁵ At the time of this writing, no reparation measure had yet been approved. This chapter examines the Guatemalan experience with reparations from a gender perspective.

WOMEN BEFORE, DURING, AND AFTER THE CONFLICT : VICTIMIZATION AND AGENCY AGAINST A BACKDROP OF INEQUALITY

During the first decades of the twentieth century, Guatemalan women, especially indigenous women, were essentially denied citizenship.⁶ The period between 1944 and 1954, beginning with Juan José Arévalo's term in office and ending with the overthrow of Jacobo Arbenz's government, witnessed the only attempts to consolidate a welfare state that would address the needs of the majority of families below the poverty line, mostly through education and health plans, as well as agrarian reform. During this period, women—especially ladino and urban women—started to participate in public life through labor unions and political parties. However, in 1954, only educated women were given the right to vote, while male suffrage was universal. The vast majority of women from rural areas—especially indigenous women, who were illiterate—were denied the right to vote for the next 20 years.⁷

Statistics in recent years continue to reflect the persistence of inequality between the indigenous and nonindigenous population, as well as between men and women. According to the United Nations Development Program (UNDP), 1.5% of the population owns 62.5% of the land. Moreover, while the indigenous population owns 23.6% of the land, women own only 6.5%.⁸ Fifty-nine percent of the female population lives in rural areas, and 48% is indigenous. Women are in charge of 20% of households. Nevertheless, the illiteracy rate among indigenous women is 51.5% and the school drop-out rate among girls reaches 81.5% in rural areas and 50% in urban areas.⁹

As indicated in 2003 by the organization Women's Civic Convergence [*Convergencia ciudadana de mujeres*], lack of medical assistance during childbirth is the primary cause of maternal deaths in Guatemala (70%), followed by complications due to abortions (14%); these statistics reveal a lack of governmental concern in protecting the lives of women. Moreover, in its 2003 report, the Inter-American Commission on Human Rights (IACHR) emphasized "the high levels of conjugal violence, sexual violence, harassment, ill-treatment,

incest, and violence within the family.”¹⁰ In 2003 alone, there were 4,500 cases of rape and 9,000 cases of domestic violence. In 2005 as many as 600 women were murdered. In virtually all of these cases the judicial response has been the same: impunity for the perpetrators. Indeed, it is estimated that impunity in such cases reaches 97%.¹¹

Women’s experience of and participation in the armed conflict, the transition, and the post-conflict period should be set against this backdrop of inequality between female and male, as well as indigenous and nonindigenous, Guatemalans. This experience will be discussed here within the following categories: (1) as members of the guerrillas;¹² (2) as victims; and (3) as survivors, family members, and social leaders.

WOMEN’S EXPERIENCE DURING THE INTERNAL ARMED CONFLICT (1960–85)

WOMEN AS MEMBERS OF THE GUERRILLAS (INSURGENT FORCES)

In 1963, the Rebel Armed Forces [*Fuerzas Armadas Rebeldes*] (FAR), created with the support of the Guatemalan Labor Party [*Partido Guatemalteco del Trabajo*] (PGT), formed the first guerrilla group to combat state violence and to attempt to gain political power. In the 1970s, new rebel organizations emerged, such as the Guerrilla Army of the Poor [*Ejército Guerrillero de los Pobres*] (EGP) and the Revolutionary Organization of the People in Arms [*Organización Revolucionaria del Pueblo en Armas*] (ORPA). During this time, women participated mostly by providing logistical support, carrying documents inside their clothes, or hidden in their braided hair: “The nature of women was employed for clandestine tasks.”¹³ Some of them were directly involved in the insurrection. These were mainly young women who questioned the society in which they lived, its family structure, and, possibly for the first time, their status as women.¹⁴ Until then, women had participated in the insurgency with the belief that the guerillas’ goals of modifying the economic relations of exploitation would also produce a change in their own livelihoods. Some women also joined the feminist movement.¹⁵

In the 1970s, these insurgent groups aimed to recruit more women, both ladino and indigenous, either as combatants or for their political and ideological support.¹⁶ Approximately one-fourth of combatant forces in all organizations were women. At this time, the first women guerrilla leaders began to emerge. Mayan women also started organizing themselves for the first time through the Committee for Peasant Unity [*Comité de Unidad Campesina*] (CUC), a grass-roots political organization with the support of the Catholic ecclesiastical communities.¹⁷ Their main demands were about land claims.¹⁸ Some of

these women later joined the guerrilla groups, especially after their communities were destroyed.

During the 1980s, thousands of ladino and indigenous women were faced with unprecedented circumstances that shaped their agency in, and experience of, the conflict. Some found themselves looking for disappeared family members, others became involved in judicial proceedings and still others were forced into urban exile and refugee camps.¹⁹

WOMEN AS VICTIMS OF VIOLENCE

While women actively participated in the conflict, they were also victims of both selective and generalized repression. According to testimonies received by the CEH, women, especially those belonging to Mayan ethnic groups, experienced a whole range of violations during the conflict, including extrajudicial executions, illegal detentions, disappearances, torture, internal displacement (leading to deaths in some cases), and rape, as well sexual slavery, forced labor and forced unions with captors. Girls were also subject to additional forms of violence, like forced recruitment. Women suffered from a variety of serious consequences of these human rights violations, including unwanted pregnancies and loss of reproductive capability due to rape, orphanage, loss of material assets, loss of ties to their communities and families, post-traumatic stress disorder, widowhood, and ostracism and isolation for having been victims of sexual abuses.²⁰

The CEH calculated the percentage of female and male victims for six types of violations, as shown in the following chart:

HUMAN RIGHTS VIOLATIONS	FEMALE VICTIMS	MALE VICTIMS
Extrajudicial executions	23%	77%
Torture	23%	77%
Deprivation of freedom	21%	79%
Forced disappearance	12%	78%
<i>Death due to displacement</i>	51%	49%
<i>Rape</i>	99%	1%

As highlighted, the victims of rape and death resulting from displacement were mostly women. Unfortunately, the CEH did not make an effort to quantify the rest of the violations suffered mainly by women, such as forced unions, sexual slavery, forced labor, and prostitution.

Crimes suffered by women. The CEH determined that around 132,000 individuals were executed or “disappeared” between 1978 and 1996 as a consequence of the State’s counterinsurgency policy. Women were the victims of 23% of the cases of execution and 12% of the “disappearances.” It is also worth noting that women, especially in cases of selective repression, were more likely to be murdered for belonging to social organizations, for their political activism or for their activism and search for justice after the execution of a family member. Politically active women were doubly punished: first, because they were considered enemies of the state; and second, because they broke gender norms by having “dared” to intervene in the political realm, a traditionally “male” domain.

Women detained in military stations or areas of refuge were frequently the victims of rape and various forms of torture, especially during interrogations,²¹ such as beatings, forced ingestions, choking, simulated executions, forced observation of the torture of others, deprivation of food and sleep, and the use of electric shock.²² Other common practices included threatening to rape or kill the victim’s children, spouse, or other family members, as well as actual rape and torture of family members in the presence of the victim.²³

Between 500,000 and 1.5 million Guatemalans were forced to flee to the mountains, to Mexico and, less commonly, to urban areas as a direct consequence of repression.²⁴ The army persecuted, harassed, and sometimes even assassinated these people during their escape. A significant number of displaced people (of which 51% were women) also died from lack of food, cold weather, and diseases. Women were also subjected to sexual assaults, and some suffered the loss of all of their assets and family ties. (The return of refugees started only in 1993, and the internally displaced Communities of Peoples in Resistance [*Comunidades de Población en Resistencia*] (CPR)—indigenous people who fled and were in hiding throughout part of the civil war—surfaced again in 1996 to establish more permanent communities.)

The CEH concluded that, because it was an acceptable practice in military training, rape of women by the military was not a matter of isolated actions or sporadic excesses, but rather part of a strategic plan: “Women were subjected to complete degradation; this enabled elements of the army to harass them with complete impunity, because they were indigenous, civilian women.”²⁵ Rapes were sometimes “massive” and/or “multiple,” performed in public squares or markets, to be seen by the whole community or the victims’ families, or during imprisonment in front of other women. According to survivors’ testimonies, soldiers, members of the army of different ranks, but also members of the Civilian Self-Defense Patrols [*Patrullas de Autodefensa Civil*] (PACs), were among the perpetrators of rape.²⁶

In most of the massacres that took place in villages throughout the country, the *pattern* of action by the army was the same: a village was surrounded, the population was concentrated in one place, the men were separated from the women, and women and girls were raped.²⁷ Summary executions would then take place; the victims died of beatings, stabbings, blunt-force trauma to the head, and gunshot wounds. The bodies were then thrown into mass graves. Later, in some cases, the army stayed on in the village for a while and, before leaving, burned the villagers' houses and fields.

There were also "selective rapes" of women accused of being guerrillas, social leaders, union leaders, or family members of disappeared victims.²⁸ The wives, partners, mothers, and daughters of suspected guerrilla members were also subjected to rape. These took place during their detentions in military stations, in their homes, and in the amnesty areas of refuge organized by the state.²⁹

ODHAG recorded "92 accusations of rape, including rape resulting in death, as a form of torture, and as part of sexual slavery, in which the victim was raped repeatedly."³⁰ The CEH obtained a report of "1,465 cases of rape."³¹ These numbers are unlikely to reflect the true magnitude of rapes committed against women in Guatemala due to the social stigma suffered by the victims. The CEH indicated that although the vast majority of victims of sexual violence by the state were women and girls, 1% of the victims were men and boys.³² There are cultural reasons to believe that the underreporting of sexual violence against males is greater than for women.³³

During the massacres, many women were mutilated after they had been murdered and their bodies were left exposed on roads and public places as warnings to survivors.³⁴ Another common practice was to remove the fetuses from pregnant women, after they had been raped and murdered.³⁵ According to the CEH, the mutilation of male sexual organs before the dead bodies were thrown into the streets and public squares was also a systematic practice, and was used as a way of terrorizing the population.³⁶

After some of the massacres, if the army remained behind in the community, some women were kept alive in order to be raped and forced to work.³⁷ Members of the army commonly raped indigenous women detained in military stations repeatedly for months, as well as women taken as amnestied persons to "areas of refuge."³⁸ Likewise, many women detained in military stations, in addition to suffering repeatedly from sexual violence, were forced to perform hard labor for the members of the military, such as cooking, cleaning, or washing. The CEH called this treatment "slavery."³⁹

Women who survived their husbands, especially the victims of massive

repression, were particularly vulnerable. They were often forced into temporary or lifelong “marital” unions by members of the military commissioners, the army, or especially PACs, by whom they were exploited sexually and economically.⁴⁰

The CEH report also addresses the ways in which girls and boys were victimized. Girls as young as eight or nine years old were victims of sexual violence, like adult women. Boys were widely victims of forced recruitment. Both boys and girls were victims of a wide range of human rights violations, including extrajudicial executions (47% of the violations), torture (14%), imprisonment (14%), death by forced displacement (10%), forced disappearance (9%), and rape (3%).⁴¹ Furthermore, it should be noted that, after the massacres, many surviving children were taken to the homes of members of the army, where they were forced to work as servants or illegally adopted by those families or their friends. This practice was especially prevalent in the case of children under five years of age.

Secondary harms suffered by women. An enormous number of pregnancies probably resulted from the massive number of rapes that occurred during the conflict. In the CEH report, however, there are few references to this.⁴² Even today, the magnitude of these pregnancies is unknown; the silence surrounding them was confirmed in interviews with victims, as women did not talk about the issue. Likewise, it is presumed that the majority of survivors brought these pregnancies to term since women, especially rural women, did not have access to methods of pregnancy termination.⁴³ Women who were the victims of rape, both in urban and rural areas, did not have access to safe and legal abortions, as is still the case, since abortion is illegal according to the penal code.

The prevalence of women’s contraction of sexually transmitted diseases as a result of sexual violence is also completely unknown. Strictly speaking, women in rural areas of Guatemala did not have access to health services, let alone reproductive health services, before, during, or after the conflict, including up to the present day. Although the CEH report mentions serious injuries to reproductive organs, especially in the case of girls and adolescents who were rape victims, no exhaustive assessment of this problem has been made.⁴⁴ And with the exception of the project, “From Victims to Agents for Change” [*De Víctimas a Actoras de Cambio*],⁴⁵ there are no governmental or nongovernmental initiatives dedicated to rehabilitating victims of sexual violence.

Two forms of victimization demand special attention: widowhood and sexual abuse resulting in ostracism and isolation. Regarding the former, the extreme vulnerability in which surviving Mayan women were left after their

husbands or partners were murdered during the state's counterinsurgency must be placed in the context of existing gender relations before the internal armed conflict. In general terms, the relationship between Mayan men and women is one of dependency for economic and symbolic resources. Men control commercial exchange, ownership of property or land, and inheritance, and are more likely than women to master the Spanish language.⁴⁶ This explains why, when they became widows, Mayan women were left in isolation and extreme poverty. After their spouses had been executed, many widowers were able to have a relationship again, but this was not the case with widows.⁴⁷ The ODHAG made explicit reference to the impact of widowhood on women's life, underscoring the feelings of sadness, loneliness, uncertainty, and suffering from lack of eating that prevails among widows, along with fear, a disrupted process of mourning, and traumatic memories.⁴⁸

Survivors of sexual violence during the internal armed conflict, especially in rural areas, have been stigmatized, isolated, abandoned, and blamed—by members of the army and patrols, members of their communities, and their kin, husbands and children—for their victimization, a practice which continues to this day. This social condemnation has silenced victims of sexual violence and, as a result, negatively affected the possibility of criminally prosecuting these crimes, keeping track of them in the historical-memory records and claiming reparations.⁴⁹ Divorce, ill-treatment, and abandonment by their husbands or partners are some of the secondary aggressions suffered by these victims.⁵⁰ Rejection by the community made survivors even more vulnerable, which meant that they often continued to be sexually assaulted for many more years, especially by members of the PACs, or in forced unions.⁵¹

WOMEN AS SURVIVORS, FAMILY MEMBERS, AND SOCIAL LEADERS

In response to the political violence in their lives, women started individual, and then organized, searches for their disappeared family members.⁵² Both nationally and internationally, there has been recognition of the extraordinary courage of indigenous and urban Guatemalan women who denounced the atrocities, committed themselves and put their own lives in danger in spite of the generalized fear and silence of the rest of the population. In the course of their struggle, women organized themselves around common concerns.

In 1984, women from the capital searching for their “disappeared” family members formed the Mutual Support Group [*Grupo de Apoyo Mutuo*] (GAM); these women included Nineth Montenegro, María Emilia García, and Aura Elena Farfán, who remain key actors in the fight against impunity and for the processes of demilitarization and democratization of the country. The women

of the National Commission of Guatemalan Widows [*Comisión Nacional de Viudas de Guatemala*] (CONAVIGUA) organized in 1988 at the initiative of Rosalina Tuyuc, a Kaqchikel widow who brought to the fore the negative consequences of widowhood. This group also had demands that transcended the search for their family members, such as the fight against the militarization of rural areas and, especially, forced recruitment of men and children.⁵³ In 1992, the Families of the Detained-Disappeared of Guatemala [*Familiares de Detenidos-Desaparecidos de Guatemala*] (FAMDEGUA) was formed. It actively participated in the first exhumations of clandestine cemeteries and the search for the disappeared with the aim of giving them proper burials.

Other women stood out for their individual fights for justice, such as Rigoberta Menchú (Nobel Peace Prize 1992) and Helen Mack (Alternative Nobel Prize 1994), both of whom continue their work today through civil society organizations. Many women, as social and human rights leaders, were extrajudicially executed for their participation in the fight for justice, such as anthropologist Myrna Mack (assassinated in 1990), María Mejía of CONAVIGUA (assassinated in the same year), and María Rumualda Camey of GAM (disappeared in 1989).

Finally, women organized out of concern for refugees and internally displaced persons. For instance, the CPR⁵⁴ formed as a response to the internal displacement of survivors of massacres. This group designed strategies and collective forms of survival (as extreme safety measures against harassment by the army) in order to obtain and distribute food, as well as for mutual support for preserving life in extreme conditions. In refugee camps, especially in Mexico, women organized in groups that have been key for the return of the displaced and for the fight for land. Among these organizations of displaced women are *Mama Maquin*, *Madre Tierra*, and *Ixmucané*.

PARTICIPATION OF WOMEN IN THE PEACE NEGOTIATIONS (1985–96)

After 1985, favorable conditions emerged in Guatemala for the democratization of the country, beginning with the approval of the new text for the national constitution and the creation of an electoral process. Parallel to these developments was the negotiation of the peace accords. In 1996, the *Acuerdos de Paz Firme y Duradera* (the Strong and Everlasting Peace Accords) were signed by President Álvaro Arzú Irigoyen and the URNG after nine years of negotiations, with the UN acting as mediator. The accords laid out a 12-point agenda (with specific actions and goals) to root out the causes of conflict and to establish the foundations for a new period of development.⁵⁵

During this process, many women who had participated with the guerrillas, but who could not find a place there to fight for the gender cause, joined the feminist movement.⁵⁶ It was at this time that the Civil Society Assembly [*Asamblea de la Sociedad Civil*] was formed, joining together the various organizations fighting for social justice for peasants, unions, women, and so on, through the peace accords.⁵⁷ Within the assembly, a group of women formed the Women's Sector.⁵⁸

During the peace negotiations, all of the parties involved recognized the specific discrimination suffered by women and committed themselves to overcoming this through specific actions, such as guaranteeing women's right to organize themselves and participate in society under conditions of equality with men, eliminating any legal or de facto form of discrimination and facilitating their access to land, housing, credit, and development projects.⁵⁹ The inclusion of these issues in the peace process has been deemed a "starting point" that helped the women's struggle in the decade that followed, and created the basis for incorporating many proposals by women in the national and institutional agendas.⁶⁰

WOMEN'S EXPERIENCE DURING THE POST-CONFLICT PERIOD (1996 ONWARDS): THE SEARCH FOR TRUTH, JUSTICE, AND REPARATION

In the late 1990s, the two reports that recorded and acknowledged the human rights violations committed during the internal armed conflict — *Guatemala: Nunca Más* (ODHAG report, 1998) and *Guatemala: Memoria del Silencio* (CEH report, 1999) — included chapters on gender violence as a result of women's demands: "Sexual Violence against Women" [*Violencia sexual contra la mujer*] in the CEH report and "Confronting Grief: From Violence to the Affirmation of Women" [*Enfrentando el dolor: De la Violencia a la afirmación de las mujeres*] in the ODHAG.⁶¹ The latter covers the many forms of sexual violence suffered by women, as well as their coping strategies and organization against the violence, especially in the fight for justice for their assassinated loved ones. It is worth mentioning that the inclusion of a separate chapter on sexual violence suffered by women was a great achievement, since the rest of the report played down the importance of gender-based violence. The CEH report included a series of recommendations to the state relating to human rights violations committed during the conflict; however, none of these recommendations referred to sexual violence.

Following the publication of these reports, the "First Forum of Women's Consciousness" [*Primer Tribunal de Conciencia de las Mujeres*] was formed as a

civil society forum in which a dozen testimonies, covering the many forms of violence against women, were presented as public denunciations in order to make such cases more visible.⁶² This group of women has remained an important authority in the fight for preventing violence against women.⁶³ Finally, due to the impact of the establishment of the International Criminal Court, more criminal actions have been undertaken at the local level in connection with this issue, but they can still be considered incipient.⁶⁴

WOMEN'S INVOLVEMENT IN THE ARTICULATION OF REPARATIONS : STRUGGLING AGAINST HIGHER PRIORITIES AND DIFFICULT OBSTACLES

The peace accords formally held the state responsible for providing reparations to the victims of the conflict.⁶⁵ Before the peace accords were signed in 1996, however, human rights organizations had already initiated actions to criminally prosecute those who authorized and those who committed human rights violations, as well as those who acted as intermediaries. Justice was sought mostly for forced disappearances and extrajudicial executions.⁶⁶ These cases were filed before both national and Inter-American courts. The latter has ordered reparations for at least nine cases to which we refer below.

It was in this context that civil society initiatives for the establishment of a reparations program started to emerge.⁶⁷ In 1995, GAM made the first proposals for redressing victims,⁶⁸ and in 1998 other organizations began their own initiatives.⁶⁹ From a gender perspective, however, violence against women was not given specific attention in any of these proposals. Moreover, none of them called for including women's associations in the executive committees of the reparations programs.⁷⁰

The CEH held consultations and incorporated some of civil society's ideas into its own proposal on reparations. One of CEH's main recommendations to the state was to create and execute immediately a national program of reparations for the victims and their families of human rights violations and violent actions linked to the armed conflict. The CEH further proposed the kind of reparations measures that the program should include.⁷¹ It also defined the concepts of victim and beneficiary for the purpose of reparations. Victims were defined as "those who endured directly on their persons the violations of human rights and acts of violence linked to the internal armed conflict" and beneficiaries as "victims or family members of victims of violations of human rights and humanitarian law or of the acts of violence linked to the internal armed conflict."⁷² As mentioned above, the CEH called for the creation of an

executive body that would implement the reparations program. It proposed specific measures for the search for disappeared persons, including disappeared children, and an active policy of exhumations, both important demands of victims organizations. The CEH recommendations, however, contained only two specific references to women. The first was that women should be included in the implementing body. The second was that widows had to be given priority among the beneficiaries of the program.⁷³ A list of the crimes or abuses to be repaired was not included in the recommendations.

As recommended by the CEH, the Multi-Institutional Office for Peace and Harmony [*Instancia Multiinstitucional para la Paz y la Concordia*] was created in 1999 by the Office of the Solicitor of Human Rights [*Procuraduría de los Derechos Humanos*]. The office comprised 50 organizations,⁷⁴ 12 of which had a majority of women as members.⁷⁵ These included organizations of displaced women (such as *Mama Maquin*, *Madre Tierra*, and *Ixmucané*); victims organizations, led mainly by women (such as CONAVIGUA, ADIVIMA, FAMDEGUA, and GAM);⁷⁶ various widows and orphans committees;⁷⁷ and feminist movements and organizations, such as the Court of Conscience [*Tribunal de Conciencia*] and *Tierra Viva*.⁷⁸ The participation of young people, both male and female, was rather low.⁷⁹ In all of these groups, however, there was a very high participation of indigenous women, especially in associations dealing with displaced populations and victims, since most of victims of the conflict were Mayan people.

From 2001 on, the multi-institutional office undertook several efforts aimed at the creation of the PNR, which did not materialize until August 2002, when a draft bill for reparations was presented to President Alfonso Portillo. The president named a commission for dialogue, to be mediated by the UN Verification Mission in Guatemala [*Misión de Verificación de las Naciones Unidas en Guatemala*] (MINUGUA). After 54 dialogue sessions, the draft bills for the creation of the PNR and its executive body, the CNR, were delivered to the president in November 2002. Lack of political will, however, prevented the passing of the corresponding legislation.⁸⁰ Finally, the PNR was approved by Governmental Agreement 258-2003 on 7 May 2003. The content of the PNR corresponded with the recommendations made by the CEH and with the principles on reparations elaborated by the UN.⁸¹

It is worth noting that the question of reparations has not been presented as a priority by most feminist organizations, which address current violence against women (domestic, sexual, and violent deaths), without making any real connection with human rights violations against women committed during the conflict.⁸² Victims organizations prioritize the search for justice for their

murdered or disappeared relatives, and indigenous women's organizations add to the agenda the issues of widowhood, access to land and, above all, the demand for recognition by the state of the existence of genocide against the Mayan people.⁸³ These, then, are the main themes raised in the debate on reparations. Violence against women is subsumed under broader ethnic and political issues.

In the fight to obtain reparations for women, there have been four main obstacles: first, lack of political will on the part of the state to redress victims in general; second, divisions within civil society organizations; third, the downplaying by political actors (both male and female) of the magnitude of human rights violations committed against women during the conflict and the attempt to render such violations invisible; and, finally, the fear and social shame suffered by women for having been victims of violence, especially sexual violence, which prevents them from denouncing these crimes. Let us take a brief look at each.

The reticence of the state to support the PNR delayed the negotiations unnecessarily, and later, led to the failure to have it passed into law despite President Alfonso Portillo's overwhelming majority in congress at the time. The weak legal basis of the PNR allowed the government to go back and forth, constantly introducing new changes. This process is ongoing and keeps delaying the actual implementation of the program.

Differences among civil society organizations that work for reparations also caused delay. In the first election for representatives to the CNR, important victims organizations, such as GAM and CONAVIGUA, did not get enough votes to be included.⁸⁴ These organizations then formed part of the Organizations' Coordinator for Reparations for the Mayan People [*Coordinadora de Organizaciones para el Resarcimiento del Pueblo Maya*] (CORPUMA) and were finally included in the CNR.

Most women interviewed stated that the magnitude of the violence suffered by women victims, defined as "those who endured directly on their persons the violations of human rights and acts of violence linked to the internal armed conflict," has not been acknowledged to this day. Indifference towards and negligence of human rights violations against women has been commonplace during the transition and post-conflict period. This changed only minimally when the ODHAG and CEH reports saw the light. However, most public officials still remain largely insensitive to this issue.⁸⁵

Finally, the isolation and ostracism to which women victims of sexual violence have been subjected in their own environments (family, social, or

community), both in rural and urban areas, have been major obstacles in the fight for reparations. Fear and shame constitute major cultural impediments to the demand for reparations by victims of sexual violence, in contrast to victims of other human right violations.⁸⁶

ENGENDERING REPARATIONS

The National Reparations Program was created in 2003 by executive decree.⁸⁷ The regulations of the PNR were approved on 3 February 2005, but were then derogated in December of the same year.⁸⁸ Three more documents have been elaborated by the CNR to guide its operations: “Handbook for the Qualification of Victims and Beneficiaries of the PNR” [*Manual para la calificación de víctimas y beneficiarios del Programa Nacional de Resarcimiento*] (hereafter, “Handbook”), “Reparation Measures of the PNR” [*Medidas de Resarcimiento del Programa Nacional de Resarcimiento*] (hereafter, “Reparation Measures”) and “Guidelines for the Implementation of the PNR” [*Directrices para la implementación del PNR*] (hereafter, “Guidelines”).⁸⁹ These documents provide guidance regarding the gendered nature of the determination of the crimes and harms to be repaired and the benefits and the beneficiaries of the reparations program.

The ongoing legal reforms and the changes in the direction of the PNR make it very difficult to foresee which policies it will follow and which of the documents approved by the CNR will remain in force. As many of the statements in the following pages refer to these documents, it is important to bear in mind that they might be changed in the near future.

DEFINING THE VIOLATIONS THAT TRIGGER REPARATIONS

The PNR, as modified by Executive Decree 619-2005, includes the following as crimes that merit reparation: forced disappearance; extrajudicial executions; physical and psychological torture; forced displacement; forced recruitment of minors; sexual violence and rape; violations against children; and massacres. It establishes that other violations not included are to be addressed and resolved by the CNR.⁹⁰ Thus, the PNR includes sexual violence and rape as a separate category, but leaves out other forms of gender violence including sexual slavery and forced labor, forced unions with captors and sexual torture, and amputation and mutilation of sexual organs. The Rome Statute of the ICC served as a reference in this regard.

The “Handbook” contains a definition of rape and other instances of sexual violence. Section four, “Violations,” article 16, states that: “Sexual violence and

rape consist of the aggression by men against women, in captivity or under coercive conditions when such conditions are used to the advantage of consummating the various acts of sexual contact or physical or psychological aggression. Other instances of sexual violence include sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and other sexual abuses of comparable seriousness.” This definition includes sexual slavery and forced pregnancy, but it also includes forced prostitution and sterilization, which are not crimes registered as such by the CEH report (which only alluded to using prostitutes as part of soldiers’ training for sexual violence) or the ODHAG report. In this conceptualization, sexual violence and rape are defined in the same category. The definition of rape corresponds to the definition contained in the Guatemalan penal code (which does not consider the possibility of rape against men); the inclusion of forced pregnancies, sterilizations, and prostitution corresponds to the Rome Statute.⁹¹ In any case, it is worth underlining that if a given violation does not fall under the category of sexual violence, it could be included under the open clause.⁹²

The inclusion of the crimes of rape and sexual violence as separate and specific categories can be considered a great improvement. Reliance on the Rome Statute for their definition is to be celebrated in principle, as it is one of the most advanced legal texts on this matter. On the other hand, the definition excludes some forms of gender violence that were recurrent during the conflict in Guatemala, such as forced unions with captors, sexual torture, and amputation and mutilation of sexual organs, while including others that have not been documented, such as enforced prostitution and sterilization. Moreover, it would have been preferable if each of these crimes had been conceptualized separately because they cause different harms. Doing so would also have enhanced their visibility.

Regarding crimes committed against children, the PNR as modified by Decree 619-2005 specifically refers to the following crimes as meriting reparations: “forced recruitment of minors” (e) and “violations against children” (g). In the “Handbook,” under the section named “Violations,” forced recruitment of minors is defined as the incorporation “against their will of minors for undertaking military and paramilitary tasks, exercising any type of pressure on them, violating the principle of nondiscrimination for racial, economic, social, ideological or any ground” (article 15). Likewise, the following violations against children are established: “illegal removal of children and infants from their parents, enforced prostitution of male and female children and adolescents, fraudulent adoptions, as well as submission to servility; all of these produced within the context of the internal armed conflict” (article 17). As can be

observed, recruitment of minors, a practice that affected both female and male children and adolescents, is specifically defined. However, the definition of violations against children includes enforced prostitution, but not rape, both of which are mostly suffered by girls. It is unclear yet if these child victims of rape (who, in the meantime, have become adults) will be included in the victims of rape category.

The current regulation of the PNR does not explicitly exclude the crimes committed by the guerrillas. However, in the definitions of “human rights violations” contained in the “Handbook,” forced disappearance and extrajudicial executions are restricted to activities supported or accepted by the state. As a consequence, the crimes committed by members of the PACs and military commissioners can be included, but those committed by the guerrillas are excluded. The inclusion of the crimes committed by the self-defense groups is of fundamental importance for women, since such groups were mostly responsible for the crimes of sexual violations, sexual slavery, forced labor, and forced unions.

Finally, reparations for forced displacement were recommended by the CEH, which should be commended. Although the CEH did not provide a sex-based breakdown of the 1.5 million displaced persons, the percentage of female deaths resulting from displacement is higher, at 51%, than the percentage of male deaths. It is therefore believed that most displaced persons were women.

DEFINING BENEFICIARIES OF REPARATIONS

According to the “Handbook,”⁹³ victims are those who suffered directly or indirectly, individually or collectively, from the human rights violations and crimes against humanity listed by the PNR.⁹⁴ This is a broad definition of victimhood: it encompasses not only those who were the direct victims, but also all those who suffered the effects of the violations of human rights, such as the family members of a disappeared or executed person. Additionally, the “Handbook” defines the beneficiaries, in the case of deceased or disappeared victims, as their direct family, including the father, mother, son, daughter, spouse, or common-law partner, all of whom would need to share the granted compensation. When none of these family members survive, the siblings of the disappeared or deceased victim become the beneficiaries.

This definition of beneficiary departs from the national legislation’s definition of inheritors: it includes ascendants who, according to that legislation, can only be successors if the deceased has no children.⁹⁵ Likewise, the definition includes both the spouse and common-law partner. The latter status can be

proven by having a child in common, something that represents a simplification of the ordinary procedures established in the national legislation for the purpose of proving common-law marriages.⁹⁶ It has not yet been established how to set the priority in cases in which a victim has more than one common-law partner, or if the person was in more than one union.

Since the definition of victim includes those who suffered from human rights violations—both directly and indirectly—there was confusion in the PNR on the distinction between victim and beneficiary, which obscured the establishment of criteria for awarding reparation measures to individuals.⁹⁷ This confusion has been cleared up by restricting the term “victim” to those who suffered directly from human rights violations. Moreover, the term “beneficiaries” was limited to only the closest family members and would apply only when the direct victim has died or disappeared. If one person qualifies as both direct victim and beneficiary, as in the case of the death of a family member, s/he can receive compensation as it applies to both terms. Given that most of the survivors are women who were often themselves victimized, this possibility is to be applauded.

Civilian and combatant victims are not differentiated in the “Handbook.” However, reparations are denied to human rights offenders and those who have been registered on the list of former civilian patrolmen in order to receive demobilization and reinsertion payments (according to Article 28).

The PNR as reformed by Decree 619-2005 establishes the criteria to prioritize among the individual beneficiaries. These include the seriousness of the violations and the socioeconomic condition and social vulnerability of beneficiaries. Special attention needs to be paid to widows, orphans, disabled persons, senior citizens, and minors. Although these criteria seem to benefit women, it is not known how they will be applied in practice. Likewise, the “Guidelines” contemplate the need to prioritize attention to people over 50 years of age, widows/widowers or people fully incapacitated.

DEFINING BENEFITS

The PNR as reformed by Decree 619-2005 contemplates the following individual and collective reparation measures:

- Material restitution (mixed character, i.e., either individual or collective in kind),
- Economic indemnification (individual character),
- Psychosocial reparation and rehabilitation (mixed character),

- Dignifying of victims (mixed character) and
- Cultural reparations (collective).⁹⁸

However, the decree does not define the contents of these measures. Thus, what follows is drawn from the “Handbook,” the “Guidelines,” and “Reparation Measures,” all of which were referred to above, and the Instancia Multiinstitucional, *Política Pública*.⁹⁹ Interviews held with members of the program have also been a source of information. Nevertheless, it is important to bear in mind that this is a model still under construction and that all this information could undergo significant changes especially since the PNR is still being revised.

In general, it can be said that the economic indemnification measure is the only one offered exclusively at the individual level. The measures of material restitution, psychosocial reparation and dignifying of victims apply both at the individual and collective level, while cultural reparation is strictly collective in kind.¹⁰⁰ For individual reparation measures, the beneficiary is an individual or a family member; for collective reparation measures, the beneficiary is an entire collectivity, whether it is a group of persons, a community, or a series of communities.

MATERIAL RESTITUTION MEASURES

According to the “Reparation Measures” document, the purpose of material restitution measures is to re-establish the material situation of the victims prior to the violations or to compensate for the loss resulting from the violations. The focus is on land restitution, housing, and productive investment. It is established that victims of “forced displacement, forced recruitment of a minor, violations against children, massacre and crimes against humanity (genocide)” will qualify for material restitution. Property will be restituted; if victims were adolescents during the conflict, they can be compensated for lost or frustrated opportunities.¹⁰¹

Victims of rape or sexual violence, like victims of torture, do not qualify for material restitution unless they have also lost property through any of the other human rights violations, such as displacement or massacre. This is not adequate in the case of girls or women who were victims of rape or sexual violence, since the measure fails to consider that they may also suffer the loss of their productive opportunities as a result of stigmatization, the loss of reproductive health caused by rape, or the obligation to bring up children resulting from rape.

According to the Instancia Multiinstitucional, *Política Pública* document, the restitution and legalization of land explicitly indicates that “affirmative

action [will take place] in order to guarantee the right to property of women... in case their husbands died as a consequence of the armed conflict.”¹⁰² This is in response to women’s restrictions in accessing land title under a customary system whereby the first-born sons are those who inherit land. Guaranteeing women access to land could be quite empowering for them, especially if this access is provided on an individual basis: it would guarantee women economic independence to a great extent and at the same time help modify power relations within the communities. If the restitution is done collectively (in order to reconstitute land that was communal property), however, then women’s right to own land could still be vetoed, since men are the majority owners of land in the communities.¹⁰³

ECONOMIC INDEMNIFICATION MEASURES

According to our interviews, two possibilities for economic indemnification were initially considered. The first consisted of awarding a monthly amount based exclusively on the criteria of vulnerability, such as socioeconomic position, age, and disability, for either indirect beneficiaries (the mothers and fathers and spouses of those victims who lost their lives) or direct victims. The amount fixed for the pension was Q500 (US\$67).¹⁰⁴ This choice presented several major obstacles: the exact amount of the pension would have to be settled by the government of the day, which would open up the matter to the influence of electoral politics; and, in the case of women, it would make invisible the multiple human rights violations they had suffered. The second option was to award a fixed amount for each human rights violation suffered.

In the end, the government approved an indemnification of Q24,000 (US\$3,200) for each victim of extrajudicial executions, death in massacre or forced disappearance, as well as an indemnification of Q20,000 (US\$2,667) for each victim who survived torture, rape, or sexual violence.¹⁰⁵ The decision to indemnify rape and sexual violence is a major step forward, because these are ranked among the most serious crimes. If a person suffered several violations qualifying for economic reparations, he or she would be paid a separate indemnification for each violation. Victims over the age of 50 would receive a one-time payment. All other victims would be paid within a three-year period.¹⁰⁶

As mentioned above, in the case of victims of extrajudicial executions, death in massacre, or forced disappearance, the beneficiaries of the indemnification are direct relatives (father, mother, sons and daughters, spouse or partner), who will receive equal shares; if there are no direct relatives as defined above, the beneficiaries will be siblings. This distribution is different from that provided by the national legislation, which awards half of the assets to the

surviving spouse and distributes the other half among the inheritors.¹⁰⁷ It would have been better if the PNR had followed these criteria, since they better reflect the more acute needs of the widow or widower, especially when the children will rely on him or her for basic support.

PSYCHOSOCIAL REPARATION MEASURES AND REHABILITATION

*Recordar para poder olvidar [Remembering in order to forget]*¹⁰⁸

These measures are aimed at all victims suffering from psychosocial and physical afflictions resulting from the listed crimes. According to the “Reparation Measures,” they include physical rehabilitation, psychosocial reparation, and community organization and participation¹⁰⁹ through individual assistance, family assistance, and creation of self-help groups.

Several organizations are currently addressing the psychological aftereffects suffered by survivors by setting up self-help groups, which are mostly comprised of women. Members of different teams of psychologists have stressed that women are more likely to join these groups in order to articulate their feelings about the loss of loved ones. Men are often more willing to participate if the group’s goal is related to legal actions or some kind of economic or productive undertaking.

It is recognized that sexual violence entailed the stigmatization of the victims, making them “unable to recognize themselves as such and to make themselves visible, thus increasing their suffering and emotional well being.”¹¹⁰ The explicit acknowledgment of sexual violence and rape as crimes that warrant reparation and the provision of specific measures to assist the survivors are, without a doubt, important improvements in the protection of women’s rights. As previously stated, both women’s groups and women as individuals have demanded reparation for sexual violence through these types of rehabilitation measures.¹¹¹ Some consider that measures of this kind are required in order to denounce the crime.¹¹² Work has started on training the various groups that form the PNR regarding the issue.¹¹³ As of this writing, the project “From Victims to Agents for Change” has held three workshops in which the meaning of sexual violence during the war and the challenges for its reparation were discussed. These workshops aim to raise awareness of sexual violence and explore its effects on women’s lives.¹¹⁴

Indigenous organizations, especially women’s groups, have demanded that psychosocial reparation take place in the indigenous communities; moreover, they say, it should be implemented from the point of view of Mayan spirituality, taking into account the knowledge of elderly women, midwives and other

women who have been leaders in their communities and who have helped with the confrontation of trauma.¹¹⁵ This would make it possible to assist more people, using their own language and based on their own culture. However, such assistance should be complemented with professional help in the case of serious traumas or victims of sexual violence, who sometimes prefer to talk to persons outside the community in order to “take the pain away” and to prevent rumours from spreading within the community.¹¹⁶

MEASURES FOR DIGNIFYING VICTIMS AND CULTURAL REPARATIONS

Measures for dignifying the victims can include making the facts known, vindicating the good name of the victims, keeping history alive, and completing search processes and giving closure to mourning.¹¹⁷ Among these, the following were specifically recommended: disseminating the CEH and ODHAG reports, supporting the search for disappeared victims, creating museums and monuments to dignify the victims, mapping clandestine cemeteries, and promoting an exhumations policy. As of this writing, the only such measure that has specifically sought to repair the harm caused to women victims of sexual violence and rape has been the publicity of the CEH report, which at least serves to acknowledge a reality that is too commonly denied.¹¹⁸

Cultural reparation measures seek to promote the revitalization of the cultures affected by the internal armed conflict, mainly the Mayan culture.¹¹⁹ These measures have not been sufficiently implemented yet. Mayan organizations have requested that at least the following issues be considered: recovery and systematization of the communities’ collective memory, acknowledgement of spiritual authorities, re-establishment of ritual centers, and creation of Nimajá houses to promote their language.¹²⁰

Due to the stigmatization, isolation, and shaming suffered by Guatemalan women who are rape victims or widows, it is essential to include some of the following elements as integral parts of the reparations program:

- Public recognition by the army and security forces of the use of sexual violence as a counterinsurgency weapon and the training of personnel for that purpose.
- Public apology by the army and security forces to all women for having used sexual violence as a counterinsurgency weapon, a practice that harmed the dignity of women in general and of the whole population.
- Public recognition by municipal and community authorities, especially in the regions where massacres took place, of the existence of

aberrant practices of sexual violence against women, for which women themselves should not be blamed.

- Public recognition and apology by former members of civilian patrol organizations responsible for those crimes.
- Public apology by the state to the women of Guatemala for the totality of human rights violations committed against women, including widowhood as a cause of their impoverishment and the deterioration of their quality of life.
- Establishment of a public policy of education for the prevention of sexual violence against women, based on the events that occurred during the internal armed conflict.
- Incorporation of education, specifically aimed against individual or collective use of sexual violence, as well as at the prevention and awareness of its consequences, into the training of members of the army and the National Civil Police.
- Establishment of a public policy to promote female literacy and guarantee women's reproductive health, with an explicit link to the events that occurred during the internal armed conflict.
- Vetting of the security forces, especially the National Civil Police, in order to discharge those members involved in human rights violations.

These measures would all encourage the denunciation of crimes committed against women and the incorporation of women's concerns into the demands for reparation, thus softening the impact of stigmatization and isolation.¹²¹

THE CHALLENGE OF GENDER-SENSITIVE IMPLEMENTATION OF REPARATIONS : THE PNR, PROCEDURES, AND WOMEN'S ACCESS

At the time of this writing, approximately 3,800 testimonies¹²² have been gathered, but not one measure of reparation has been awarded.¹²³ However, the government has allocated a yearly Q300 million (US\$37.5 million) budget line for reparations for the 13 years that the program lasts. In spite of this, the PNR finds itself in a delicate institutional situation, as it is currently being reformed. It is unclear whether the budgetary commitment will be sustained over time. As a result, one of the main complaints lodged against the PNR has been the delay in its implementation; since it was re-established in July 2004, more than a year has passed without any reparation measures being implemented.

As no reparations have been awarded, it is not yet possible to determine who will benefit from the program. Nevertheless, it can be predicted that most of the beneficiaries will be women, since the majority of testimonies have been made by women. According to one member of the CNR, the male-to-female ratio is 10 to 1.¹²⁴ (One of the obstacles that has already presented itself is the existence of unscrupulous organizations that have profited from reparations by threatening petitioners that they could be excluded if they are not registered on their lists.¹²⁵ In order to face this problem, victims and women's organizations have demanded more information and asked that the measures of reparation also serve to strengthen their communities and the organizations "to prevent people from exploiting reparations."¹²⁶) The following are some of the major factors that will determine the extent to which the reparations program is eventually implemented in a gender-sensitive manner.

INTERNAL ORGANIZATION OF THE PNR

When reparations are provided, a gender-sensitive implementation of the program will depend in part on the internal organization of the PNR. According to Governmental Agreement 258-03 and its amendments, the PNR should have an executive body, the CNR, made up of five permanent governmental delegates, one of whom presides.¹²⁷ Civil society representatives are now part of a Consultative Council formed by five members of female victims organizations, indigenous peoples, and human rights organizations. Victims organizations lack direct representation in it. The commission's president is Rosalina Tuyuc, who is "delegate of the President of the Republic."¹²⁸

PROCEDURES TO ACCESS REPARATIONS

Similarly, implementing the reparations program in a gender-sensitive manner will require procedures that allow female beneficiaries to access their benefits as completely as possible. The procedures to access reparations are, according to the "Handbook," as follows:

- Reception of the testimony by the victim or potential beneficiary. All testimonies are presented under guarantee of confidentiality.
- Verification of whether the case is contained in the reports of the CEH or ODHAG, the reports of forensic-anthropological appraisals or the cases published by the Inter-American Commission on Human Rights. If this is the case, the applicant qualifies automatically for reparations.
- If the case is not verified, an investigation is conducted to determine if

- the case appears on the lists held by victims organizations, the cases registered in international organizations, the cases filed before domestic courts, or other studies that document human rights violations.
- If the case has not been documented, the Technical Unit for Qualifying Victims [*Unidad Técnica de Calificación de Víctimas*] (UTCV) will proceed to conduct a small investigation in order to determine whether human rights violations took place or not. In any case, the burden of proof falls on the PNR.¹²⁹
 - In addition, the petitioner's identity and relationship to the victim must be verified. When these cannot be established due to lack of documentation, the UTCV will present the case for resolution before the CNR.¹³⁰
 - After the investigation and processing of the information are concluded, the file is analyzed and qualified; then, a decision is given recommending one or more reparation measures.¹³¹ This decision is presented before the CNR, which makes the final resolution.

According to our interviews, the provision of psychological assistance to victims who present their testimonies has not yet been considered. Nor have the teams gathering the testimonies been given adequate training.¹³²

ACCESS TO THE PNR BY WOMEN

Ultimately, the effective implementation of the reparations program from a gender perspective will depend on women's access to the PNR. The following issues present potential obstacles to such access:

- Stigmatization. Condemnation by the community and the ensuing isolation to which women survivors of sexual violence have been subjected can be considered the main obstacles to women's access to the reparation program. The PNR allows women to give testimony in private, in the presence of another woman, either upon request or when the interviewer feels a testimony has not been made in full due to shame or fear of stigmatization.
- Illiteracy, affecting mainly indigenous women in Guatemala.
- Lack of relevant documentation, especially in the case of the displaced population.¹³³ It would be important that access to the PNR not be denied to any person lacking identity documents.
- Fear of reprisals, since many victims still live near the perpetrators. This fear might have increased when indemnification was offered to

the PACs, as this led to the reactivation and legitimization of their leadership within the communities. In these cases, the guarantee of confidentiality plays a key role.

- Impossibility of access to PNR central offices, especially for women living outside the capital, due to lack of economic resources and lack of adequate roads.¹³⁴ In order to overcome this obstacle, five additional offices have been opened throughout the country.¹³⁵
- Linguistic barriers. Many women speak only a Mayan language and therefore require bilingual testimony takers.

REPARATIONS STEMMING FROM THE COURTS OF JUSTICE

Criminal prosecutions can provide reparation to victims in two ways: first, simply by bringing perpetrators to justice; and, second, by leading to concrete reparation measures. In the national courts of justice in Guatemala, several guilty verdicts have been pronounced in cases of crimes committed during the conflict, including those of the extrajudicial execution of Myrna Mack,¹³⁶ the extrajudicial execution of the parents of Anabela Garniga,¹³⁷ the massacre of Rio Negro,¹³⁸ and the crimes committed by Candido Noriega.¹³⁹ All of these cases were brought against patrolmen, except for the Mack case, in which, for the first and only time, middle- and high-ranking members of the Presidential Security Guards [*Estado Mayor Presidencial*] were convicted. None of these sentences includes reparation measures beyond the criminal sanction against the perpetrators.¹⁴⁰

When the enormity of the number of violations committed is compared to the scarcity of cases decided by the national courts, it is clear that access to criminal justice is currently not a real option in Guatemala. Furthermore, out of all the cases filed before the national courts for human rights violations during the conflict, only three (one for genocide filed against Ríos Montt, one against Candido Noriega,¹⁴¹ and Anabela Garniga's case¹⁴²) included charges of rape. On its own, this demonstrates the lack of interest in prosecuting these crimes, which in turn has a symbolic effect that reduces the visibility of the need for reparations. In the rest of the cases of extrajudicial executions, assassinations or forced disappearances, sexual violence may figure in the testimonies but does not appear at the level of the charges pressed—neither in the formal accusation nor in the sentence. Here, too, the majority of women who presented themselves before the courts of justice, either as plaintiffs or witnesses, did so as relatives of disappeared or executed victims. Although there

was no policy discouraging them from speaking out about the crimes committed against them, they were not encouraged to do so, nor were they asked specifically about these violations. The issue was simply ignored.

In the Inter-American Court of Human Rights, favorable verdicts have been reached in nine cases, three of which dealt with women as direct victims. The cases were those of the Massacre of the Plan de Sánchez,¹⁴³ Myrna Mack Chang,¹⁴⁴ and Maritza Urrutia.¹⁴⁵ Five out of the nine cases were undertaken by women (Marco Molina Theissen,¹⁴⁶ Bámaca Velásquez,¹⁴⁷ Plan de Sánchez, Myrna Mack Chang, and Maritza Urrutia). In the cases that dealt with women as direct victims, the state was sentenced to provide a number of types of reparation,¹⁴⁸ the main ones being:

- The investigation and clearing up of the facts and the publication of the results of these investigations.
- Economic reparations for moral and material harms to the families.
- Dignifying measures for the memory of the victims through public acts, among others.
- Psychosocial measures of reparation—physical and mental health assistance—for the survivors of the Plan de Sánchez massacre.
- Measures aimed at strengthening the courts of justice and a guarantee that these crimes will never happen again.

In general, the State of Guatemala has abided by the court's decisions, particularly regarding the economic and dignifying measures for victims and their families. However, there have been repeated failures to comply with the obligation to investigate and punish, and to implement measures to prevent the crimes from occurring again.

In two of the decisions related to cases including female victims, the court did not take into account gender when reviewing the violation of human rights and, consequently, the reparations were not based on a gender perspective. For example, in the Mack and Urrutia cases, the court could have considered that the facts occurred not only within a context of counterinsurgency, but also of exclusion and violence against women.¹⁴⁹ The court also failed to examine whether the human rights violations occurred because of the women's positions as social leaders (in the case of Myrna) or guerrilla members (in the case of Maritza), or because they had dared to become visible. Nor was any reference made to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, both ratified by Guatemala.

In the decision in Plan de Sánchez, the occurrence of sexual violence against women was acknowledged, with the violence suffered by women being specifically considered and differentiated, including the loss to the community brought about by extrajudicial executions of women.¹⁵⁰ However, no specific indemnification for sexual violations was included in the calculation of economic reparations.¹⁵¹ Only under the psychosocial reparations was it required that medical and psychological treatments cover the aftereffects of sexual violations.

GENDER, REPARATIONS, AND TRANSITIONAL JUSTICE : CONCLUDING REMARKS

Women have participated in the peace process in Guatemala, including the signing of the peace agreement and the creation of the PNR, as individuals and as members of women's and victims organizations (mainly led by women). This has led to at least some focus on gender-relevant aspects of human rights violations committed during the internal armed conflict. Furthermore, the level of this participation has gradually increased, bringing a certain amount of progress to each stage of the process, at least in terms of the acknowledgement of relevant facts. There is still, however, a long way to go before this is translated into concrete practices (official policies, prevention measures, etc.).

At the same time, both the opportunity to participate and speak and the state's acknowledgment of the truth regarding, and its responsibility for, violence against women during the conflict have in themselves been reparative.¹⁵² However, if the spaces for participation are not consolidated through effective reparations and measures aimed at satisfying victims demands for remembrance, truth, and justice, new frustrations may threaten the possibility of reconciliation among the population of Guatemala.

Essential in this process has been the light that the CEH shed on the violations committed against women. Although the CEH did not specifically include the investigation of violence against women in its mandate, it did address the issue under the broader category of human rights violations in a way that was determinant for future actions. It is the women involved in the process, many at the expense of their personal and life projects, however, who should get most of the credit for the progress that has been made. They have had to face discrimination and discredit right up until the present day. Many were considered insane or mad for their efforts to show that rape was a human rights violation and not a mere excess. The inclusion of women in Guatemala's

PNR is a step forward. Such inclusion is a way to guarantee that the momentum achieved with reparation measures for the violence suffered by women during the conflict is maintained, and that the measures are improved.

Furthermore, the PNR has acknowledged sexual violence and rape as serious crimes to be repaired explicitly and through indemnification; this is also a significant step forward which may, in the long run, convince survivors to speak out more about their experiences. (However, it is regrettable that the PNR's definitions of crimes failed to build on the CEH's definitions to better respond to the reality in Guatemala, using instead the concepts in the Rome Statute.) From the point of view of women, the following achievements are also worth mentioning: the wide notion of victim used for the purposes of reparations (including both directly and indirectly affected persons), widowhood as a priority criterion for beneficiaries, and the inclusion of children and adolescents as victims. However, the criteria for beneficiaries in case of death or disappearance should be reviewed in order to prioritize partners and children.

Another new and positive development has been the wide scope assigned to the PNR, which covers not only economic reparations, but also psychosocial reparations, dignifying measures, and recovery measures that respect Mayan culture. The only measures that have not yet been expressly included — and that are key to building peace in Guatemala — are guarantees preventing recurrence. Such measures should be developed, in particular regarding sexual violence against women. Finally, by making the PNR into law, congress could prevent the program from being at the mercy of the kinds of political changes that it has been subject to over the last three years.

Translated by Christian Gerzso and Sara Costa-Sengera

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INTERVIEWS

- 1 Alba Estela Maldonado, representative for URNG; former member of the National Directorship of the EGP.
- 2 Aura Elena Farfán, member of the CNR, representing FAMDEGUA.

- 3 Carmen Bejarano, in charge of legal assistance of the PNR.
- 4 Claudia Samayoa, consultant for the Multi-Institutional Office for Peace and Harmony.
- 5 María Canil, member of the CNR, representing CONAVIGUA.
- 6 María Eugenia Solís, former member of the Consciousness Forum; feminist lawyer; former member of Women's Sector.
- 7 María Guadalupe García, former member of the CNR, representing *Mama Maquin*.
- 8 María Toj, member of the CNR, representing the Mayan Defense Council.
- 9 Mario Polanco, member of the CNR, representing GAM.
- 10 Mayra Alarcón, in charge of the economic indemnification measure of the PNR.
- 11 Nieves Gómez Dupuis, community psychologist for ECAP.
- 12 Orlando Blanco, member of the CNR, representing human rights organizations.
- 13 Ruth del Valle, member of the CNR, representing Alliance against Impunity [*Alianza contra la Impunidad*].
- 14 Sandra Morán, Women's Sector coordinator.
- 15 Sonia Ankerman, in charge of the psychosocial reparation measure of the PNR.
- 16 Thelma Artiga, in charge of the measure for dignifying victims of the PNR.
- 17 Yolanda Aguilar, former member of the Consciousness Forum.
- 18 Rosalina Tuyuc, social leader; currently chairing the CNR.
- 19 Maya Alvarado, member of the research team of the PNR.
- 20 Rafael Herrarte, director of the PNR.

ACRONYMS

ADIVIMA	<i>Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces, Maya Achi</i> (Association for Victims of Violence in Verapaz)
AEU	<i>Asociación de Estudiantes Universitarios</i> (University Students Association)
CALDH	<i>Centro de Acción Legal para los Derechos Humanos</i> (Center for Human Rights Legal Action)
CEH	<i>Comisión para el Esclarecimiento Histórico</i> (Commission for Historical Clarification)
CNR	<i>Comisión Nacional de Resarcimiento</i> (National Commission for Reparations)
CONADHEGUA	<i>Coordinadora Nacional de Derechos Humanos de Guatemala</i> (National Coordinator on Human Rights in Guatemala)
CONAVIGUA	<i>Comisión Nacional de Viudas de Guatemala</i> (National Commission of Guatemalan Widows)
CORPUMA	<i>Coordinadora de Organizaciones para el Resarcimiento del Pueblo Maya</i> (Organizations' Coordinator for Reparations for the Mayan People)

CPR	<i>Comunidades de Población en Resistencia</i> (Communities of Peoples in Resistance)
CUC	<i>Comité de Unidad Campesina</i> (Committee for Peasant Unity)
ECAP	<i>Equipo de Estudios Comunitarios y Acción Psicosocial</i> (Community Studies and Psychosocial-Action Work Team)
EGP	<i>Ejército Guerrillero de los Pobres</i> (Guerrilla Army of the Poor)
FAMDEGUA	<i>Familiares de Detenidos-Desaparecidos de Guatemala</i> (Families of the Detained-Disappeared of Guatemala)
FAR	<i>Fuerzas Armadas Rebeldes</i> (Rebel Armed Forces)
GAM	<i>Grupo de Apoyo Mutuo</i> (Mutual Support Group)
IACHR	Inter-American Commission on Human Rights
ICCPG	<i>Instituto de Estudios Comparados en Ciencias Políticas de Guatemala</i> (Guatemalan Institute of Comparative Studies in Political Science)
MINUGUA	<i>Misión de Verificación de las Naciones Unidas en Guatemala</i> (United Nations Verification Mission in Guatemala)
ODHAG	<i>Oficina de Derechos Humanos del Arzobispado de Guatemala</i> (Human Rights Office of the Archbishop of Guatemala)
ORPA	<i>Organización Revolucionaria del Pueblo en Armas</i> (Revolutionary Organization of the People in Arms)
PAC	<i>Patrullas de Autodefensa Civil</i> (Civilian Self-Defense Patrols)
PGT	<i>Partido Guatemalteco del Trabajo</i> (Guatemalan Labor Party)
PNR	<i>Programa Nacional de Resarcimiento</i> (National Reparations Program)
REMHI	<i>Recuperación de la Memoria Histórica</i> (Recovery of Historical Memory)
UN	United Nations
UNAMG	<i>Unidad Nacional de Mujeres de Guatemala</i> (National Union of Guatemalan Women)
URNG	<i>Unión Revolucionaria Nacional de Guatemala</i> (Guatemalan National Revolutionary Unity)
UTCV	<i>Unidad Técnica de Calificación de Víctimas</i> (Technical Unit for Qualifying Victims)

NOTES

- 1 Two reports were published on human rights violations committed during the internal armed conflict in Guatemala. The first was published by the Human Rights Office of the General Archbishopric of Guatemala [*Oficina de Derechos Humanos del Arzobispado de Guatemala*] (ODHAG), *Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica* (REMHI), *Guatemala: Never Again [Guatemala: Nunca Más]* (Guatemala: ODHAG, 1998). The second was produced by the Commission for Historical Clarification [*Comisión para el Esclarecimiento Histórico*] (CEH), *Guatemala: Memory of Silence [Guatemala: Memoria del Silencio]* (Guatemala: CEH, 1999). According to ODHAG, during the internal armed conflict in Guatemala, which started in the 1960s and worsened in the 1980s, with the government's scorched earth policy, three out of four victims were indigenous.
- 2 Three commissioners directed the CEH: one UN-appointed individual and two Guatemalans, one of whom was a Mayan woman. The central work team was composed of 16 persons (including five women). There were also 14 chiefs of sites (including 10 women) and a research and support team of 184 individuals (including 92 women). During its operations, the CEH gathered 7,338 testimonies, but the gender of the participants was not specified. The gender of the victims was only implied based on the type of human rights violations they suffered.
- 3 CEH, *Guatemala: Memoria del Silencio*, <<http://shr.aaas.org/guatemala/ceh/report/spanish/toc.html>> (accessed 10 May 2005).
- 4 The CEH based its conclusions on the Convention for the Prevention and Sanction of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 and ratified by the State of Guatemala by virtue of Decree 704 on 30 November 1949.
- 5 Executive Agreement 619-2005.
- 6 Lorena Carrillo Padilla, *Luchas de las guatemaltecas del siglo XX* (Guatemala: Ediciones del Pensativo, 2004), 88 and following.
- 7 Jorge Mario García Laguardía and Edmundo Vásquez Martínez, *Constitución y orden democrático* (Guatemala: Universidad de San Carlos, 1984), 93.
- 8 Programa de las Naciones Unidas para el Desarrollo, *Informe Nacional de Desarrollo Humano 2002. Guatemala: desarrollo humano, mujeres y salud 2002* (Guatemala: PNUD, 2002), 47–48.
- 9 Programa de las Naciones Unidas para el Desarrollo, *Informe Nacional de Desarrollo Humano 2001. Guatemala: el financiamiento del desarrollo humano 2001* (Guatemala: PNUD, 2001).
- 10 Comisión Interamericana de Derechos Humanos, *Justicia e inclusión social. Los desafíos de la democracia en Guatemala* (Washington, DC: CIDH, 2003), 139.

- 11 Andrea Diez and Kenia Herrera, *Violencia contra las mujeres* (Guatemala: Instituto de Estudios Comparados en Ciencias Penales de Guatemala, 2004), 114.
- 12 The participation of women in progovernment political movements was much smaller than in guerrilla groups; as time wore on, that participation dwindled even further. In 1980, arguably the most trying year of the war, a few organizations, such as *Unión de Mujeres Guatemaltecas*, *Agrupación Femenina Independiente* and *Comité de Madres Guatemaltecas*, became visible in the media. However, these organizations were more state propaganda instruments than true political movements. Carrillo Padilla, *Luchas*, 177.
- 13 Alba Estela Maldonado, interview by the author, Guatemala, 20 May 2005.
- 14 Carrillo Padilla, *Luchas*, 169.
- 15 Ibid. As Aura Marina Arriola explains: “Immediately after the events of March and April 1962, organized armed resistance and the organization of the first FARs began. Many of us women, who were also beginning our struggle for women’s liberation, participated in them. We didn’t know it back then, but in such a macho society, we were true pioneers.” Quoted in Norma Stoltz Chinchilla, *Nuestras utopías: Mujeres guatemaltecas del siglo XX* (Guatemala: Tierra Viva, 1998), 102.
- 16 Alba Estela Maldonado interview.
- 17 Chinchilla, *Nuestras utopías*, 314.
- 18 María Toj, interview by the author, Guatemala, 31 May 2005.
- 19 Ana Lorena Carrillo, “Indias y Ladinas, Los ásperos caminos de las mujeres en Guatemala,” *Nueva Sociedad* 111 (1991), 127.
- 20 These consequences were detailed in the report by the CEH, which considered that “the breaking up of marital unions and social ties, social isolation and shame within their communities, exodus of women and entire communities, impediment of marriages and childbirths within ethnic groups, abortions and filicides...seriously affected the biological and cultural continuity of indigenous groups” (translation by the author). CEH, *Guatemala: Memoria del Silencio. Tomo III. Las violaciones de los derechos humanos y los hechos de violencia* (Guatemala: UNOPS, 1999), 57.
- 21 “In the mornings, they wake us by kicking us, we don’t understand what they’re asking us because we don’t speak Spanish, we only know that they’re asking where the guerrilla is and we don’t know.” CEH, *Guatemala: Memoria del Silencio*, III, 41.
- 22 Ibid., 52.
- 23 Regarding this issue, ODHAG states: “One of the harshest pressure instruments against women was using their children to control, dominate or harass their conscience; the torture or death of family members, and the manipulation of their feelings as a tool of psychological torture against women” (ODHAG, *Guatemala: Nunca Más. Volumen I, Impactos de la violencia*), 206. On the same issue, in Maritza Urrutia’s case before the Inter-American Court of Human Rights, “the threat and continuous possibility of being assassinated, physically tortured or raped, of losing her small son or that violence be

- perpetrated against her family” was considered psychological torture. See *Maritza Urrutia vs. State of Guatemala*, decision dated 27 November 2003.
- 24 CEH, *Guatemala: Memoria del Silencio*, III, 211.
- 25 *Ibid.*, 53.
- 26 The PACs were paramilitary corps formed by the army with members of the community in order to control the civilian population identified as insurgent. In many cases, patrolmen were forced, under death threats, to commit murder, torture, and rape. In others, patrolmen identified themselves with the counterinsurgent role assigned to them by the army.
- 27 “Separating the victims by their gender, before committing the massacres, is an indication of the premeditation with which they proceeded, and it shows how, before the events, the destiny of the victims had been established by choosing the type of abuse to be performed according to their gender. Both men and women were executed extrajudicially; however, women were first subject to sexual violence.” *Ibid.*, 30.
- 28 *Ibid.*, 56.
- 29 CEH, *Guatemala: Memoria del Silencio*, III, 53.
- 30 ODHAG, *Guatemala: Nunca Más*, 210.
- 31 CEH, *Guatemala: Memoria del Silencio*, III, 23.
- 32 *Ibid.*, 13.
- 33 There is only one testimonial of rape against a male adult (by witnesses who found in a gully the body of a murdered man showing signs of sexual violence) and one testimonial of child rape within a context of massive repression. *Ibid.*
- 34 “The soldier... said that when the women were dead, he would move up their skirts and would introduce a stick in their vaginas;... one old lady was hanged with a cord around her neck. She was naked with a banana in her vagina.... They opened the belly of a pregnant woman and took out the baby and they introduced a stick from behind the baby until it came out of his mouth.” *Ibid.*, 31.
- 35 In the massacre perpetrated by the army and members of the PAC in San Martín Jilotepeque (Estancia de la Virgen, Chimaltenango) it is indicated: “The army picked some pregnant mothers and beheaded them; the soldiers ripped open their stomachs and took out the babies.” *Ibid.*, 36.
- 36 *Ibid.*, 484.
- 37 According to testimony gathered by the CEH, during the massacre of Cuarto Pueblo (Ixcan, Quiché), perpetrated by the army on 14 March 1982, after separating the men from the women, “twelve women were then divided into pairs. Each pair had to remain with five soldiers in each one of the 6 entry boxes at the gates of downtown Cuarto Pueblo. They were forced to cook and bring water for the troops. The soldiers were raping them for 15 days. On March 15, they finished off killing the old women and the pregnant women. Only the young ones remained.... They took turns so that each

- woman was raped by 15 soldiers.” Similar stories are told about the majority of the massacres. Ibid., 30.
- 38 At the reception center for amnestied persons, Lancetillo and San Miguel Espantan, the CEH stated that “at night, soldiers would take out the young women and take them to their rooms; they were using them thus for months.” Ibid., 39.
- 39 “For 10 years after the forced disappearances, widows . . . were turned into slaves . . . of the military commissioners and the Comité de Desarrollo (Development Committee) that worked with the army. Widows had to work in the fields and organize activities like parties, by orders of the Playa Grande station.” Ibid., 44.
- 40 CEH, *Guatemala: Memoria del Silencio*, III, 56.
- 41 Ibid., 59.
- 42 “As a consequence of rapes, unwanted pregnancies occurred; and the children born of these situations were marked: ‘the kid is called the sergeant.’” Ibid., 43.
- 43 María Toj interview; Yolanda Aguilar, interview by the author, Guatemala, 31 May 2005.
- 44 CEH, *Guatemala: Memoria del Silencio*, III, 374.
- 45 The project, under the leadership of Yolanda Aguilar and two nongovernmental organizations — Community Studies and Psychosocial-Action Work Team [*Equipo de Estudios Comunitarios y Acción Psicosocial*] (ECAP) and National Union of Guatemalan Women [*Union Nacional de Mujeres de Guatemala*] (UNAMG)—organizes self-help groups aimed at healing the wounds of women survivors of sexual violence. Currently, there are groups in three regions, in which about 80 women are involved.
- 46 See Walda Barrios Klée and Edda Gaviola Artigas, *Mujeres Mayas y cambio social* (Guatemala: Facultad Latinoamericana de Ciencias Sociales, 2001).
- 47 Nieves Gómez Dupuis, interview by the author, Guatemala, 5 May 2005.
- 48 ODHAG, *Guatemala: Nunca Más*, 66.
- 49 “Women surviving rape . . . are stigmatized and singled out by the community. The terror they lived through during the massacre still persists today The stigmatization they perceive, the continuous physical presence of their aggressors, and the impunity of these aggressors has resulted in an intense feeling of fear which has prevented these women from participating in the processes of justice and from speaking up.” Nieves Gómez Dupuis, ed., *Informe sobre el daño a la Salud Mental derivado de la Masacre de Plan de Sánchez para la Corte Interamericana de Derechos Humanos* (Guatemala: ECAP, 2005), 27.
- 50 “I told no one, not even my husband, because he could have hit me and I was afraid . . . that night they raped many women and their husbands didn’t know about it because they were out doing their shifts.” CEH, *Guatemala: Memoria del Silencio*, III, 48.
- 51 “Many [women] were persuaded by patrolmen and members of the army of their own guilt in the rapes, since they were the ones who had left their homes. On many occasions, this institutional attitude was also adopted by their respective husbands and part-

- ners when they accepted these situations as normal and blamed their women for exposing themselves.” Ibid., 42.
- 52 ODHAG, *Guatemala:Nunca Más*, 203.
- 53 Ibid., 236.
- 54 CPRs were mostly made up of women, since most survivors were women.
- 55 The relevant points dwell on human rights, relocation of the uprooted population, identity and rights of indigenous peoples, socioeconomic aspects and the agrarian situation, the strengthening of civilian powers, and functions of the army.
- 56 Alba Estela Maldonado interview.
- 57 National Office for Women [*Oficina Nacional de la Mujer*] (ONAM), *Las obligaciones legislativas a favor de las mujeres derivadas de los Acuerdos de Paz* (Guatemala: ONAM, 1997), 10.
- 58 “We were six or seven, all from different orientations, with some links to leftist organizations. We had all had some political involvement. But in ‘88 we had already begun to embrace a gender perspective and engaged in feminist discourse and practice.... Our agenda included demands such as eliminating discriminatory contents from legislation, passing laws to favor women, maternal and child care, socioeconomic issues, that sort of thing. Demanding gender justice was never there.” María Eugenia Solís, interview by the author, Guatemala, 10 May 2005.
- 59 Misión de Verificación de las Naciones Unidas en Guatemala (MINUGUA), *Los desafíos para la participación de las mujeres guatemaltecas. Informe de Verificación* (Guatemala: MINUGUA, 2001), 5.
- 60 Sandra Morán, interview by the author, Guatemala, 9 May 2005.
- 61 The chapter in the ODHAG report was written by petition of, among others, Yolanda Aguilar (student leader detained and abducted, currently feminist leader working with female survivors of sexual violence during the conflict). In the case of the CEH, the petition came from Teresa Rodríguez, a Spanish feminist whose work was critical for including sexual violence committed against women in the report.
- 62 Yolanda Aguilar interview.
- 63 Ibid.
- 64 As part of the project, “From Victims to Agents for Change,” a list of all the rapes that were committed during the conflict in various regions of the country is being created; healing groups for surviving women are also being established.
- 65 Point 8 in the accord on human rights provides that “it is a humanitarian duty to redress and/or assist the victims of human rights violations during the internal armed conflict.” This duty also appears in the “Relocation of the Uprooted Population due to the Armed Conflict” [*Reasentamiento de las Poblaciones desarraigadas por el Enfrentamiento Armado*] agreement, Chapter II, Clause 9.
- 66 In 1991, the case of the assassination of Myrna Mack was initiated; in 1992, the case of the murder of a PAC patrolmen; in 1993, a case related to the massacre of Rio Negro; in 1994,

one on the massacre of Dos Erres; all of these before the national courts and supported by organizations of victims of human rights violations, such as ODHAG, CONAVIGUA, FAMDEGUA, and the Maya Achi Association for the Integral Development of Victims of Violence [*Asociación para el Desarrollo Integral de las Víctimas de la Violencia en las Verapaces, Maya Achi*] (ADIVIMA), among others.

- 67 According to the first schedule of fulfillment of the accords, the reparations program should have been implemented in 1997. However, it was decided that the CEH should first issue its recommendations. Civil society groups wrote proposals to influence the fulfillment of the reparations commitment and the assistance to victims required by the peace accords. It should be noted that, in principle, reparations did not need to be preceded by the CEH's report and its recommendations.
- 68 They proposed the creation of the Guatemalan Institute of Comprehensive Assistance to Victims of Human Rights Violations [*Instituto Guatemalteco de Atención Integral a las Víctimas de Violaciones a los DDHH*]. Mario Polanco, interview by the author, Guatemala, 17 June 2005.
- 69 FAMDEGUA, *Bases para una Ley de Resarcimiento para las Víctimas de Violaciones a los Derechos Humanos* (Guatemala: FAMDEGUA, 1998); Instituto de Estudios Comparados en Ciencias Políticas de Guatemala, *El deber de Resarcir* (Guatemala: ICCPG, 1998).
- 70 In the same period, two governmental bodies, the Congressional Commission on Human Rights [*Comisión de Derechos Humanos del Congreso*] and the President's Office [*Presidencia de la República*], made ample proposals to establish a commission in charge of reparations. These proposals were discussed in congress, but were never adopted. Both suffered from the same omissions: they did not include sexual violence against women, they did not focus on the specificities of other forms of violence against women, and they did not include women's organizations in the process.
- 71 The proposed measures are: material restitution, economic indemnification and compensation, rehabilitation and psychosocial reparations, and measures towards satisfaction and dignifying. All of these were included in the current PNR.
- 72 CEH, *Guatemala: Memoria del Silencio*.
- 73 This lack of consistency between the content of the report and the recommendations, which ignored the chapter devoted to violence against women, was partly due to the absence of gender experts in the team that prepared this part of the report.
- 74 At the beginning, it was composed of 90 organizations. However, the number of members has varied. Claudia Samayoa, interview by the author, Guatemala, 1 June 2005.
- 75 For the sake of the present analysis, these organizations will be divided into women's organizations (made up only of women demanding social and economic rights, such as access to land, and mainly organized during the displacement and period of refuge), victims organizations (led mainly by women and seeking, above all, court decisions

- on the crimes committed during the armed conflict) and feminist organizations (with demands relating to gender justice, such as reproductive and sexual rights, among others). The Women's Sector as such did not take part in the process of negotiation for the PNR. Only some of its affiliates did. For them, the issue of reparations was not one of their priorities, even if it was considered very important. Interviews with Sandra Morán and Claudia Samayoa.
- 76 CONAVIGUA and GAM separated themselves from the Multi-Institutional Office and grouped themselves into another entity that later formed part of the CNR.
- 77 There are local reparations committees in 71 municipalities in 14 departments. These committees were created in most cases with the support of the Multi-Institutional Office in order to articulate and channel the demands for reparations. Orlando Blanco, interview by the author, Guatemala, 5 May 2005.
- 78 Most feminist organizations did not actively participate in the establishment of a reparations program, because, as explained below, they had other priorities. The involvement of these two organizations can be partly explained by the fact that they were made up of feminist survivors of war violence. The main demands were achieving visibility for gender-specific violence and promoting actions aimed at repairing its consequences, particularly in terms of psychosocial reparations. However, the debate about an adequate way to include sexual violence in the other reparation measures is still pending.
- 79 Among the organizations that make up the Organizations' Coordinator for Reparations for the Mayan People [*Coordinadora de Organizaciones para el Resarcimiento del Pueblo Maya*] (CORPUMA), the only one to be found is the Young Mayas Movement [*Movimiento de Jóvenes Mayas*].
- 80 Misión de Verificación de las Naciones Unidas en Guatemala, *Estado de cumplimiento de las recomendaciones de la Comisión para el Esclarecimiento Histórico. Informe de Verificación* (Guatemala: MINUGUA, 2004).
- 81 Instancia Multiinstitucional por la Paz y la Concordia (IM), *Programa Nacional de Resarcimiento. Política Pública* (Guatemala: IM, 2004). Hereafter, Instancia Multiinstitucional, *Política Pública*.
- 82 María Eugenia Solís interview.
- 83 María Canil, interview by the author, Guatemala, 20 June 2005.
- 84 In order to form the first CNR, MINUGUA invited all organizations interested in the issue to participate in electing representatives. The organizations signed up and voted for representatives according to several categories (victims, human rights, women's and indigenous people's organizations). The associations that form the CORPUMA did not obtain the necessary majority in the voting processes in order to be elected. María Guadalupe García, interview by the author, Guatemala, 5 May 2005.
- 85 Sandra Morán interview.
- 86 María Guadalupe García interview.

- 87 Executive Decree 250-2003, subsequently modified by Executive Decrees 188-2004 and 619-2005.
- 88 Executive Decree 43-2005.
- 89 Approved on 26 July 2005.
- 90 This last open clause was created because the government refused to include genocide among the categories of crimes to be repaired, even though that was one of the few crimes typified as such in the criminal code during the internal armed conflict.
- 91 Article 3 of Governmental Agreement 43-2005, approved on 3 February 2005.
- 92 As for the exclusion of men from the possibility of being victims of rape, the position rightly endorsed by the PNR reflects the fact that during the armed conflict, sexual violence was deliberately and strategically used by the state to control and subjugate women exclusively. It was not a systematic practice used against men. The few cases of rape of men that were reported could always be conceptualized as torture. This is not to say that the criminal code should not be reformed to overcome the stereotype that men cannot be raped.
- 93 "Handbook," Article 2.
- 94 Article 2 of Governmental Agreement 43-2005, approved on 3 February 2005.
- 95 Article 1078 of the Civil Code.
- 96 Mayra Alarcón, interview by the author, Guatemala, 13 May 2005.
- 97 Ibid.
- 98 Article 1.
- 99 Instancia Multiinstitucional, *Política Pública*, includes the general guidelines of PNR policy (of uncertain legal-juridical nature).
- 100 Mayra Alarcón interview.
- 101 This measure and the psychosocial reparations measure are the only ones that explicitly refer to those who were victims of human rights violations while they were children.
- 102 Instancia Multiinstitucional, *Política Pública*, 25.
- 103 A study on the gender equality policy of the Fondo de Tierras shows how cooperatives limit women's participation because their rules require the participation of a single family member, which, in fact, excludes women. Nor is there an adequate solution for the case of widows or single women. In general, men consider that if women want to have the same rights, they have to "prove" that they can do similar jobs, which would involve working in the fields like men do (but while carrying an infant on their back and looking after two or three more children). Fondo de Tierras, *Política de Equidad de Género del Fondo de Tierras* (Guatemala: Fondo de Tierras, 2004), 17.
- 104 In order to survive in Guatemala a daily minimum income of US\$2.00 is required, according to the poverty line index. Mayra Alarcón interview.
- 105 "Guidelines."
- 106 Ibid.

- 107 Civil Code, Article 124.
- 108 Nieves Gómez Dupuis, *Posibles Formas de Reparación Psico social* (Guatemala: forthcoming).
- 109 This measure refers to creating “a space for the community to meet and grow, enabling members to break the wall of silence, heal the inner pain, socialize and give meaning to the experiences lived; restoring trust in others...building a spirit of solidarity to restore the social network.” “Reparation Measures,” 31.
- 110 Instancia Multiinstitucional, *Política Pública*, 33.
- 111 Yolanda Aguilar interview.
- 112 María Guadalupe García interview.
- 113 Yolanda Aguilar interview.
- 114 Sonia Ankerman, interview by the author, Guatemala, 26 May 2005. It would be helpful if these psychosocial rehabilitation programs also addressed the ways in which men’s masculinity was targeted during the conflict, and the resulting psychological effects. Both the CEH and the ODHAG reports indicate that such targeting took place mostly through sexual violations against women, forcing men in prison or in refuge to watch and listen to such violations.
- 115 María Toj interview; Rosalina Tuyuc, interview by the author, Guatemala, 5 September 2005.
- 116 Nieves Gómez Dupuis interview.
- 117 According to “Reparation Measures.” Thelma Artiga, interview by the author, Guatemala, 13 May 2005.
- 118 Thelma Artiga interview.
- 119 This was the last measure that was incorporated; it was included in Agreement 43-2005.
- 120 CORPUMA, *Planteamiento de Organizaciones del Pueblo Maya para el Resarcimiento Histórico de las víctimas del genocidio y del enfrentamiento armado interno* (Guatemala: Fondo de Tierras, 2003), 14.
- 121 Only a few of the private schools attended by middle-class boys and girls currently follow the CEH recommendation to use both the CEH and the ODHAG reports as school texts, which is a key step to raising the population’s awareness of the gender violence suffered by women during the war.
- 122 Maya Alvarado, interview by the author, Guatemala, 22 August 2005.
- 123 Rosalina Tuyuc interview.
- 124 Orlando Blanco interview.
- 125 Ibid.
- 126 María Guadalupe García interview.
- 127 Article 4 of Governmental Agreement 258-2003, as amended by Governmental Agreement 188-2004.

- 128 Rosalina Tuyuc founded the National Commission of Widows of Guatemala [*Comision Nacional de Viudas de Guatemala*] and was a member of the National Congress from 1996 to 2000. See above comments on Guatemala's women leaders.
- 129 Carmen Bejarano, interview by the author, Guatemala, 11 May 2005.
- 130 "Handbook," Article 8.
- 131 *Ibid.*, Article 25.
- 132 Maya Alvarado interview.
- 133 Many registries were burned during the internal armed conflict. Likewise, many births and deaths during the displacement or period of refuge were not registered.
- 134 María Guadalupe García interview.
- 135 The offices are in Chimaltenango, Santa Cruz (Quiché), Rabinal, Baja Verapaz, Cobán Alta Verapaz, Huehuetenango. Rosalina Tuyuc interview.
- 136 Tribunal Tercero de Sentencia Penal, decision dated 3 October 2002.
- 137 Tribunal de Sentencia Penal de Baja Verapaz, August 2003.
- 138 *Ibid.*, 14 September 1999.
- 139 Tribunal de Sentencia de Quiché, decision dated 26 August 1999.
- 140 According to Guatemala's criminal procedure code, the civil action leading to economic or other types of reparations must be started together with the criminal action. In these cases, civil actions were not filed.
- 141 This patrolman was sentenced in the year 2000 for six murders and two disappearances, but was absolved from rape.
- 142 In this case, the accusation was originally filed for rape; however, this accusation was later withdrawn—despite the fact that the victim had testified on this—as a strategy for obtaining a sentence for the extrajudicial executions.
- 143 Inter-American Court of Human Rights, *Plan de Sánchez vs. Guatemala*, decision on reparations dated 19 November 2004.
- 144 Inter-American Court of Human Rights, *Myrna Mack vs. Guatemala*, decision dated 25 November 2003.
- 145 Inter-American Court of Human Rights, *Maritza Urrutia vs. Guatemala*, decision dated 22 November 2003.
- 146 Inter-American Court of Human Rights, *Molina Theissen vs. Guatemala*, decision dated 3 July 2004.
- 147 Inter-American Court of Human Rights, *Bámaca Velásquez vs. Guatemala*, decision dated 22 February 2002.
- 148 The Inter-American Court considers two types of damage: material and moral. Under material damage, the court includes any loss of property suffered as a consequence of human rights violations and any expenses incurred by the victims or their families as a direct result. Furthermore, material damage also covers "lost profit," including the income the victims failed to receive due to the human rights violations. Under moral

damage, the court values the suffering and affliction caused upon the direct victims and their close relatives, as well as the undermining of values that may be very significant to the victims, such as nonmaterial alterations to their conditions of existence.

149 Inter-American Court of Human Rights, *Myrna Mack vs. Guatemala* and *Urrutia vs. Guatemala*.

150 Inter-American Court of Human Rights, *Masacre Plan de Sánchez vs. Guatemala*, decision dated 29 April 2004.

151 This lack was presumably because the list of victims was not submitted, to prevent stigmatization.

152 Yolanda Aguilar interview.

CHAPTER 3

Linking Gender and Reparations in Peru:
A Failed Opportunity

Julie Guillerot

In May 1980, the most violent period in Peru's republican history began when the country's communist party—*Sendero Luminoso* (SL)—announced the launching of a “popular war from the countryside to the city” against the state. It did so in the belief that so-called armed struggle was the best way to attain power, destroy the “old state” and “class enemies” and impose a new political, economic, and social order. The SL's “Gonzalo thinking”—a fundamentalist, totalitarian ideology based on Marxism-Leninism-Maoism that developed a personality cult surrounding its founder, Abimael Guzmán—had by then achieved a certain degree of popular acceptance. This was due to the failure of the state and the country's elites to respond to the demands of part of the population and, particularly, the young generation's frustrated efforts to achieve social mobility and progress.¹

The conflict started in a context marked by the fact that the state's accelerated expansion and presence in the economic, political, and social spheres had not reached marginal areas, such as the rural Andean area, through infrastructure or services, but only through obligatory military service or the primary school system. In addition, Peru is known for its fragile national integration and a lack of true acknowledgement of its ethnic diversity, demonstrated by the imposition of Western cultural patterns on, and the marginalization of, indigenous rural sectors. The country's economic policies had widened the gap between rich and poor, particularly in rural Andean areas. Finally, the expansion of the education system was not matched by a degree of economic growth that could ensure a formal labor market big enough to absorb the qualified population; the result was a “myth of progress.”²

Unlike other internal conflicts in Latin America, where state agents were the main perpetrators, in Peru *Sendero Luminoso* was responsible for a large portion of the violence. SL turned rural areas into the main setting of the conflict, with individual dissidence leading to selective executions and assassinations, and collective dissidence leading to massacres and destruction affecting whole communities.³ Furthermore, the violence unleashed by SL was increased by

the emergence in 1984 of another insurgent group called the Tupac Amaru Revolutionary Movement [*Movimiento Revolucionario Tupac Amaru*] (MRTA). Although the MRTA did not attack the unarmed population, it carried out selective assassinations, hostage taking, and systematic kidnappings.⁴

The state was unable to contain the advance of the insurgency, which in a few years had spread throughout the country. In 1982, the democratic government acknowledged the militarization of the conflict and, renouncing its control, placed the counterinsurgency struggle in the hands of the armed forces.⁵ The armed forces initially implemented a strategy of indiscriminate repression against the population it suspected of belonging to SL, making human rights violations, in certain areas and at certain periods of the conflict, a generalized and/or systematic practice. In its second phase, the counterinsurgency strategy became more selective, but numerous human rights violations continued.⁶

A significant decrease in political violence coincided not only with the capture of the SL and MRTA leadership, but also with the start of Alberto Fujimori's regime in 1992. Fujimori's government constructed an official version of the events of the conflict in an effort to obtain political credit in the alleged "victory over terrorism." It created a regulatory framework that not only changed the national defense system, the national intelligence service law and the military law, but also established punishments and procedures that violated due process principles and ensured impunity.⁷

It was not until the fall of Fujimori's authoritarian and corrupt regime, in November 2000, that a transition to democracy began under Valentín Paniagua's administration, which allowed raising the nation's awareness of the abuses of the past and consolidating a regulatory and political framework more respectful of human rights. As part of this effort, the Truth Commission [*Comisión de la Verdad*] was created in 2001 during the transitional administration.⁸ Later that same year, it was ratified by the newly elected President Alejandro Toledo, who changed its name to the Truth and Reconciliation Commission [*Comisión de la Verdad y Reconciliación*] (CVR) and expanded the number of commissioners from seven to twelve.⁹ The CVR included two female commissioners, but there is no evidence that their appointment was part of an effort to create a gender-balanced body. The first female commissioner to be appointed, Beatriz Alva Hart, is a labor lawyer and former deputy minister in Fujimori's administration; the second, Sofia Macher Batanero, is a sociologist with a strong background in human rights and former Executive Secretary of the National Human Rights Coordinator [*Coordinadora Nacional de Derechos Humanos*], and was appointed when the CVR expanded.

The CVR's mandate was "to clarify the process, facts and responsibilities related to the terrorist violence and human rights violations that occurred between May 1980 and November 2000, which were perpetrated both by terrorist organizations and by State agents, as well as to propose initiatives aimed at consolidating peace and harmony among Peruvians." The commission was also expected to further "national reconciliation, the rule of law and the strengthening of the constitutional democratic system."¹⁰ Regarding the issue of reparations in particular, its mandate was to prepare proposals for repairing and dignifying victims and their relatives.¹¹

As a result of the CVR's work, in August 2003 the *Final Report of the Truth and Reconciliation Commission* [*Informe Final de la Comisión de la Verdad y Reconciliación*] (IFCVR) was submitted. The IFCVR comprises nine volumes, in which the causes and consequences of the internal armed conflict are analyzed, and the magnitude of the serious human rights violations that occurred is clearly stated. *Volume IX, Recommendations of the CVR: Towards Reconciliation* [*Recomendaciones de la CVR. Hacia la reconciliación*], proposes ways to prevent the reported violent acts from occurring again, including a Comprehensive Reparations Plan [*Plan Integral de Reparaciones*] (PIR) made up of a combination of symbolic and economic, individual and collective reparations. This plan is an attempt to respond not only to the collective damage suffered by communities and groups, but also to the individual harms suffered by direct victims and their relatives.

Two years after the IFCVR was submitted, the country has a relatively advanced regulatory framework for reparations. In February 2004, the High Level Multisector Commission in Charge of the State's Actions and Policies Related to Peace, Collective Reparation and National Reconciliation [*Comisión Multisectorial de Alto Nivel encargada de las Acciones y Políticas del Estado en los Ámbitos de la Paz, la Reparación Colectiva y la Reconciliación Nacional*] (CMAN) was created with the mandate of designing, coordinating and supervising the relevant national policy.¹² The CMAN proposed a Policy Framework for Actions by the State Related to Peace, Reparation and National Reconciliation [*Marco programático de la acción del Estado en materia de paz, reparación y reconciliación nacional*], under which the axes of the state's reparations policy should be restoring citizen rights, providing education and health-related reparations and collective and symbolic reparations, and promoting and facilitating a solution for the housing problem.¹³ However, the policy framework fails to define the content of such axes or to provide a definition of the qualifying victims and beneficiaries.

Under the policy framework, the CMAN developed the Comprehensive Reparations Plan — 2005–2006 Multiyear Program [*Plan Integral de Reparaciones—Programación multianual 2005–2006*] (PIR), which was approved in July 2005.¹⁴ This plan gave priority to the most affected rural communities and developed the content of some of the axes set out by the policy framework. Like the policy framework, however, the multiyear program failed to define victims and beneficiaries qualifying for the measures, considering as “beneficiary” the whole populations of the identified communities. Finally, the Comprehensive Reparations Plan Law was promulgated in late July 2005,¹⁵ which refers to the same axes as the policy framework. Unlike previous documents, however, the law does provide a definition of victims and beneficiaries for the purposes of the plan. Furthermore, it orders the creation of a reparations council in charge of preparing a unified registry of victims. In spite of these significant steps forward, however, the actual implementation and execution of the reparations measures included in the multiyear program have not yet begun. Also pending are the regulation of the law and the creation of a reparations council.

WOMEN DURING AND AFTER THE CONFLICT : VICTIMIZATION, AGENCY, AND CONTINUING INEQUALITY

WOMEN AS VICTIMS OF THE CONFLICT

During the internal armed conflict that ravaged Peru, men were the main targets of both insurgent groups and the state.¹⁶ Women were also seriously affected, but in a different way and in smaller numbers. The *IFCVR* was the first official attempt to record human rights violations suffered specifically by women and to acknowledge that the violence affected women and men in different ways.¹⁷ Indeed, the report states that violence affected the Peruvian population in different ways according to social position and gender. Thus, women were victims of a set of crimes and abuses against their dignity and their human rights that differed from those suffered by men.¹⁸

The *IFCVR* shows how, in addition to being direct victims of kidnappings, forced recruitment, arbitrary detentions, physical and psychological torture, forced disappearances, massacres and extrajudicial executions, women also suffered from the death and disappearance of family members. It is likely that violence against children also had a differential impact on women. Although the report, in its section on violence against boys and girls,¹⁹ does not point to any gender-based differences, it does state that children accounted for 12.8% of human rights violations, and that abuses committed against them were mainly

rape, kidnapping, forced recruitment, and murder. Women suffered the consequences of such acts in their daily life, driving many into displacement.²⁰

Furthermore, the report documents how women were subject to sexual violence in different forms by both official forces and insurgent groups.²¹ Despite the fact that sexual violence is consistently underreported, mainly due to victims' feelings of guilt, shame, or (justified) fear of stigmatization or community ostracism, the CVR was able to prove that such abuses were perpetrated mainly by official forces and, to a lesser extent, members of insurgent groups. In fact, the two sides practiced different forms of gender violence. While 83% of rapes were attributable to the state, including multiple rape and rape of pregnant women,²² insurgent groups were mainly responsible for actions such as forced domestic work; mutilations, including mutilations of a sexual nature; sexual slavery; forced contraception; forced abortion; and forced cohabitation. These abuses usually took place within the insurgent organization itself, against persons forcefully recruited or the population in the controlled areas.²³

Women who participated actively in the armed conflict or who were suspected of collaborating with insurgent groups, along with women who had or were suspected of having any type of relation (personal, family ties or affinity) with any of the conflict players, and women who committed themselves to searching for and defending their relatives were more vulnerable to such abuses.²⁴ In addition, the absence of a man in the family, military or police raids, the presence of a military base, or confinement in police or criminal facilities all significantly increased the vulnerability and exposure of women.²⁵

All such violations, particularly forced pregnancies (abortions were out of the question, since it is illegal in all its forms), affected the body, mental health, sexuality, and reproductive health of the victims. Many testimonies revealed that the aftereffects of sexual violence included vaginal problems, sexual diseases, pregnancy-related difficulties and, in some cases, sterility.²⁶ Likewise, the abuses affected victims' relations with their families and communities, including rejection, abandonment or violence by their partner, rejection by the family, stigmatization in the community, the impossibility of getting married, and so on.²⁷ The CVR also concluded that ethnic, cultural, social, and gender factors played a role in the impact and aftereffects of the violations.²⁸

The CVR reports that the sociodemographic profile of women directly affected by human rights violations was similar to the profile of male victims. Most of them (73%) spoke Quechua as their mother tongue, 80% lived in rural areas, and 34% were illiterate. Most of the victims were also young: 48% were 10 to 30 years old, and 8% were younger than 10.²⁹ The crimes that most affected women were murders and extrajudicial executions (50%), followed by

detentions (27%) and torture (23%). Rapes were the sixth most common crime against women (10%), after kidnappings (17%) and disappearances (16%).³⁰ Although the other types of violations described above are mentioned in the IFCVR chapters dealing with sexual violence against women and the differentiated impact of violence, no statistics are available on these because the CVR database did not record them in a systematic way.

Upon comparing the sociodemographic profiles by type of human rights violation, the CVR found that, even though the average female victim was young, murders and extrajudicial executions affected women of all ages.³¹ These two types of crimes, therefore, were indiscriminately committed and the most affected were women of certain age groups, such as children, adolescents, and elders.³² However, forced recruitments were conducted selectively: 71% of the women forcibly recruited were younger than 20.³³ Violence, particularly sexual violence, aggravated exclusion, discrimination, racism, and domination patterns.³⁴

WOMEN AS AGENTS IN THE CONFLICT AND THE POST-CONFLICT PERIOD

It should be kept in mind that many women opted to participate in the conflict by becoming involved in the insurgent groups SL and MRTA and that, in this context, they were also responsible for deaths, torture, threats, and other human rights violations. These were generally young, highly educated women from Andean provinces, overqualified for the jobs they had, who participated as sympathizers, in emerging or active cadres, and even in high leadership positions within the insurgent groups.³⁵ These groups, and particularly SL, served as channels for the hatred and frustration fostered not only by social and racial, but also by gender-based discrimination.³⁶

Another space within which women became active in the violence was created by the Self-Defense Committees [*Comités de Autodefensa*] (CAD), or counterinsurgent peasant patrols. In the CADs, men generally patrolled and carried the guns, and women were in charge of surveillance, carrying food, or supporting patrols by watching after the children of those on duty. In some cases, however, women received weapons training and actively participated in the patrols and even in clashes. This led not only to the militarization of daily life in the affected areas, but to a change in gender roles: women were seen as having “become *machos*” by assuming the defense of their communities.³⁷

However, the conflict entailed other forms of change for most women. As is typical in conflict situations, gender roles were modified and redefined, with men and women being forced to occupy nontraditional spaces. The fact that

men became the main targets in the Peruvian conflict had a strong impact on women's lives³⁸ through, for example, family disintegration and the collapse of the family economy and community organizations.³⁹ The new conditions posed new challenges for women, as they were primarily in charge of catering to the needs of daily life. Women had to undergo an intensive learning process, including gaining skills about income-generating activities. They were also forced to move from the private to the public sphere, from family to community issues and to assume what thus far had been typically male roles, consolidating thereby their function as key social actors.

Women developed collective solutions to domestic issues, such as mothers groups, community kitchens, milk programs, production workshops, community gardens, and so on.⁴⁰ Women's community organizations played a significant role in achieving social integration, organizing daily life, building social networks and offering an alternative to SL's proposals. As these organizations came to be seen as an obstacle to the latter's political project,⁴¹ SL tried to either co-opt or destroy them through threats, intimidation, assassinations of leaders,⁴² and blowing up organization facilities. This led to an increasingly open rejection of SL expressed through massive demonstrations "against hunger and terror."⁴³

Women also played a leading role in the struggle against violence and in defense of human rights (which often led to further victimization).⁴⁴ In this capacity, they searched for the missing, sought freedom for prisoners, and buried the dead. They also fought for the physical safety and lives of the loved ones who remained with them.⁴⁵ Women launched search-and-reporting processes, approached human rights NGOs, and engaged with governmental agencies and the media, all the while facing an unknown, complex and discriminatory world. It should be noted that most of these women spoke Quechua and lacked basic education. They joined organizations for displaced persons, victims, and families, approaching the defense of human rights as a collective task and developing new capabilities and mechanisms, which gradually improved over time.

CONTINUING INEQUALITIES

Although, to some extent, the whole process increased women's awareness of their rights, the changes in the behavior and lives of the women affected by the conflict were not always accompanied by changes in the way they have perceived and evaluated their experiences. For women, the learning process was of more a functional than a strategic nature: they were mainly reacting to an

emergency situation. In this context, there is the risk that an idealized vision of the pre-conflict period may lead women to try to restore previous dynamics and traditional roles that would limit their potential as individuals, but are associated with times of “harmony.”⁴⁶

It should be understood that the system of inequalities, hierarchical relations, and discrimination in Peru has outlived the conflict and influenced the way it is remembered.⁴⁷ The conflict itself developed out of existing conditions of ethnic, social and gender inequality, which were aggravated by violence.⁴⁸ In Peruvian society, today just as in the past, the idea that women should get married and devote themselves to taking care of their families continues to prevail. Women have always had restricted opportunities and significantly lower education levels than men. Of the approximately 11 million women living in Peru in 1993, roughly 30% lived in rural areas, generally under conditions of poverty and cultural, political, and social isolation.⁴⁹ Despite a certain amount of education expansion that began in the 1970s, and a trend towards uniform educational coverage, particularly among the young, illiteracy continues to be a serious problem among women. It has become a constant, structural problem affecting women in both rural and urban areas,⁵⁰ and is one of the greatest obstacles to women’s participation in local and regional institutions.

Another obstacle affecting particularly poor indigenous women is their status as undocumented persons, which not only violates their right to citizenship and restricts their right to vote, but also limits their access to health, education, social programs, and marriage, as well as the opportunity to record the birth of their children, buy and sell property, and find employment.⁵¹ Statistical data from the last few decades show that while Peruvian women have been increasingly entering the job market,⁵² the conditions under which they do so and their pay rates continue to be discriminatory. Furthermore, women’s access to quality health services, particularly women’s health services, is largely conditioned by their socioeconomic situation, including social position and role.⁵³

In Peru, violence against women is a serious and old problem. Each year, thousands of women are murdered, beaten, raped, and psychologically abused, usually by their partners. In 1998, the national police received approximately 28,000 reports of domestic abuse.⁵⁴ Between January and September 2004 alone, the Women Emergency Centers at the Ministry of Women’s Affairs and Social Development recorded 23,013 cases of violence, of which 20,816 (90%) involved violence against women.⁵⁵ Women with low educational levels are victims of violence in higher proportion, and the highest incidence of domes-

tic violence is recorded in areas characterized by poverty and social exclusion.⁵⁶ Studies of a more qualitative nature have found that domestic violence is rooted in the historical and cultural traditions of Peruvian communities, and in authoritarian family traditions characterized by male dominance. All of this results in unequal power relations between the genders and a lack of rights for women.⁵⁷

The 1990s in Peru paradoxically saw both an authoritarian regime violating the rule of law and progress in legislation favorable to women.⁵⁸ As Alberto Fujimori's regime consolidated its power, systematically dismantled democratic institutions, and operated without constitutional controls, women participated in movements demanding a transition to a democracy respectful of individual and collective rights, and with gender equality. Fujimori's illegal, unconstitutional third nomination in 2000 led many women to unite in coordinating "peaceful resistance" actions and calling for new elections.⁵⁹ The struggle against authoritarianism and corruption thus coalesced with the demand for truth and justice: among the goals of this movement were "creating the institutional, legal, political, and social conditions needed to try and punish those responsible for the social spending of the 1980–2000 period, demanding specific accountability, restoring the rights and dignity of the victims," and promoting "the implementation of mechanisms to restore human rights and [repair] the women raped in 1980–2000."⁶⁰ The creation of a truth commission, as proposed by civil society organizations, including women's groups, became one of the main points of negotiation on the agenda of the dialogue table [*mesa de diálogo*] between the government and the opposition.⁶¹

In spite of this, tangible improvements in women's rights during the 1990s were restricted to urban middle- and upper-class areas, and were more the result of a global trend than of deep changes in Peruvian society.⁶² Despite the participation of the women's movement, the Peruvian transition has been understood primarily in its formal political dimension, rather than as a process aimed at democratizing relations between the state and its citizens, as well as among citizens themselves, and overcoming the culture of the subordination of and discrimination against women.⁶³ Within this context, it is easy to understand that women, as victims of the conflict, have been rendered invisible. The dominant image of both political and armed groups is that of men.⁶⁴ The fact that the victims of the conflict belong to a marginalized (poor, indigenous, and rural) sector of the population only makes matters worse. Consequently, the violations suffered by women, whether inherent in their condition as women or not, as well as their role in the regeneration of social networks, have been overlooked.

WOMEN'S INVOLVEMENT IN THE ARTICULATION OF REPARATIONS

In the Peruvian context it is difficult to speak of a reparations movement, or even discussions about reparations and, consequently, of relevant mobilization strategies, at least until the transitional period.⁶⁵ The term itself was rarely used by human rights and feminist NGOs, and even less in the accounts of victims, until the possibility of creating a truth commission was considered. Only then, in 2001, did the notions of truth, justice, and reparations start to attract the attention first of civil society organizations generally and later of victims organizations specifically.

During the conflict, Peruvian feminist organizations focused their demands on sexual and reproductive rights of women in general, establishing ties with the international feminist movement, while somehow distancing themselves from the domestic context of political violence.⁶⁶ This may have been related to the social origin of the feminist movement, which was formed by middle- and upper-class women activists and researchers who joined with left-wing militants and were mostly active in urban areas.⁶⁷ Women's community organizations, for their part, devoted their efforts to and focused their demands to the state on issues of survival.

Although human rights NGOs played a more important role in supporting the victims, their relatives and their organizations, they focused on the issue of the dead/disappeared and detained people. Therefore, the NGOs worked directly with women, but in their role as relatives, often forgetting that these women had also been direct victims of violations.⁶⁸ In addition, victims and relatives organizations, which, due to the very nature of the conflict, consisted mainly of women, mobilized and organized on the basis of demands for truth and justice: finding out what had happened to their relatives, finding their bodies, burying them, punishing the perpetrators, and so on. In other words, the women who became involved in such organizations were much more prone to demand justice for their relatives than for themselves, in their roles as mothers, daughters, wives and sisters. The claim for reparations did not appear in their accounts until later, and it never overshadowed the claim for justice that was part of the predominant discourse of human rights NGOs.

In the specific case of women who were victims of human rights violations, especially of sexual violence crimes, another issue was their self-identification as victims. These crimes, which are also perpetrated against girls and adult women in times of peace, are not perceived as human rights violations by women, because women are generally not fully aware of being persons capable of holding legal rights.⁶⁹ Furthermore, and particularly in the case of sexual violence, silence prevails, not only due to feelings of guilt, shame or fear of

stigmatization or rejection by the community,⁷⁰ but also due to the belief that any demands would be useless given the arbitrariness, impunity, corruption and inefficiency of the legal system.⁷¹ Finally, women, facing the loss or disappearance of their loved ones, or experiencing sexual violence within the framework of other human rights violations, often downplay the importance of the violations they have suffered and prioritize the accounts of others. This is how their own suffering becomes invisible even to themselves.

The fact that similar forms of violence against women occur in times of peace seems to have been a major factor in the failure of society in general, and certain state institutions in particular, to identify women as victims. For example, the Peruvian armed forces are extremely reluctant to admit that the massive rapes committed around military bases were crimes, or even blameworthy actions.⁷² It appears instead that the aggravation of sexist cultural patterns is one of the characteristics of war: the body of a woman becomes the territory on which male domination and “virility” are proven, and this is considered a “normal” action by the perpetrator, an action done with the consent of society as a whole.⁷³ In fact, according to a prevailing belief in Peruvian society, the sexual violence that occurred during the conflict was more the collateral damage of war than a human rights violation⁷⁴—and damage of secondary importance, since it does not impair the right to life and affects socially invisible women.⁷⁵

Women’s main motivations to mobilize and call for the state’s attention have little to do with their awareness of being victims of specific crimes or human rights violations. Instead, what forced women to act was the absolute helplessness, vulnerability, and need brought about by the disruption of their life projects by the violence in their daily lives.⁷⁶ Thus, the death and disappearance of a relative translates into abandonment and helplessness for widows and orphans, and detentions and displacements truncate life projects. Women’s demands focus on these types of situations and, therefore, on basic needs. This is obviously related to the fact that the affected population mostly belongs to an excluded, poor sector, for which a “reparation” may represent a first “opportunity” to attract the state’s attention, and is more than just a claim to compensation linked to a human rights violation.⁷⁷ In view of this, it is not surprising that the elements that appear most often in women’s demands include measures related to their own physical or mental health, their children’s education, jobs for themselves and their children, and compensation.⁷⁸ Other demands, which fall within a wider concept of reparations and focus on allowing victims to have a certain sense of closure, include recovering the bodies of their loved ones and burying them, punishing the perpetrators, and explaining the causes of the violence.⁷⁹

In any case, to the extent that victims gained an awareness of sorts about their right to reparations, their claims, prior to and particularly during the life of the CVR, were mainly brought forward by human rights NGOs. In fact, there is a clear difference in both the number and the type of claims made, depending on the level of organization of the women's groups and their proximity to NGOs. The more organized and experienced the groups were, the more reparation measures they demanded; and the more their demanded measures resembled the concept of reparations contemplated under international law, the less they resembled claims for basic services to which all citizens, and not just victims of human rights violations, should have access.⁸⁰ Urban women did not seem to be more prone than rural women to ask for compensation, nor were the latter more prone to demand basic services, since most urban victims or relatives of urban victims actually live in marginal areas, where the lack of basic services is almost as critical as in rural areas.

The CVR, which was initially assigned the mandate of articulating reparation proposals for the victims, went through several structural changes during its life. It was not until January 2003, as part of a general restructuring of the commission for the last phase of its work, that reparations received specific attention—along with other issues falling under the CVR's mandate—and the Comprehensive Reparations Proposal Group [*Grupo de Propuesta Integral de Reparaciones*] (GPIR) was created. This group, an integral part of the CVR, was made up of one executive director, one operations coordinator, and one researcher, whose competences were to be complemented with external consultants when necessary. The GPIR's objective was to formulate reparation recommendations that would ultimately adopt the form of a comprehensive reparations plan.

The CVR used a gender-based approach in its work,⁸² which involved examining how political violence affected the lives of men and women differently, as well as the roles played by each gender. In its research, the commission also acknowledged and studied the discrimination against and invisibility of women during the conflict. In doing this, it mainly focused on the analysis of human rights violations, making efforts to get women to testify about their experiences and the violations they had suffered. This was done through a communications strategy specifically targeted at these women, which was facilitated by mixed teams of male and female interviewers.⁸³ However, the group working on women's experiences during the conflict gave the GPIR no specific guidelines and, consequently, the latter was not in a position to mainstream gender issues in its approach to reparations.

In preparing its reparation proposals, the GPIR sought to encourage a

process of open dialogue between its technical team and human rights NGOs and victims organizations. The process also benefited from the contribution of national and international experts in the field of reparations, but not specifically gender. Together with human rights NGOs, a series of workshops were organized to hear proposals and priorities from victims organizations. Also, regular meetings were held with human rights NGOs to discuss the progress of reparations proposals. Civil society proposals were systematized, reviewed, assessed, and discussed in the meetings. Finally, a national consultation was conducted, in which hundreds of representatives of affected persons—men and women—participated. All this was used as input in the design of a final proposal for a Comprehensive Reparations Plan (PIR-CVR). One concrete result of this participatory process was the addition of an education program, which had been expressly requested by youth organizations from the areas most affected by the conflict. The process also enabled affected persons to have a sense of ownership of the plan, and to support and defend it. However, throughout this consultation process, the GPIR's approach to gender issues was limited to organizing workshops described as having a "gender focus," which simply meant they were aimed at men or women only, as opposed to others that were open to both.

It was not until after the CVR's work was concluded, and thanks to the visibility that its final report gave to women's experiences during the conflict, that a few major feminist organizations began working on the issue.⁸⁴ Nor was it until this time that efforts were made to open direct communication channels between the executive branch and victims organizations.⁸⁵ Nevertheless, it should be noted that, once the CVR's work was finished, the legal framework related to reparations (the policy framework, the multiyear program and the recently approved PIR law) was developed without adequate dialogue with civil society, including human rights NGOs, feminist organizations, or victims/relatives organizations. Moreover, none of the mentioned documents was developed with a gender-based approach, and the only relative and concrete step forward is that the law includes rape among the crimes to be repaired.

ENGENDERING REPARATIONS: THE POTENTIAL FOR TRANSFORMATION

DEFINING THE VIOLATIONS THAT TRIGGER REPARATIONS

The CVR adopted the following definition of victim for purposes of its PIR: "All such persons or groups of persons who, due to or by reason of the domestic armed conflict affecting Peru from May 1980 through November 2000, have

suffered acts or omissions that violate International Law on Human Rights.”⁸⁶ This neutral wording, which may be intended to provide a more inclusive and extensive definition of victim, makes it impossible to adequately reflect the specific victimization experiences of men, women, boys and girls.⁸⁷

The presidential decree that created the CVR mandated it to focus its work on murders and kidnappings, forced disappearances, torture and other serious harms, violations of the collective rights of the Andean and native communities and other crimes and serious violations of rights of persons, provided they were attributable to terrorist organizations, state agents, or paramilitary groups.⁸⁸ For the purpose of giving consistency to the work of its different teams, the CVR’s interpretation and development of this basic list of crimes and human rights violations relied on customary international law and human rights and humanitarian law treaties (Article 3 common to the Geneva Conventions and the Additional Protocol II) signed by Peru, as well as on international criminal law.⁸⁹ Within this framework, the CVR defined a series of acts as crimes against humanity and systematized them into a list of nine types of serious crimes: murders and massacres; forced disappearances; arbitrary executions; torture and cruel, inhuman or degrading treatment; sexual violence against women; due process violations; kidnapping and hostage taking; violence against boys and girls; and violations of collective rights, understood as forced displacement.⁹⁰ These crimes and human rights violations are defined and reviewed in detail in Volume VI of the *IFCVR*.

The CVR understands torture as “intentionally causing pain or acute suffering, both physical and mental, to a person who is under the custody or control of the agent.”⁹¹ Cruel, inhuman, or degrading treatment is defined as “practices seeking to arouse in the victim feelings of fear, distress, and inferiority, as well as humiliation and degradation, regardless of whether used as intimidation method or for personal punishment, to intimidate or coerce, as punishment or for any other reason based on any type of discrimination or for other purposes.”⁹² Within this framework, the CVR includes acts such as forced nakedness, molestation, beating the genitals, and rape (of both men and women).

Although it includes forms of sexual violence in the definition of “torture or cruel, inhuman or degrading treatment,” the CVR also devotes a special section to sexual violence against women. It understands sexual violence as “performing an act of sexual nature against one or more persons, or having this/these person/s perform an act of sexual nature through force or threat of force, or through coercion, such as that caused by fear of violence, intimidation, detention, psychological oppression or abuse of power upon the person/s or another person, or taking advantage of a coercive environment or of the inability of

the person/s to consent on a voluntary basis.”⁹³ This concept covers different forms and related acts, such as forced prostitution, forced cohabitation, sexual slavery, forced abortion, forced pregnancy, forced nakedness and rape.⁹⁴ The list of acts or omissions violating international human rights law regulations recognized in the PIR-CVR as crimes to be repaired basically matches the CVR list, with a few variations.⁹⁵

A critical comment should be made about the fact that in the PIR-CVR the term “torture” is used instead of “torture and cruel, inhuman or degrading treatment,” although these forms of violence are described in other chapters of the *IFCVR*. Furthermore, the term “rape” is used instead of “gender violence” or even “sexual violence,” categories that go beyond rape and relate to other forms of violence aimed at women or having a differential impact on women, which were also described in other chapters of the *IFCVR*, such as forced abortion, forced cohabitation, forced contraception, forced domestic labor, sexual slavery, sexual molestation, sexual mutilation, and so on.

There are several practical, conceptual, and ethical reasons why the list of crimes to be repaired failed to reflect the complexity of the crimes and secondary damages suffered by women and girls during the conflict. Some of these are as follows:

- The CVR’s database and interview forms were the first technical tools designed to collect testimonies shortly after the CVR was established. They were designed before the legal team worked on the list and definitions of the crimes on which the CVR’s work would focus (in addition to the guidelines set by the presidential decree creating the commission); before the gender team was created and was able to identify specific, gender-based violations; and before the GPIR was created and was able to identify its needs in terms of information on victims and relatives for the purposes of designing the reparations plan. Consequently, although the individual interview form included space for interviewees to state their expectations, such space was placed at the end of a relatively long interview and was not linked to any of the commission’s specific objectives (only “expectations” were requested). Moreover, such expectations were not included in the database. All this limited the potential development and use of the information and, in particular, made it impossible to conduct a thorough analysis of its content. This is also why the database only shows the cases of women victims of rape, but fails to include, in a systematic manner, other forms of violence suffered by women or the effects of rape (miscarriages,

pregnancies, or sexual diseases, etc.). Neither does it contain systematic data on the victims' relatives, the number and age of widow/ers and orphans, the number of victims suffering disabilities as a result of human rights violations, socioeconomic data on the victims, data that may enable "profiling" beneficiaries, and so on. Eventually, this made it impossible to add other forms of gender violence or to design a reparations plan more suitable to the reality of the violations and the victims.⁹⁶

- In general, communication among the CVR's work teams was poor. The teams researched and prepared proposals while working in parallel, which prevented the progress of some groups from benefiting from the work of other groups. Poor internal communication and deficient cross-distribution of the findings of different CVR work areas prevented, for example, the GPIR from making thorough use of studies on crime and violation patterns, and, particularly, of the analysis of gender violence and its aftereffects.
- The inclusion of a gender-based approach in the CVR's work was reflected in its research methods, communication strategy, and testimony-collection methods, but not necessarily in specific guidelines to add a gender approach to the work of the teams dealing with the commission's recommendations.⁹⁷ Another problem was the fact that the GPIR was created rather late, at a time when the gender team was already saturated with work and in the final phase of drafting the chapters on sexual violence and the differential impact of violence.⁹⁸ Thus, although some serious gender-based work, related to the investigation of facts, was conducted within the CVR and reflected in those two chapters of the final report, the situation described above led to the lack of a real, overall mainstreaming effort; consequently, the PIR repairation recommendations did not echo the work on gender violence other than in a rather superficial manner, that is, by including rape among the crimes to be repaired.
- A permanent topic of debate among commissioners regarding the crimes to be repaired was the possibility of proving violations, which made it difficult to include several forms of torture and cruel, inhuman, or degrading treatment, as well as several forms of sexual violence and/or their secondary damages. Obviously, rape is not easy to prove. However, the fact that rapes were so widely documented by the CVR's gender team in the report influenced the commissioners, who,

eventually, decided to include rape in the list of crimes to be repaired.⁹⁹

- Discussions on reparations in the commission's plenary session were always tinged with a pragmatic discourse of political and financial feasibility, and this resulted in a narrower and more "conventional" definition of the crimes to be repaired with an emphasis on those violating the right to life.

The recently approved law establishing the PIR basically follows the CVR's proposal and, in Article 3, states that "the persons or groups of persons who suffered acts or omissions violating human rights standards, such as forced disappearance, kidnapping, extrajudicial execution, murder, forced displacement, arbitrary detention, forced recruitment, torture, rape or death, as well as the relatives of dead or disappeared persons, are considered victims." Like the PIR-CVR, this law acknowledged torture, but not cruel, inhuman, or degrading treatment, and rape, but not other forms of sexual violence. The fact that it only refers to torture and rape constitutes a failure to adequately recognize the set of violations and damages suffered by women; it leaves legal access to reparation in such cases to an eventual expansion of the list of crimes in the law's regulations, or to legal actions that the victims might undertake and that, in any case, would need to meet higher standards and much more complex requirements.

Furthermore, violations perpetrated on boys and girls,¹⁰⁰ such as child abuse or harassment, may be understood as being included within wider categories, mainly torture or rape, although they were not specifically defined as crimes to be repaired by either the PIR-CVR or the law creating the PIR. There is, however, the risk that the actual recognition and inclusion of such violations as "to be repaired" will depend on the subjective views of those enforcing the PIR, as well as on the more or less broad definitions contained in the regulations to implement the law.

Based on international human rights law, and seeking to respect the principles of nondiscrimination, equity, and equality before the law, the PIR-CVR recommends treating all victims equally, regardless of whether they are victims of acts committed by state agents or insurgent groups.¹⁰¹ In another section, the CVR report repeats that "the status of victim of a violation does not depend on who the perpetrator was or whether the perpetrator of the violation has been identified; such status is also independent of any relationship there may be or have been between the victim and the perpetrator."¹⁰² Although

positive in principle, this recognition will have only a limited effect on women and girls, since most perpetrators of rape were in the armed forces and the police, while the crimes mostly committed by SL and MRTA—forced abortion, forced contraception, forced marriage, forced labor, sexual slavery, and so on—have not been included in the PIR-CVR as crimes to be repaired.

However, the PIR-CVR introduces an asymmetry between members of the state forces and those of insurgent groups, by stating that the latter cannot be considered victims and/or beneficiaries if they have suffered a violation in a combat situation.¹⁰³ Since women were more prone to join SL or MRTA than the state forces, this may have a negative impact on the recognition of women as victims, especially given the widespread resistance in Peruvian society to recognize any type of right for members of insurgent groups, regardless of whether or not they were victims of human rights violations. This resistance has been embraced by the law creating the PIR, which states in Article 4 that “members of insurgent groups are not considered victims and, therefore, do not qualify as beneficiaries of the programs to which this Law refers,” even though they may have suffered a violation of their human rights, which is a breach of the principle of legality and equality before the law.

DEFINING BENEFICIARIES OF REPARATIONS

According to the CVR, a beneficiary is an individual who will receive some type of symbolic and/or material, individual and/or collective benefit¹⁰⁴ because he or she has been a victim of a human rights violation, such as forced disappearance, kidnapping, extrajudicial execution, murder, forced displacement, arbitrary detention, forced recruitment, torture, or rape. The concept of beneficiary adopted by the CVR, however, goes beyond “direct victims”¹⁰⁵ to take into account “the specific nature and consequences of each type of violation or act leading to reparations, the context in which the victims currently are, and the potential reach of each measure.”¹⁰⁶

Thus, the status of beneficiary is granted to the relatives of dead and disappeared persons, with relatives including spouse or partner; children, both legitimate and illegitimate; and parents.¹⁰⁷ All relatives, as proposed by the CVR, will qualify as beneficiaries for all benefits, except in the case of compensation, in which, as discussed below, a priority order is proposed. The CVR’s proposal seeks to go beyond the Peruvian law of succession, which provides that the property of the deceased goes first to the children and the surviving spouse or partner, and, if there are no children, to the parents. Clearly, the commissioners preferred that all relatives qualify for benefits, as a form of acknowledgement for the mothers who had fought over so many years for truth and justice.

Furthermore, the CVR “recommends not to exclude other claimants from enjoying this status; such claimants will have to prove their status as beneficiaries by submitting evidence of a dependency relation similar to a family relation with the dead or disappeared person, according to the customs or customary law recognized by the community to which the claimant belongs.”¹⁰⁸ The CVR thus tries to go beyond the Western-type notion of family unit considered by the Peruvian Civil Code to recognize the notion that prevails in the high Andean and jungle communities, and the impact that violence may have had on such family relations. In fact, in such communities, the concept of family covers various types of relations that go beyond consanguinity. Moreover, violence forced families to spread out in order to protect themselves, relying on relatives or neighbors, which created new dependency ties.¹⁰⁹

Finally, recognizing that the armed conflict violated the rights of still other persons, and guided by humanitarian reasons, the CVR proposed granting the status of beneficiaries, for the purposes of some specific reparation measures, to the following:

- Children of rape;
- Persons who, as minors, were members of a Self-Defense Committee;
- Persons unduly convicted of terrorism and treason;
- Persons who became undocumented individuals due to the conflict.¹¹⁰

These additional beneficiaries, whom the CVR does not describe as victims, together with the direct victims and family members, make up the universe of beneficiaries according to the PIR-CVR proposal. Unfortunately, this effort to reflect the impact of the violations on a wider group of people is largely limited by the requirement that the main victim be dead or missing. Thus, it does not cover relatives of surviving victims, such as relatives of unjustly detained persons, despite the obvious damages that such detentions caused them. Moreover, since most of these relatives are women, a certain gender bias can be identified in the PIR-CVR proposal, particularly considering that many crimes that affected mostly women were excluded from the list of crimes to be repaired, which made it impossible for the women who suffered them to qualify as direct victims. In any case, faced with the difficulty of increasing the total number of beneficiaries, the commission’s plenary session decided that it was up to the surviving direct victim to choose whether or not to enjoy the reparations measures together with his/her relatives.

Nevertheless, the above-mentioned additions and qualifications to the concept of beneficiary should be valued positively, even if they inevitably increase the complexity of the PIR-CVR’s implementation. They also should

make it possible for benefits to reach a larger number of women. For example, civil or religious marriages are far from representing the majority of marital unions in Peru. There are many de facto unions, and many dead or missing men had two partners. Women are also overrepresented among those lacking identity documents, so the inclusion as beneficiaries of those who became undocumented individuals due to the conflict is important for them.¹¹¹ In addition, the inclusion of children of rape as beneficiaries of educational and economic reparation programs was designed to compensate for the situation of abandonment, vulnerability, and higher financial burden in which their mothers generally found themselves.¹¹²

The law creating the PIR largely follows the CVR's proposal, except that, in line with relevant international case law, it considers relatives of dead and missing persons as victims and not only as beneficiaries.¹¹³ According to the law, individual beneficiaries are: "a) relatives of disappeared or dead victims, including spouse or partner, children and parents of the victim; b) direct victims, including displaced persons, innocent persons who have been imprisoned, persons who have been tortured or raped, and persons who have been kidnapped. Members of the Armed Forces and the National Police are also considered direct victims, as are members of Self-Defense Committees and public officials if they were wounded or injured during acts violating Human Rights from May 1980 to November 2000; c) indirect victims, including children of rape, minors who belonged to a Self-Defense Committee, persons unjustly charged with terrorism and treason, and persons who became undocumented individuals."¹¹⁴ Hence, the new law is subject to the same gender-relevant considerations as the PIR-CVR proposal.

DEFINING BENEFITS

The PIR-CVR is characterized by its comprehensive nature. It combines individual reparation measures with collective measures, as well as symbolic and material reparation measures. It is made up of six programs: the Symbolic Reparations Program, the Health Reparations Program, the Educational Reparations Program, the Citizen Rights Restoration Program, the Economic Reparations Program, and the Collective Reparations Program.¹¹⁵ This section will briefly examine each of them.

The objective of the Symbolic Reparations Program is to contribute to rebuilding the social ties that were broken by violence, both between the state and the people, and among the people themselves, through public recognition of the damages inflicted by the acts of the insurgent groups, and the acts

and omissions of the state. The proposed components and measures should be implemented by the state at its various levels: public gestures (messages to the nation supporting the IFCVR, individual letters of apology to victims and relatives, public ceremonies to affirm the truth); acts of acknowledgment (declaring a “national day to honor all victims of the internal armed conflict,” publishing a press insert with the full list of those unjustly detained, publicly acknowledging civil authorities and social leaders who were victims of violence); monuments or places to keep memory alive; and actions promoting reconciliation (changing or giving new meaning to symbols associated with violence).

The Health Reparations Program seeks to contribute to the restoration of the mental and physical health of the population affected by the conflict, the rebuilding of social support networks, and the strengthening of personal and social development capacities. For these purposes, the CVR recommends: comprehensive recovery through community involvement (rebuilding community support networks and creating community spaces based on the identification of specific issues of women’s mental health, valuing their role in the recovery process both at the personal and community levels) and professional medical care; access to health through access to comprehensive health insurance; and promotion and prevention programs, as well as education, communication, and awareness-raising actions on the aftereffects of violence and their impact on current social issues.

The purpose of the Educational Reparations Program is to facilitate and provide new or better access to those persons who, as a result of the conflict, missed the opportunity to receive adequate education or to complete their studies. Recommendations include: tuition and accommodation grants; full scholarships for higher and technical study programs; and literacy and special extracurricular programs aimed at enabling people to complete their primary and secondary studies, taking into account cultural and linguistic differences. The Citizen Rights Restoration Program aims at enabling the affected population to regain the full and effective enjoyment of their civil and political rights, and seeks their legal rehabilitation. The CVR’s recommendations include: regularizing the legal status of missing persons and of those unjustly charged; annulling unjust criminal, legal, and police records; and regularizing the status of undocumented individuals.

The objectives of the Economic Reparations Program are to contribute to the victims’ and their relatives’ ability to plan their lives, and to secure their well-being and a dignified future. For this purpose, the CVR recommends providing economic compensation for moral and material damages suffered due

to the conflict through pensions and/or indemnifications. It also recommends reparations in the form of services, including preferential access to state-funded housing and employment programs.

Finally, the Collective Reparations Program seeks to contribute to the reconstruction and consolidation of communities and settlements that lost their social and physical infrastructure due to the conflict. In this case, the CVR recommends: promoting institutional consolidation; recovering and rebuilding production infrastructure; and recovering and expanding basic services and income-generation capacities.

Although the CVR saw the plan as an adequate and dignified way of responding to the complex nature of the damages caused by the conflict (damages that had affected the victims morally and materially, on both an individual and collective basis),¹¹⁶ it ultimately emphasized individual reparations.

Be it as direct victims, as relatives or as members of a collective beneficiary, women should have access to the whole array of measures proposed by the PIR-CVR. However, no reparation measures are exclusively designed for women, including reparations for rape. The programs simply do not mention the gender of the beneficiary, and measures are not proposed exclusively for men or women, with a few very specific exceptions. Such exceptions include the public gestures component in the Symbolic Reparations Program, as the CVR provides that “all [public gestures] should devote significant time to explain the facts and abuses that occurred in homes or communities, at army barracks or prisons, which were a direct outrage against the sexuality, honor, and dignity of women”;¹¹⁷ likewise, the CVR highlights the importance of including on the lists those women who assumed leadership roles during the conflict as part of the acts of acknowledgment.¹¹⁸ There were discussions at the commission’s plenary session regarding both rape and the concept of widow/er, for the purpose of defining beneficiaries, and some spoke of the need to restrict those definitions to women. However, in the end it was decided that the possibility of men qualifying as victims of rape and as beneficiaries of reparations as widowers should be left open.

Except in the Health Reparations Program,¹¹⁹ the PIR-CVR fails to expressly consider the stigmatizing effect of crimes — on both men and women — and the potential stigmatizing effect of receiving individual assistance in contexts where collective or community interests prevail.¹²⁰ In an attempt to protect women, who are often in a vulnerable position within these groups, the CVR sets forth that in the Collective Reparations Program women should be given “preferential treatment in the implementation of measures.”¹²¹ But this principle is not reflected in the participation mechanism proposed to define the

specific content of each component of the program. Moreover, the first component recommended in the Collective Reparations Program, institutional consolidation—understood as devolving and restoring respect, authority and leadership to “traditional organizations”¹²²—may render women invisible, depriving them of the leadership role they played through their organizations during the conflict.¹²³

In the case of economic reparations, the CVR recommended a combination of family compensation and pensions for the relatives of the dead or disappeared; life pensions for the partially or totally, physically and mentally disabled, provided such disability is the result of rape, torture, wounds, or injuries included in the CVR’s list and that occurred during the conflict; compensation for persons unjustly imprisoned; compensation for rape victims, both men and women; and pensions for the children of rape until they reach the age of 18.¹²⁴

Although the recommended amounts were confidentially submitted to the president, and valuation and grading criteria are not included in the *IFCVR*, it is known that discussions in the commission’s plenary session dealt with two elements. On the one hand, the importance of being consistent with domestic indemnification precedents was highlighted, and such precedents were in fact used as compensation caps. On the other hand, emphasis was put on the need to consider the potentially divisive effects of paying large amounts to individuals belonging to very poor communities.¹²⁵ Furthermore, violations were classified according to a scale. Death and disappearances were considered the most serious violations, as they affected the right to life; followed by disability, as it entailed a loss of the ability to generate income; and imprisonment, as it entailed the interruption of a life project. Rape ended up at the bottom of the scale because it was not considered to have any impact on such rights or abilities. This view failed to take into account, however, the potential consequences of rape on the victim’s social status, including rejection by the husband, impossibility of getting married, stigmatization in the community, and so on—all of which can lead to the impossibility of accessing means of livelihood, within the context of a society based on mutual help relations, reciprocity, and gender divisions of labor.¹²⁶ The failure to consider the effects of sexual violence on women’s capacity to have access to a stable income, as well as the fact that compensations—not life pensions—were recommended, is a clear gender bias. This is even more so when the effects are of a reproductive nature, such as unwanted pregnancies, or health related, such as sexually transmitted diseases or sterility, none of which have been taken into account as aggravating elements. Also, children of rape are considered beneficiaries of a pension until they turn 18. Thus, in order for these children to be entitled to a

pension, they must have been born before 1987. This is an instance of arbitrary discrimination and fails to acknowledge the damages done to both mother and child.¹²⁷

The objective of the pensions to be granted to relatives of dead and disappeared persons is to compensate for the economic difficulties caused by the absence of a family member and to provide support in those times when needs are generally most acute, that is, when children are still going to school and when adults are too old to provide for themselves.¹²⁸ However, it may be argued that today very few orphans are still minors and that, because unions take place very early in the communities, a high percentage of women will not qualify for the pension (for which there is an age threshold set at 50 years), even though they are still at an age at which they could restart their life in a productive manner. Furthermore, the pension scheme is based on the assumption that women under 50 are capable of generating enough income to make up for that of the dead or disappeared men, which in many cases seems unlikely, particularly considering that women continue to bear all the family burdens and have nobody with whom to share productive roles. Consequently, for relatives of dead or disappeared victims, the transformation potential of economic reparations basically depends on compensation payments.

According to the compensation scheme, spouses or partners, children and parents are paid a share ($2/5$, $2/5$, and $1/5$, respectively).¹²⁹ Since the children will share in equal parts two fifths of the aggregate compensation, and the parents will do the same with one fifth of it, the distribution model will enable the spouse or partner—generally, a woman—to receive the largest share of the compensation, and thus the financial difficulties caused by the absence of the dead or disappeared relative will be repaired. However, emphasis continues to be placed on a Western notion of the family, which does not necessarily take into account the large number of children common in high Andean or jungle families, particularly given that each extended family member should be treated as a child. In fact, by conceiving family compensations as a fixed amount, regardless of the number of dependants, the share payable to each member is automatically reduced, particularly that payable to children and qualifying extended family members. The alternative of a flexible amount, which would have certainly increased implementation complexity and reparation costs, would nevertheless have been more fair.

Furthermore, a surviving victim is, in all cases, the sole beneficiary, regardless of whether he/she is able to use the reparation or not. The distribution of benefits should then be decided by the victim, at his/her own discretion. Although the possibility of internal family conflicts arising over the decision

on the use and distribution of the money was also taken into account, it was decided that autonomy should prevail over a potential paternalism, understood as excessive intervention in how the compensation is managed. However, it is not clear whether this decision duly considers the interests of women, who often play the role of basic providers of the surviving victims who have lost their self-sufficiency.

Despite the limitations mentioned above, the measures in other PIR-CVR programs, if implemented, could have a transformative effect on the lives of women, both practically and by boosting their self-esteem. This is the case, particularly, with restoring their right to an identity through documents, and issuing declarations of absence due to disappearance, which would enable women to formalize new relations, inherit property, hold title to land, and so on. In addition, if some of the proposed measures effectively reach women—for example, literacy programs or access to higher levels of education (Educational Reparations Program), work training enabling them to improve their abilities, employment or business opportunities (Collective Reparations Program), access to housing and jobs (Economic Reparations Program), and physical and mental health care (Health Reparations Program)—taking into account not only gender but also ethnicity issues, the existing gender gaps could be bridged significantly, helping women to improve their position vis-à-vis their communities, their families and themselves.¹³⁰

The CVR has not explicitly discussed the possibility of understanding reparations as about restoring victims to their conditions in the pre-conflict period, which for many victims in general, and women in particular, would imply returning to a negative situation. The issue has been picked up by human rights NGOs, and criticism has been particularly aimed at the wording in the Citizen Rights Restoration Program; since the victims lacked citizen rights before the conflict, there is nothing to be “restored.” In general, however, it has been pointed out that the CVR wants the PIR to achieve more than “returning to the previous situation”; rather, the goal is to contribute to an improvement in the life quality of the victims and their relatives,¹³¹ thereby implicitly acknowledging that the pre-conflict situation was not fully satisfactory. The PIR makes a clear distinction between the goals of reparation programs and the goals of development or poverty programs, but, unfortunately, it seeks to achieve a transformative effect on the beneficiaries through reparation measures without adequately considering the actual enabling conditions that affect women disparately.

The regulations approved after the completion of the CVR’s mandate have introduced some changes into the scheme designed by the PIR-CVR. Only the

multiyear program, however, develops the content of its reparation programs. Both the policy framework and the law creating the PIR only refer to the axes of state policy regarding reparations, including restoring rights of citizenship, educational reparations, health reparations, collective reparations, symbolic reparations, and promoting access to a housing solution. The multiyear program covers restoring rights of citizenship, educational reparations, health reparations, collective reparations, and symbolic reparations.

Although these documents accept the comprehensive nature of reparations recommended by the CVR, none of them covers economic reparations; this means postponing a state obligation and generating inequality among the victims.¹³² In fact, the state has granted and continues to grant compensations to certain victims under special laws or following international decisions. However, the method of victims resorting to the court system to claim the compensation increases inequality because the court system is not designed to respond to systematic or widespread human rights violations, and is itself not free from discriminatory and racist practices.¹³³ Under such conditions, women—particularly rural, Quechua-speaking women, that is, the most vulnerable sector—are likely to be excluded from access to compensation.

Furthermore, although the multiyear program—the mechanism most likely to be implemented soon¹³⁴—reflects most of the content of the reparation programs proposed by the CVR, it uses a different conceptual framework, as will be discussed below, and excludes the already limited special references to women contained in the measures of the PIR-CVR. This shows its absolute lack of gender sensitivity.¹³⁵ The Multiyear Program does not place emphasis on mainstreaming gender and, in this, departs from the PIR-CVR's proposal, given that the *IFCVR* stated that “the comprehensive recovery of the affected population is linked to other dimensions of its development, such as family, work, identity, culture, social and community participation, and the enjoyment of rights”¹³⁶ and recommended that the PIR be implemented on the basis of five transversal axes,¹³⁷ with one of those being the gender-equality approach.¹³⁸ The fact that the CVR follow-up body itself failed to follow this recommendation leads one to question whether the gender-based approach included in the PIR was anything more than a rhetorical exercise.

In a more general way, the multiyear program document, though repeatedly mentioning the *IFCVR*, emphasizes dealing with the aftereffects of the armed conflict¹³⁹ rather than repairing victims for their individual human rights violations as recommended by the CVR. In other words, the goal is not to respond to specific crimes, but to issues derived from violence, such as loss and/or impairment in the exercise of citizenship rights, loss of abilities and oppor-

tunities for personal development and loss of social, material, and productive capital.¹⁴⁰ Within this logic, whole populations of the affected rural communities have been defined as a target of the program, according to several priority degrees (low, middle, high, and very high), including approximately 246,000 persons.¹⁴¹ This means the entire population of all 562 communities will be covered, regardless of whether they have suffered human rights violations or not.

This logic makes sense in the case of collective reparations, where the beneficiary is the whole group, because the social and physical infrastructure has been damaged. It is in the case of individual reparations that the approach raises questions. For example: What is the point of sending an individual letter of acknowledgment and apology to a person who, though living in a community qualifying for reparations, has not suffered a human rights violation? The need for a specific and differential implementation method, which would ensure that both the implementation agencies and the receiving population perceive the measures as reparation actions, becomes even more obvious when the benefits (such as a scholarship or access to comprehensive health insurance, as proposed by the program) are not directly related to a human rights violation. Otherwise, there is the risk that reparation measures will be confused with development or poverty eradication programs, which would perpetuate the invisibility of the most vulnerable groups of victims, including women. Human rights NGOs have spoken out against this approach on many occasions, arguing that, when the direct relation between violations and reparation measures no longer exists, the reparation plan loses force and sense, and the reparative nature of the gesture—its main goal—disappears. The National Coordinator of Affected Persons Organizations [*Coordinadora Nacional de Organizaciones de Afectados*] (CONAVIP) has asked how beneficiaries of the individual reparation measures included in the program will be identified, and has expressed concern about the false expectations generated by promised measures that may never become reality.¹⁴²

THE CHALLENGE OF GENDER-SENSITIVE IMPLEMENTATION OF REPARATIONS: AVOIDING FORMAL AND INFORMAL LIMITATIONS TO ACCESS

CMAN, the follow-up mechanism on the work of the CVR, which was announced in a speech delivered by Peru's president about the final report,¹⁴³ was created on 6 February 2004.¹⁴⁴ Its initial composition, which reflected an imbalance between representation of the state and civil society, was soon

modified,¹⁴⁵ and now includes seven state officials and four civil society representatives, all of them men.¹⁴⁶ The executive secretary of the commission, a man, was appointed on 4 May 2004;¹⁴⁷ there are two women in his team, which is the source of most of the concrete proposals.

Within the framework of its general purpose, the CMAN has been assigned the following functions: (1) designing a national peace, reconciliation, and collective reparation policy to be approved by the Council of Ministers; (2) coordinating enforcement of specific public policies aimed at meeting peace, reconciliation, and collective reparation objectives; (3) supervising enforcement of the relevant objectives; (4) promoting cooperation within civil society in the achievement of peace, reconciliation, and collective reparation objectives; and (5) establishing and maintaining ties with international human rights agencies in order to obtain technical cooperation. Although its mandate, objectives, and functions are not clearly in line with the CVR recommendations, the CMAN defines itself and is generally considered as “the commission following up the CVR recommendations.” The CMAN thus assumed the CVR-recommended PIR as its reference framework regarding reparations, going beyond the commission’s initial reference, which was limited to “collective reparations.” This is, to a certain extent, reflected in the texts supported by the CMAN, including the policy framework and the multiyear program, which use the concept of comprehensive reparation proposed by the CVR; this concept involves a combination of symbolic and material—though not necessarily economic—reparations, and individual and collective measures. In addition, the law creating the PIR reaffirms the CMAN’s functions in developing plan programs, as well as coordinating and supervising programs for its execution¹⁴⁸ and, expressly referring to the conclusions and recommendations in the CVR report,¹⁴⁹ encourages the CMAN to maintain the said interpretation of the concept of reparations.

It is difficult to know the formal or informal limitations that women could face in their efforts to access reparations because the implementation process of the PIR has not yet started, and neither the CMAN nor the law creating the PIR has developed specific implementation proposals for its programs.¹⁵⁰ However, there are a number of factors that may lead to such limitations, including, among others, women’s higher illiteracy rates and greater difficulties in having direct access to information. Relevant in the specific case of sexual violence are fear of ostracism and stigmatization, as well as shame and feelings of guilt. Other factors, such as mistrust of the public institutions that failed to play a protective role during the conflict, or lack of knowledge and understanding of the state’s institutional structure, may affect men and women alike. All this

should be considered when the time comes to design adequate implementation processes that can be understood by the beneficiaries.

Furthermore, considering the limitations that women have faced when trying to access courts to address human rights violations in general, and rape in particular, as well as the general attitude of court officials, it is easy to identify other trends that could hinder access to reparations in the case of sexual violence. The Office of the Ombudsman [*Defensoría del Pueblo*] points out that in the few cases in which victims of sexual violence have had the courage to file a complaint, they have faced inadequate action by the prosecutor's office due to three main reasons: red tape in the complaint-filing procedures; poor investigation by the prosecutors; and failure to file a formal complaint even when there was sufficient evidence to formally charge the suspects.¹⁵¹ Treating sexual violence this way during peace time, the courts easily normalize it within the context of war. In one concrete example, prosecutors closed a case because the missing person had been found, "forgetting" that this person had been raped.¹⁵² In short, the greatest challenge for sexual violence reparations will be to overcome traditional views of this type of violence held by public officials and society in general. Ultimately, gender-sensitive court proceedings and implementation of individual reparations recommended by the PIR entail the recognition of this violation and the characterization of the affected person as a victim by the state.

The process to qualify for reparations within the framework of a reparations program should be, in principle, more flexible than a judicial proceeding. The idea that, in addition to the testimony of the victim, there is the need for a legal medical examination proving that violence or rape has occurred should be discarded. Any such examination would have to be performed when the crime occurs; it is unlikely that injuries will be found five, ten, or fifteen years later.¹⁵³ The challenge is to accept and have public officials accept that rape leaves not only physical evidence, but that it has consequences for the mental health of the victim, known as "post-traumatic rape syndrome," which may be detected through an adequate psychological examination. Another way of bypassing the evidentiary hurdle would be to reconstruct behavior patterns present in the perpetration of certain violations, such as rape, in order to design an accurate assumptions model.

Another challenge is to create the necessary conditions for women to speak about their experiences. Rape accounts for approximately 1.53% of all human rights violations recorded by the CVR, which shows there is a clear underreporting of such cases. Victims of sexual violence refrain from retelling what they have suffered out of shame, feelings of guilt, and fear of retaliation,

which will no doubt hinder access to reparations unless a significant level of confidentiality is guaranteed.¹⁵⁴ In some testimonies, women do not clearly say whether they were actually raped or were the victims of attempted rape. They often make reference to a rape attempt or threat, or use confusing terms when describing the acts of sexual violence; in particular, they make reference to their “dignity” or say that other women, and not themselves, were raped. Learning to listen to women is key. It requires a complex training and awareness-raising process for the officials in charge, as well as the creation of special and adequate mechanisms, designed with the involvement of the women themselves, in order to provide a suitable response to their demands. In addition, parallel work with the community to which a woman belongs, beginning with its leaders, may prevent her stigmatization after speaking out or reduce the social pressure that may force her to retract her statement.¹⁵⁵

All the above-mentioned factors should be taken into account in designing the victim qualification process. The law creating the PRI calls for producing a unified registry of victims by a reparations council that is to be created.¹⁵⁶ Qualification procedures and required evidence are yet to be defined, since they were not provided for in the IFCVR. The only relevant recommendation made by the CVR is that both the individual victim status acknowledged in its report, and the status that a post-CVR agency (based on the same criteria as the CVR) may grant, should give access to the qualification process and to at least one measure established by the PIR. In addition, the CVR stated that, while previous testimony before the commission facilitates the process, this should not be considered as a prerequisite to qualify as a beneficiary.¹⁵⁷ These proposals by the CVR and the list of victims it produced have yet to be officially accepted by the CMAN, which has not even finished developing the regulations of the law creating the PIR.

GENDER, REPARATIONS, AND TRANSITIONAL JUSTICE : CONCLUDING REMARKS

GENDER, REPARATIONS, AND TRUTH TELLING

The first element of the relationship between Peru’s truth-seeking and reparations processes that stands out is the fact that the CVR’s mandate¹⁵⁸ did not specifically include investigating violations related to gender violence, nor did it take a crosscutting gender-based approach. It was the commissioners themselves who decided to include the gender dimension, using the window opened

by the section on “other serious crimes and violations against the rights of persons” in the mandate, and widening the interpretation of the concept of “torture and other serious abuses.”¹⁵⁹ A team of consultants largely made up of women from academic and feminist organizations was responsible for working on this issue.

Although the gender gap in the mandate itself was therefore solved, in practical terms the task was not free from limitations and, in fact, its ultimate goal was not achieved.¹⁶⁰ The gender approach was confined to two chapters describing the violations suffered by women, and had no major influence on the recommendations, including, as has been discussed, reparation recommendations. Nevertheless, the inclusion of the issue of gender violence in the final report was very useful in highlighting the issue and attracting the attention of both the state and civil society.¹⁶¹ In this respect, there is consensus that the report is both a milestone and a starting point.

The direct participation of victims in truth-seeking processes through their individual statements should also be highlighted. Out of 16,885 testimonies gathered by the CVR, 54% were given by women. The CVR concludes that “women were more willing to speak about what had happened; they felt more the need to tell, to speak out, to weep, to express their pain, to complain,” and also to explain their needs.¹⁶² The mechanisms adopted by the CVR to enable victims, relatives, or witnesses of human rights violations to tell their truth about the facts were not limited to individual interviews, as the CVR also organized public hearings. These hearings covered cases of individuals and institutional players, and included thematic sessions, one of which dealt with political violence and crimes against women. This was intended as an opportunity to listen to the victims and to have their voices heard.

A study conducted after the hearings tried to analyze their immediate effect and their meaning in the lives of the people who had given testimony. Although the study was not conducted with a gender-based approach, it shows that, for both men and women, “participation in the hearings and the feeling that people believed what they were telling is a step towards the reconstruction of a self-image that had been significantly devalued after years of neglect.”¹⁶³ Therefore, providing testimony is part of a process of restoring dignity, of rehabilitation, and vindication that has reparative value in itself.¹⁶⁴ In addition, participation in the hearings was perceived as a way to bring the claim for justice and reparations to the attention of the authorities, and a first step towards the materialization of reparations. However, even though this was a key moment of recognition, the resulting feelings of relief or reconciliation may weaken in

the long term if the expectations stated at the hearings are not met. The study considers that there is the risk that if the recommendations for justice, reparation, and reforms are not followed, many victims will again feel marginalized, frustrated and neglected. The rejection of symbolic reparation measures by some groups of displaced persons that have settled in marginal urban areas, for example, seems to reflect some level of frustration at the state's slow response.

According to the above-mentioned study, "What is key for the victims is not necessarily the public or private nature of their testimony, but the fact of being heard, as well as the type of relation established with an attentive audience."¹⁶⁵ The CVR considered the information-gathering phase of its work as the most important and delicate one: its objectives were not limited to actually collecting information or filling in forms, but included creating an atmosphere of trust for the deponents so that they could tell their stories, and upholding the dignity of the victims, their families, and communities through attentive and respectful listening by the interviewers. Although most CVR teams generally succeeded in providing this type of listening, it is worth pondering the need to provide support before and after the hearings to deal with the feelings and emotions that may arise from reliving traumatic experiences. The design of an adequate environment, suiting the emotional needs of the victims, is necessary for the testimony to have a healing effect.

GENDER, REPARATIONS, AND CRIMINAL JUSTICE

In Peru, there has been no such thing as a perceived choice between criminal proceedings or access to reparation programs. Considering the persistence of the complaints filed by the relatives of the dead and disappeared, as well as the poverty and exclusion of most sectors affected by the conflict, victims and relatives are not likely to be willing to make this choice, especially when such proposals result from political agreements providing impunity. Victims and relatives are much more likely to continue demanding both criminal prosecutions and reparations at the same time. The general understanding is that criminal justice has a reparative effect and that it cannot be dissociated from the reparation process without running the risk that victims feel they are being "bought off."

However, as discussed above, it should be understood that choosing the judicial venue is not easy for victims in general, and women in particular, given the racism, male chauvinism, and discrimination prevailing among court officials, particularly regarding sexual violence.¹⁶⁶ Therefore, considering the general costs of access to the courts for the rural, Quechua-speaking population

living in areas far from any type of state representation, and leaving aside the issue of criminal sanctions for perpetrators, reparation programs are likely to appear more promising than court actions when it comes to obtaining individual reparations.¹⁶⁷

GENDER, REPARATIONS, AND INSTITUTIONAL REFORM

The relationship between reparations and institutional reforms is not consistently understood. Some people consider that measures to restore rights are essential, mainly for women, because they mark the starting point for promoting policies aimed at the exercise of full citizenship and the attainment of more participation and representation.¹⁶⁸ Furthermore, health reparations may foster the adoption of policies that consider violence against women as a public health problem.¹⁶⁹ And some believe that education-related measures may provide the basis for reforms aimed at giving women access to all education levels, as well as for a new culture of respect and values.¹⁷⁰ Other voices argue, however, that the implementation of a reparations plan with a true gender-based approach first requires the modification of certain gender perceptions and this would require institutional reforms before reparations, and not the other way around.¹⁷¹ There is nevertheless consensus that, whatever the sequence of events, the key condition is the existence of a conscious political will to change gender relations.

The CVR's final report proposes a set of recommendations on institutional reforms with comprehensive goals, such as: strengthening and expanding the state's presence while acknowledging and respecting community organizations, local identities, and cultural diversity, and promoting citizen participation; consolidating democratic institutions; reforming the court administration system; and ensuring quality education that promotes democratic values (respect for human rights, respect for diversity, valuing pluralism and cultural diversity) and updated and complex views of Peru's history and current situation, particularly in rural areas.¹⁷² However, almost none of these recommendations refer specifically to gender justice, nor is the set of proposed measures based on a crosscutting approach to gender equality.¹⁷³

More than specific reparation measures, one way to lay the foundations for a gender-sensitive approach to deeper institutional reforms is to continue monitoring and valuing the major social role played by women in the protection and support of their families and communities, in the defense against and resistance to violent actors and in social reconstruction processes. In this respect, while giving visibility to the specific violations suffered by women has

been of utmost importance, women should not be kept in the role of passive victims or in a paternalistic relation with the state.¹⁷⁴ As stated by the CVR, one of the necessary components of “a successful reconciliation process” is valuing women more.¹⁷⁵

POSITIVE AND NEGATIVE LESSONS OF THE PERUVIAN EXPERIENCE

Although the PIR has not been implemented yet, an analysis of the Peruvian experience regarding gender and reparations provides a number of issues worth mentioning for comparison purposes. Among other positive elements are the CVR’s efforts to go beyond the basic list of crimes and human rights violations included in its mandate, and to document not only sexual violence against women, but also the gender impact of other forms of violence. This significant step did not, however, have a clear effect on the design of the CVR’s comprehensive reparations plan for several reasons, including the establishment of a gender and reparations team only after the database and interview form had been developed, and poor internal communication and cross-distribution of findings among different work areas. At the technical level, the team in charge of reparations did not include a gender expert, which was made worse by the absence of specific guidelines from the gender team regarding the incorporation of a gender-based approach in the CVR’s recommendations. Finally, it is unfortunate that internal debates on reparations were tinged by a pragmatic discourse of political and financial feasibility, particularly considering that at that stage of the process, the aim was to issue recommendations for the state, and not to design public policies. All this, to a certain extent, led the PIR-CVR to acknowledge only torture and rape among crimes to be repaired, and to exclude different forms of violations and secondary damages involving forms of violence aimed at women or with a differential impact on women.

However, the inclusion of rape among crimes to be repaired, and particularly among crimes potentially covered by economic reparations, does represent a major step forward, considering the prevailing belief in Peruvian society that rape is a form of collateral damage of war. Furthermore, the fact that the concept of beneficiary embraced by the PIR-CVR includes the family and is based on a culturally appropriate notion of family could make it possible for a larger number of women to qualify as beneficiaries. It would have been much more adequate, however, if the notion of beneficiary relative was not limited to cases where the direct victims are deceased, considering the obvious damages done to the relatives by certain violations that did not lead to the death or disappearance of the direct victim.

It is particularly in the design of reparation measures that more lessons, both positive and negative, can be drawn. Positive elements of Peru's experience in this regard include: first, the comprehensive nature of reparations, which seeks to respond to the complexity of the damages caused by the internal armed conflict, as victims were affected morally and materially, both on an individual and a collective basis; second, the inclusion of reparations for the restoration of citizenship rights, and measures aimed at restoring social networks; and, third, the distribution scheme for pensions and indemnifications among relatives of dead or missing people—though questionable in the age limits recommended. All this should have a transformative effect on the lives of women.

Nevertheless, an analysis of the PIR-CVR reparation programs shows a general lack of sensitivity for the social, family, and community-related reality of women, particularly of rural, Quechua-speaking women who are victims themselves or relatives of victims. The failure to consider the effect of certain violations—particularly rape—on women's social status and on their ability to access state resources, as well as to identify family or community conflicts that may arise upon obtaining reparations—particularly economic reparations—demonstrates the effect of the CVR's gender bias on the PIR design.

Furthermore, the PIR-CVR fails to issue adequate recommendations on the implementation of the reparation measures, not to speak of the need for one sensitive to women's reality. It would have been preferable for the CVR, beyond mentioning a gender-based approach as a crosscutting axis for PIR implementation, to develop specific guidelines to ensure that both the process of identifying victims and beneficiaries and the execution of individual and collective measures are based on the acknowledgment of the existing inequalities between men and women in social, economic, and political processes, and on the creation of conditions to overcome such inequalities. Finally, it is also most unfortunate that the composition of the agencies created after the CVR and in charge of implementation does not reflect a gender-equality criterion. Particularly regrettable is the fact that the regulatory documents issued following the proposed PIR-CVR do not respect its spirit or the meager steps forward taken in terms of recognizing violence against women, the differential impact of violations on women and the need for adequate reparation.

Translated by Sara Costa-Sengera

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- 2 Maruja Barrig, consultant specializing in gender issues, Lima, 2 May 2005.
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- 7 Mercedes Crisóstomo, anthropologist, Pontificia Universidad Católica del Perú, Lima, 9 April 2005.
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- 10 Sofia Macher, former commissioner, Truth and Reconciliation Commission, Lima, 1 April 2005.
- 11 Julissa Mantilla, former Gender Programme head, Truth and Reconciliation Commission, Lima, 3 August 2005.
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- 14 Ana María Rebaza, program coordinator, OXFAM-UK, Lima, 1 April 2005.
- 15 Flor de María Valdez, lawyer at Services Program, Estudio para la Defensa de los Derechos de la Mujer (DEMUS), Lima, 21 April 2005.
- 16 Tesania Velásquez, services program manager, Estudio para la Defensa de los Derechos de la Mujer (DEMUS), Lima, 21 April 2005.

ACRONYMS

APRODEH	<i>Asociación Pro Derechos Humanos</i> (Association for Human Rights)
CAD	<i>Comités de Autodefensa</i> (Self-Defense Committees)
CMAN	<i>Comisión Multisectorial de Alto Nivel encargada de las Acciones y Políticas del Estado en los Ámbitos de la Paz, la Reparación Colectiva y la Reconciliación Nacional</i> (High-Level Multisector Commission in Charge of the State's Actions and Policies Related to Peace, Collective Reparation, and National Reconciliation)
CONAVIP	<i>Coordinadora Nacional de Organizaciones de Afectados</i> (National Coordinator of Affected Persons Organizations)
CVR	<i>Comisión de la Verdad y Reconciliación</i> (Truth and Reconciliation Commission)
DEMUS	<i>Estudio para la Defensa de los Derechos de la Mujer</i> (Center for the Defense of Women's Rights)
GPIR	<i>Grupo de Propuesta Integral de Reparaciones</i> (Comprehensive Reparations Proposal Group)
IDL	<i>Instituto de Defensa Legal</i> (Institute for Legal Defense)
IFCVR	<i>Informe Final de la Comisión de la Verdad y Reconciliación</i> (Truth and Reconciliation Commission Final Report)
INEI	<i>Instituto Nacional de Estadística e Informática</i>
MRTA	<i>Movimiento Revolucionario Tupac Amaru</i> (Tupac Amaru Revolutionary Movement)
PCS	<i>Consejería en Proyectos</i> (Project Counselling Service)
PIR-CVR	<i>Plan Integral de Reparaciones</i> (Comprehensive Reparations Plan recommended by CVR)
REDINFA	<i>Red para la Infancia y la Familia</i> (Child and Family Network)
SER	<i>Servicios Educativos Rurales</i> (Rural Education Services)
SL	<i>Sendero Luminoso</i>

APPENDIX: SAMPLE OF WOMEN'S DEMANDS FOR REPARATIONS

(PREPARED BY THE AUTHOR)

- 1 Individual statements by women who suffered sexual violence collected by CVR (9 statements)
- 2 Individual statements by female victims or relatives of victims collected by CVR (24 statements)
- 3 Demands expressed at workshops with women organized jointly by CVR and HR NGOs (8 workshops)
- 4 Platform of the first national meeting of Women Affected by Political Violence (March 5–8, 1998)
- 5 Platform of the second national meeting of Women Affected by Political Violence (September 8–10, 2002)

TYPE/FIELD	SPECIFIC MEASURES	1	2	3	4	5	MATCHES
<i>Symbolic</i>	Being heard		x				1
	Recognition (of their existence)		x		x		2
	The state should acknowledge and assume its responsibility					x	1
<i>Health</i>	Medical assistance for themselves	x	x	x		x	4
	Specialized medical assistance for themselves (mental health)	x	x	x	x	x	5
	Specialized medical care for orphans		x			x	2
	Health coverage for affected population				x		1
<i>Education</i>	Education for orphans or children of rape	x	x	x		x	4
	Education for themselves, when orphans		x				1
	Education for themselves after detention	x					2
	Bilingual education for affected population about equal opportunities				x	x	2
<i>Restoring rights</i>	Reviewing prisoners' court files				x		1
	Reviewing cases of persons charged				x		1
	Enforcement of law on land for displaced population					x	1
	Granting land titles of community land					x	1

<i>Economic or similar</i>	Help to purchase clothing and food for orphans		x	x			2	
	Expansion of social programs focused on women				x	x	2	
	Jobs for themselves	x	x	x	x		4	
	Capital and loans for small- and mid-sized businesses for women				x	x	2	
	Jobs for orphans	x	x		x		3	
	Jobs for affected population				x		1	
	Fair indemnification	x	x		x	x	4	
	Monthly pension for affected population					x	1	
	Housing for themselves (widows or displaced women)	x					1	
	Housing for affected population				x	x	2	
<i>Collective</i>	Community development through public services and access roads		x				1	
	Agricultural investment programs				x		1	
	Technical/production, organization, and business training programs					x	1	
	Credit programs for agriculture and agribusiness (low interest rates, flexible plans, no guarantees required)					x	1	
<i>Other</i>	Finding and burying bodies of relatives	x	x			x	3	
	Investigating, judging, and punishing those responsible	x	x		x	x	4	
	Explaining causes for violence/the truth	x	x			x	3	
	Respecting and spreading women rights				x		1	
	Awareness campaigns on discrimination against women					x	1	
	Awareness campaigns on domestic abuse and sexual violence					x	x	2
	Training teachers on HR, considering causes and effects of violence						x	1

NOTES

- 1 Truth and Reconciliation Commission [*Comisión de la Verdad y Reconciliación*] (CVR), *Hatun Willakuy: Abridged Version of the Final Report of the Truth and Reconciliation Commission* [*Hatun Willakuy: Versión abreviada del Informe Final de la Comisión de la Verdad y Reconciliación*], First Edition (Lima: CVR, 2004), 436; hereafter, CVR, *Abridged*.
- 2 CVR, *Final Report of the Truth and Reconciliation Commission* [*Informe Final de la Comisión de la Verdad y Reconciliación*] (hereafter, CVR, *IFCVR*), vol. I, First Edition (Lima: CVR, 2003), 73.
- 3 CVR, *Abridged*, 436.
- 4 *Ibid.*
- 5 CVR, *IFCVR*, vol. I, 71.
- 6 CVR, *Abridged*, 442.
- 7 *Ibid.*, 446.
- 8 Presidential Decree No. 065-2001-PCM, 4 June 2001.
- 9 Presidential Decree No. 101-2001-PCM, 31 August 2001.
- 10 Presidential Decree No. 065-2001-PCM, Art. 1.
- 11 *Ibid.*, Art. 2 c.
- 12 Presidential Decree No. 003-2004-JUS, 6 February 2004. Modified by Presidential Decree No. 024-2004-JUS, 25 March 2004. Completed by Presidential Resolution No. 154-2004-PCM, 4 May 2004. Modified by Presidential Decree No. 031-2005-JUS, 7 April 2005.
- 13 Presidential Decree No. 062-2004-PCM, 27 August 2004.
- 14 Presidential Decree No. 047-2005-PCM, 7 July 2005, and annex published on 4 October 2005.
- 15 Ley de creación del plan integral de reparaciones. Law No. 28592, 29 July 2005.
- 16 CVR's figures revealed that 80% of the dead and disappeared are men.
- 17 The *IFCVR* includes a specific chapter on sexual violence against women (vol. VI, ch. 1, sec. 1.5) and another on the gender-differentiated impact of violence ("Violencia y desigualdad de género," vol. VIII, ch. 2, sec. 2.1).
- 18 CVR, *IFCVR*, vol. VIII, 59. See also: Defensoría del Pueblo, ed., *Violencia Política en el Perú: 1980–1996. Un acercamiento desde la perspectiva de género*. Series Informes Defensoriales, No. 80 (Lima: Defensoría del Pueblo, 2004), 59.
- 19 CVR, *IFCVR*, vol. VI, 606–46.
- 20 According to CVR data, it was women who, upon becoming widows and/or to protect their families, led the displacement of communities towards other peripheral areas, such as nearby urban centers, department capitals or the bush, as was the case of the Asháninkas, with the resulting loss not only of livelihood-related property, but also of emotional ties and cultural references. CVR, *IFCVR*, vol. VIII, 93.

- 21 This does not mean that men were not victims of sexual violence in its different forms (in an attempt to feminize and humiliate them). However, figures and testimonies show that women were victims of these types of violations in larger numbers; of 538 cases of sexual violations reported to CVR, 527 involve women as victims. Nevertheless, there are reasons to think that these figures may understate men's real situation, since it is a known fact that many men are ashamed to acknowledge that they have been victims of sexual violence, due to fears of being feminized or considered homosexuals, in the context of a society whose concept of masculinity is based on virility, manhood, and the power to subjugate women.
- 22 CVR, *IFCVR*, vol. VI, sec. 1.5.
- 23 SL imposed upon its members and the communities it controlled a set of rules related to gender roles, relations between men and women, sexuality, family, and children, mainly characterized by authoritarianism, hierarchy, and unconditional obedience to its leaders. The regime imposed by SL challenged order not only in the community, but also in the family. Although women were assigned new roles (women fighters), they continued to be in charge of other tasks, such as cooking or health care. Sexuality was another dimension of life controlled by SL. The CVR received information about forced cohabitations ordered by the party, and women also reported that SL killed women who had sex with army personnel. See: CVR, *IFCVR*, vol. VIII, 72, 75 and 77.
- 24 The CVR reported cases of women who were raped as a form of degradation and humiliation, but also as a method of blackmail, punishment, or retaliation, or to force the women or their husbands, children, or parents to collaborate, provide information, or incriminate themselves. This was a method used both by the state and by insurgent groups to exercise the power they lacked over the other party of the conflict.
- 25 The CVR reports about 70 military bases and 39 police and criminal facilities where there were cases of sexual violence.
- 26 CVR, *IFCVR*, vol. VIII, 95.
- 27 Unfortunately, these experiences normally do not raise any "gender solidarity" because women living alone tend to be perceived as a threat by the rest of the women in the community. Rosa Lía Chauca, Red para la Infancia y la Familia (REDINFA), interview by the author, Lima, 29 April 2005.
- 28 CVR, *IFCVR*, vol. VIII, 98. Just as forced nakedness is experienced differently by a man and a woman, certain types of violations have a different impact depending not only on the victim's sex, but on his/her ethnic origin. For example, for Andean women, the punishment of cutting their hair is an affront to their dignity as women. Also for Andean women, not being able to marry has a particular meaning, since in the Andean world "being two" means belonging to the community and working the land. Asháninka women have painful memories of having been forced by SL to leave their homes during menstruation, because according to their customs they have to stay seated during

- such periods. In Elisabeth Acha, *De la exclusión al reconocimiento. Conflicto armado interno y diversidad de género*. Report prepared for the Comisión de la Verdad y Reconciliación (Lima: Centro para la Memoria Colectiva y los Derechos Humanos, Defensoría del Pueblo, 2003), 15–16. Also Rosa Lía Chauca, interview.
- 29 CVR, *IFCVR*, vol. VIII, 63.
- 30 *Ibid.*, 79. Regarding rape, the underreporting variable should always be taken into account to relativize statistics.
- 31 See also Defensoría del Pueblo, *Violencia política*, 58.
- 32 *Ibid.*, 59.
- 33 CVR, *IFCVR*, vol. VIII, 64.
- 34 For example, 83% of rape victims were rural women, 75% spoke Quechua, 43% had only a primary education, 40% were single, and most of them were 10 to 29 years old.
- 35 CVR, *IFCVR*, vol. VIII, 71–75. See more details in Robin Kirk, *Grabado en piedra. Las mujeres de Sendero Luminoso* (Lima: IEP, Series, Colección Mínima 29, 1993). See also Maruja Barrig, “Liderazgo femenino y violencia en el Perú de los 90.” Paper presented at the conference “Women and Political Transitions in South America and Eastern and Central Europe: The Prospects for Democracy,” Berkeley, 1992.
- 36 CVR, *IFCVR*, vol. VIII, 71.
- 37 *Ibid.*, 69–70.
- 38 The data collected by the CVR show that the main victims of the conflict were men aged 20 to 49, and that more than 75% of them were married or lived with a partner; consequently, it can be said that the main effect of the conflict was that a high percentage of families were left with mothers and wives as the head of the household in areas already characterized by social and economic exclusion.
- 39 In spite of their wide diversity, rural Andean community organizations—or farming communities—can be characterized as political, economic, and social units, based on family ties of several levels, land possession, ancestral customs, and patriarchal domination, placing collective and family interests before individual ones. It was mainly SL’s campaign to “behead” farming communities and to subject them to its revolutionary codes that led to the disintegration of this traditional form of organization. On the changes in women’s space of development, see Isabel Coral, “La mujer en contexto de violencia política,” *Cuadernos CEPRODEP* (Lima: Centro de Promoción y Desarrollo Poblacional, 1991).
- 40 Women’s community organizations, especially the Central Organization of Community Kitchens [*Central de Comedores Populares*] and the Federation of the “Glass of Milk” Committee [*Federación del Comité de Vaso de Leche*], created in the 1970s as a response to the economic crisis and the growing impoverishment of urban low-income sectors, played a leading role in the 1980s and early 1990s. CVR, *IFCVR*, vol. VIII, 66.
- 41 See Barrig, “Liderazgo”; and Cecilia Blondet, “La violencia y las mujeres.” Paper pre-

- sented at the international seminar “La violencia Política en el Perú. Análisis y Perspectivas,” organized by Centro Peruano de Estudios Sociales, Instituto de Estudios Peruanos and Centro Norte/Sur of Universidad de Miami, Lima, 1993.
- 42 According to CVR data, 39% of the dead or missing women leaders belonged to assistance organizations.
- 43 CVR, *IFCVR*, vol. VIII, 67. See also Barrig, “Liderazgo”; and Isabel Coral, “Las mujeres en la guerra: impacto y respuestas,” in Steve J. Stern, ed., *Los Senderos insólitos del Perú: guerra y sociedad, 1980–1995* (Lima: Instituto de Estudios Peruanos, Universidad Nacional de San Cristóbal de Huamanga, 1999).
- 44 See note 25.
- 45 Coral, “Las Mujeres,” 11.
- 46 Ana María Rebaza, “Roles de género y violencia política.” Paper read at the public hearing on the subject organized by the Truth and Reconciliation Commission on “Political Violence and Crimes Against Women” [*Violencia política y crímenes contra la mujer*], <<http://www.cverdad.org.pe>> (accessed 5 April 2005).
- 47 CVR, *IFCVR*, vol. VIII, 60.
- 48 *Ibid.*, 59. See also Defensoría del Pueblo, *Violencia política*, 59.
- 49 Instituto Nacional de Estadística e Informática (INEI), ed., *La Mujer en el Perú*, <<http://www.inei.gob.pe/biblioneipub/bancopub/Est/Lib0039/Ci-12.htm>> (accessed 10 August 2005).
- 50 The gap between rural and urban women tends to widen: female illiteracy in rural areas affects 43 out of 100 women, compared to 10 out 100 women in urban areas. Comparing women with men, the illiteracy rate among the former is much higher. Out of 100 women aged 15 and older, 18 cannot read or write, while the same applies to only 7 out of 100 men. *Ibid.*
- 51 Tesania Velasquez, *Vivencias diferentes: la indocumentación entre las mujeres rurales del Perú* (Lima: Estudio para la Defensa de los Derechos de la Mujer [DEMUS], 2004), 13.
- 52 In 1961, 22 out of every 100 women of working age were economically active; in 1993, 30 of every 100 were. INEI, *La Mujer*.
- 53 *Ibid.*
- 54 Instituto del Tercer Mundo, *Violencia contra la mujer. La institución de la violencia de género*, <http://www.guiagenero.com/GuiaGeneroCache%5CPagina_Pobreza_000372.html> (accessed 25 September 2005).
- 55 Manuela Ramos, *Cifras en violencia sexual*, <http://www.manuela.org.pe/violen_sex.asp> (25 September 2005).
- 56 Instituto del Tercer Mundo, *Violencia contra la mujer*.
- 57 *Ibid.*
- 58 During the 1990s, progress was made in expanding several aspects of the domestic legal framework of women’s rights, among them: a number of discriminatory laws on

sexual crimes that had been effective for more than 70 years were abrogated; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women was ratified; a Women's Commission was created in the Peruvian Congress, initially as a special commission and later as an ordinary commission; the Ministry of Women's Affairs and Social Development was created; a quota mechanism was incorporated into election laws, whereby political organizations are required, among other things, to include at least 30% or 25% of women candidates in their congressmen or local legislators lists, respectively. See Lisbeth Guillén, "Autoritarismo y derechos de las mujeres: ¿una década perdida?" *Una experiencia Institucional y Política, 1998–2001* (Lima: Calandria, Centro de Estudios para el Desarrollo y la Participación, Centro de Estudios Sociales y Publicaciones, Manuela Ramos, 2001).

- 59 A front called the Union of Women for Democracy [*Unidad de las Mujeres por la Democracia*] was created by a wide range of organizations: Movimiento Amplio de Mujeres, Coordinadora del Vaso de Leche, Comedores Populares, Casas de Refugio para Mujeres Maltratadas, Mujeres por la Democracia, Coordinadora de Organizaciones de Base, as well as members of political parties.
- 60 Catalina Salazar, *Agenda del Movimiento Amplio de Mujeres* (Lima, 4 March 2000), <http://www.apuntes.org/paises/peru/ensayo/mam_agenda.html> (accessed 24 September 2005).
- 61 CVR, *IFCVR*, vol. I, 40.
- 62 The 1990s were marked by human rights and women's rights international conferences, such as those in Vienna (1993), Cairo (1994) and Beijing (1995), and the beginning of gender mainstreaming in international law. Most Peruvian laws on women's rights are related to Peru's participation in the Beijing conference. Furthermore, during this time the policies of cooperation agencies and international financing institutions started to condition their assistance on the incorporation of a gender perspective.
- 63 Jennie Dador, *A propósito del Plan Nacional de Apoyo a la Familia*. Report prepared at request of DEMUS, <<http://www.demus.org.pe>> (accessed 18 April 2005). See also the risks of backward steps by the present administration in connection with sexual and reproductive rights and equal opportunity rights, due to alliances with conservative groups.
- 64 Maruja Barrig, "El cuerpo de las mujeres como campo de batalla." Paper read at the public hearing organized by the Truth and Reconciliation Commission on Political Violence and Crimes Against Women [*Violencia política y crímenes contra la mujer*], <<http://www.cverdad.org.pe>> (accessed 5 April 2005).
- 65 Diana Avila, Consejería en Proyectos (PCS), interviewed by the author, Lima, 15 April 2005; Iliana Estabridis, PCS, interviewed by the author, Lima, 15 April 2005; and Rocío Paz, Asociación Pro Derechos Humanos (APRODEH), interviewed by the author, Lima, 13 April 2005.

- 66 Interviews with Rosa Lía Chauca and Tesania Velásquez, and Maruja Barrig, consultant specializing in gender issues, interviewed by the author, Lima, 2 May 2005. Barrig remembers the case of Georgina Gamboa, who was raped by military officers and got pregnant as a result. The case was used by feminist organizations to fight for the legalization of abortion.
- 67 See Maruja Barrig, “La persistencia de la memoria. Feminismo y Estado en el Perú de los 90,” *Cuadernos de Investigación Social* (Lima: Departamento de Ciencias Sociales, Pontificia Universidad Católica del Perú, 2000). It can also be explained by the women’s ongoing risks and perceived need to protect themselves; interviews with Maruja Barrig and Tesania Velásquez; Mercedes Crisóstomo, anthropologist, Pontificia Universidad Católica del Perú (PUCP), interviewed by the author, Lima, 9 April 2005.
- 68 Rosa Lía Chauca interview; and Ana María Rebaza, Oxfam-GB, interviewed by the author, Lima, 1 April 2005.
- 69 “Regarding the process of constitution of the notion of citizenship in Peru . . . individual and political rights appear to be blurred, if not absent from the concerns and demands of most of the population It seems that Peruvians do not have an extended sense of their ‘right to have rights.’” Barrig, “La persistencia,” 21.
- 70 Interviews with Rosa Lía Chauca and Rocío Paz.
- 71 Rocío Paz interview.
- 72 The following statement made by General (ret.) German Parra on a feminist TV program called *Barra de Mujeres* sometime after the final report was issued is more than clear: “Soldiers had to satisfy their instincts . . . anyway, rural women were used to that because their men do the same to them.”
- 73 This may explain, in part, why the few rape actions filed with the courts yielded almost no results; see Defensoría del Pueblo, *Violencia Política*.
- 74 Rosa Lía Chauca interview.
- 75 Therefore, the inclusion of rape as a crime to be repaired by the CVR was indeed a major step forward—though an incomplete one, as will be discussed below.
- 76 Interviews with Rosa Lía Chauca and Rocío Paz; Ivonne Macasi, Centro de la Mujer Peruana – Flora Tristan, interviewed by the author, Lima, 12 April 2005; Flor de María Valdez, DEMUS, interviewed by the author, Lima, 21 April 2005.
- 77 “When victims see the possibility of having access to education through scholarships or tuition grants, they see such benefits not as their right as victims of the conflict, but from the point of view of their inability to access such benefits in normal conditions because they are poor . . . this widens their possibilities compared to those of an ordinary poor individual.” Rocío Paz, interview.
- 78 See sample in appendix.
- 79 The complex nature of these demands, in the context of reparations, highlights the need to approach transitional justice elements in a comprehensive manner, linking the efforts

- to find out the truth, the development of a historical memory, and the implementation of justice.
- 80 See the results of the two national meetings of women affected by political violence included in the appendix and compare with the results of the individual testimonies. Both national meetings followed a long process of local and regional meetings to which women leaders were invited and in which NGOs also participated.
- 81 Initially, in January 2002, the CVR plenary session created the Aftereffects, Reparations, and Reconciliation Area [*Área de Secuelas, Reparaciones y Reconciliación*], with the general objective of “identifying the aftereffects of violence in different areas of the life of the affected persons and villages, preparing proposals for reparation, reconciliation, and prevention aimed at dignifying the victims of the 1980–2000 violence, and establishing mechanisms to follow-up on its recommendations.” In a second phase, in July 2002, the element of reconciliation was separated and mental health was added to the responsibilities of the said area. It was then redefined as the Aftereffects, Reparations, Prevention, and Mental Health Area. There were no significant changes in its work methodology and objectives.
- 82 CVR, *La perspectiva de género en la CVR*, <<http://www.cverdad.org.pe/lacomision/nlabor/documentoso4.php>> and *Acuerdo de Comisionados*, <<http://www.cverdad.org.pe/lacomision/nlabor/documentoso1.php>> (both accessed 5 August 2005).
- 83 CVR, *Género en la comunicación*, <<http://www.cverdad.org.pe/lacomision/nlabor/documentoso3.php>> (accessed 27 September 2005).
- 84 This is true of, for example, DEMUS, whose involvement in the issues of reparations and criminal justice for women victims did not start until the post-CVR period and was always related to the issue of sexual violence. Tesania Velásquez interview.
- 85 Presidential Resolution No. 325/2004-PCM ordered the creation of a “Registry of Organizations of Affected Persons,” which has not been implemented yet, with the following purposes: to centralize and organize information available throughout the country in a unified database of existing organizations of affected persons, and to set a framework to encourage and facilitate their participation in the definition of policies and actions designed to help them. The Ministry of Health and the Ministry of Women’s Affairs and Social Development also have their own links to organizations of affected persons.
- 86 CVR, *IFCVR*, vol. IX, 156.
- 87 In addition, it may reflect a Western idea of the notion of victim that has nothing or almost nothing to do with the notion accepted within an Andean or jungle community. Tesania Velásquez interview.
- 88 DS No.065-2001-PCM, 4 June 2001, art. 3.
- 89 CVR, *IFCVR*, vol. I, 203–32.
- 90 *Ibid.*, 203.

- 91 CVR, *IFCVR*, vol. VI, 201 and 223.
- 92 *Ibid.*, 201 and 204.
- 93 *Ibid.*, 273.
- 94 *Ibid.*, 273 and 274.
- 95 The violations covered by the PIR-CVR include: forced disappearances; kidnapping; extrajudicial execution; murder; forced displacement; arbitrary detention and violation of due process principles; forced recruitment; torture; rape; wounds, injury, or death caused through breaches of international humanitarian law. CVR, *IFCVR*, vol. IX, 156.
- 96 *Ibid.*, vol. VI, sec. 1.5.
- 97 CVR, *La perspectiva de género* and *Acuerdo de Comisionados*.
- 98 Julissa Mantilla, former CVR Gender Programme head, interviewed by the author, Lima, 3 August 2005.
- 99 Sofia Macher, former CVR commissioner, interviewed by the author Lima, 1 April 2005.
- 100 See on this issue: CVR, *IFCVR*, vol. VI, 425–45. It is interesting to note that in this chapter no major differentiation is made between boys and girls.
- 101 CVR, *IFCVR*, vol. IX, 150.
- 102 *Ibid.*, 156.
- 103 *Ibid.*, 157.
- 104 *Ibid.*
- 105 *Ibid.* The term “direct victim” is explicitly used by the CVR in defining the concept of beneficiary, and refers to the persons who directly suffered the violations considered.
- 106 *Ibid.*, 156.
- 107 *Ibid.*, 158.
- 108 *Ibid.*
- 109 *Ibid.*, vol. VIII, 214.
- 110 *Ibid.*, vol. IX, 159.
- 111 In fact, “Based on existing findings and statistical data, it can be said that undocumented individuals have a specific profile: they are poor and live in rural areas . . . they are mainly women, children and victims of political violence. It is believed that around 31,200 women have no identity document . . . the lack of such document is associated, first of all, with economic barriers; secondly, with administrative barriers, service coverage, and quality; and cultural barriers (discrimination against women and extramarital children) . . . and related to times of political violence, the destruction of civil registries in municipalities is an explanatory factor.” Velásquez, *Vivencias*, 7 and 13.
- 112 It should be noted, however, that women who were forced to have an unwanted child conceived through rape are not considered victims. Only the children are considered beneficiaries of reparation measures. Although the benefits received by these children are likely to bring about benefits for their mothers, the fact that the recognition of women’s victimization is not made explicit is offensive. There are no records of discussions

in the CVR about whether the children or the mothers ought to be granted the status of beneficiaries of economic reparations.

113 Law No. 28592, 29 July 2005, Art. 3.

114 *Ibid.*, Art. 5.

115 CVR, *IFCVR*, vol. IX, 166–206.

116 *Ibid.*, 155.

117 *Ibid.*, 169.

118 *Ibid.*, 171.

119 The program’s guidelines refer to the need to identify “the specific mental health problems of women and [to value] the role thereof in the recovery process at the individual and community level . . . [trying] to prevent stigmatization—avoiding terms such as *raped* or *mentally ill*—or any discrimination by the people of their home towns due to the assistance they receive under the program.” In order to analyze each situation, “the effects on families and interpersonal relationships, as well as on gender relationships” must be identified, emphasizing “any changes or the existence of new problems in the family as a result of the violence.” *Ibid.*, 176 and 181.

120 Experience shows, however, that this issue should be taken into account. Interviews with Tesania Velásquez, Rosa Lía Chauca, Mercedes Crisóstomo, and Rocío Paz. “In the case of the Manta (Huancavelica) community, we found that reparations represent a highly controversial issue that often generates even more division among the population. Reparations can easily lead to speculation and political manipulation. The generalized perception, by both men and women, is that only certain families, mainly those already better-off or having contacts with urban circles, have obtained support. ‘My mother and my mother-in-law have received help and so people stare at us.’” *Estudio para la Defensa de los Derechos de la Mujer*, ed., *Noticias, Remesas y Recados de Manta, Huancavelica* (Lima: DEMUS, 2005), 51.

121 CVR, *IFCVR*, vol. IX, 200.

122 *Ibid.*, 201.

123 Rosa Montalvo, Servicios Educativos Rurales (SER), interviewed by the author, Lima, 3 May 2005.

124 CVR, *IFCVR*, vol. IX, 194–198.

125 The issue of whether economic reparations should be given to individuals in rural communities or whether only collective reparations should be paid was widely discussed. Finally, due to basic equality reasons, the CVR decided not to discriminate between rural and urban communities, adding to the Economic Reparations Program the following statement: “[The CVR] is aware of the risks that economic reparations might pose to the integrity of communities as a result of the creation of unwanted asymmetries or privileges among their members. Therefore, it recommends that if beneficiaries of economic reparations who live in native or high Andean communities do not accept the family

or individual compensation, their compensation will be added to the collective reparations to be granted to their communities under the Collective Reparations Program.” Ibid, 198. This statement, though partly positive, could lead to women being subject to great pressure to give up their compensation in favor of the community.

126 CVR, *IFCVR*, vol. VIII, 100.

127 Rosa Montalvo interview.

128 “The CVR recommends the following... b) to create a life pension for widow/ers older than 50; younger widow/ers will be eligible to receive this benefit when they reach the age of 50; c) to create a pension for children until they reach the age of 18; the benefit will be paid to the father, mother and/or guardian to cover the needs of the child/adolescent.” CVR, *IFCVR*, vol. IX, 196.

129 “The CVR recommends the following: a) to grant a family compensation, the amount of which is proposed in a written communication to the President of the Republic. The compensation distribution criteria for the relatives of the dead and disappeared proposed by the CVR will take into account the provisions of the civil law of succession, as well as the CVR’s guidelines on the notion of relatives, which incorporates the customs or customary law recognized by the community to which the claimant belongs. Therefore, the CVR recommends that distribution criteria be consistent with the following guidelines:

- The compensation will be mainly addressed to the surviving spouse or partner, who will prevail over the children and parents of the victim. As to the distribution itself, the share of the surviving spouse or partner will not be smaller than two fifths of the aggregate compensation; the share payable to the children will not be smaller than two fifths of the aggregate compensation and will be distributed equally among them; the share payable to the victim’s parents will not be smaller than one fifth of the aggregate amount and will be distributed equally among both parents. If only one parent has survived, the applicable share will be paid to him/her in full.
- However, compensation may be also addressed to other relatives or persons, who will have to prove their status as beneficiaries by submitting evidence of a dependency relation similar to a family relation with the dead or disappeared according to the customs or customary law recognized by the community to which the claimant belongs. For distribution purposes, these new beneficiaries will be considered as the victim’s children.
- If upon granting compensation there is only one beneficiary, such person will receive the aggregate amount of the compensation. If one or more of the categories of beneficiaries mentioned above do not exist at the time of granting compensation, the amount payable to such inexistent categories will be distributed proportionally among the other categories.

- In case of dispute, the decision of the national agency for the implementation of reparations may be appealed to a justice of the peace, who will resolve the issue on the basis of equity principles. This resolution may not be appealed.”

CVR, *IFCVR*, vol. IX, 196.

- 130 Interviews with Rosa Montalvo, Sofia Macher, Ivonne Macasi, Elsa Bustamante, REDINEFA, interviewed by the author, Lima, 29 April 2005.
- 131 CVR, *IFCVR*, vol. IX, 155.
- 132 However, the last section in Article 2 of Law No. 28592 opens the possibility of expanding the content of the PRI through any other program approved by the CMAN, which facilitates a future inclusion of economic reparations.
- 133 Julie Guillerot, “¿Llegaremos algún día a las víctimas?” at Palestra, Pontificia Universidad Católica del Peru’s public affairs portal, <www.palestra.edu.pe> (accessed 20 September 2005).
- 134 The multiyear program has been allocated 10 million soles for 2005 and the president has promised to allocate to it 100 million soles for 2006, while the law has not yet been regulated.
- 135 The PIR-CVR, for example: recommended paying special attention to violations suffered by women in its Symbolic Reparation Program; explicitly considered the stigmatizing effect of crimes in its Health Reparations Program; and proposed giving women preferential treatment upon implementing the measures included in the Collective Reparations Program.
- 136 CVR, *IFCVR*, vol. IX, 163.
- 137 These axes are: psychosocial approach, participative approach, intercultural approach, symbolic approach, and gender-equality approach.
- 138 “The PIR is based on the recognition of the inequalities existing between men and women in the different social, economic and political processes. It fosters a gender-equality approach based on the generation of processes involving both men and women. The gender-equality approach recognizes the disadvantages and differences between men and women with respect to access to resources and making decisions; therefore, it stimulates the creation of special conditions to facilitate the participation and presence of women in decision-making and other PIR-related activities. This approach is guided by the goal of increasing the participation of women in decision-making processes and thus ensuring they have a stronger influence on the general conditions of their situation. At the same time, this approach seeks to generate awareness among the different members of the community about the structural gender differences and inequalities that exist within the community.” CVR, *IFCVR*, vol. IX, 165.
- 139 Appendix to Presidential Decree No. 047-2005-PCM, published 4 October 2005, I-a. Within this aftereffects plan, no special attention has been paid to those suffered by women.

- 140 Ibid.
- 141 Ibid.
- 142 CONAVIP letter to CMAN dated 11 June 2005 titled “Request for Reformulation of Comprehensive Reparations Plan – Multiyear Program 2005–2006.”
- 143 Speech by President Alejandro Toledo on the Report of the Truth and Reconciliation Commission, 21 February 2003.
- 144 Presidential Decree No. 003-2004-JUS, 6 February 2004.
- 145 Presidential Decree No. 024-2004-PCM, 25 March 2004.
- 146 It should be noted that the participation of representatives of various ministries is always subject to ministerial and technical changes, which could eventually enable the inclusion of women.
- 147 Presidential Resolution No. 154-2004-PCM, 4 May 2004.
- 148 Law No. 28592, 29 July 2005, Articles 8 and 11.
- 149 Ibid., Art. 1.
- 150 The multiyear program sets forth the principle that ministries, as well as regional and local governments, will be in charge of execution, but fails to provide specific implementation guidelines for the programs. Appendix to Presidential Decree No. 047-2005-PCM, published 4 October 2005.
- 151 Defensoría del Pueblo, *Violencia Política*, 126.
- 152 Ibid., 99.
- 153 For example, there is the case of Magdalena Monteza. She suffered multiple human rights violations committed by members of the armed forces since the start of her detention on 30 October 1992, including rape, from which she became pregnant. A military court opened an investigation into the facts. One of the key points used to deny the occurrence of rape was the results of different examinations she underwent, which proved the presence of *old* injuries and muscular tearing. The CVR considers that such results in themselves do not rule out the possibility of rape, considering that in 1992 legal medical examinations consisted of external examinations and were focused on the type of examination requested by the competent authorities and the symptoms or references provided by the examinees. In other words, if the authorities requested an examination of injuries, such examination did not include aspects related to sexual integrity, particularly if the examinee failed to report that s/he had been raped. CVR, *IFCVR*, vol. VI, 388. Currently, legal medical examinations of detained persons include specific questions related to possible acts of torture and sexual violence. By interviewing professionals, the CVR learned that the traces in a woman of the first intercourse may disappear in about seven to ten days.
- 154 The law creating the PIR, acknowledging this need, sets forth that benefits will be granted under conditions of speed and confidentiality in order to prevent any type of social stigmatization or of discrimination against beneficiaries. Law No. 28592, 29 July

- 2005, Art. 10.
- 155 Interviews with Tesania Velásquez and Maruja Barrig.
- 156 Law No. 28592, 29 July 2005.
- 157 CVR, *IFCVR*, vol. IX, 157.
- 158 According to Section 3 of Supreme Decree No. 065-2001-PCM, “The work to elucidate the truth to be performed by the CVR is focused on (a) murders and kidnappings; (b) forced disappearances; (c) torture and other serious abuses; (d) violations of the collective rights of the country’s Andean and native communities; (e) other crimes and serious violations of the rights of persons.”
- 159 Sofía Macher interview.
- 160 Interviews with Tesania Velásquez and Sofía Macher.
- 161 Thus, the Ombudsman published a study discussing an approach to political violence from a gender perspective, further developing a paper on forced disappearance files that it had prepared prior to the CVR. In addition, human rights NGOs, such as *Instituto de Defensa Legal* (IDL) and APRODEH, as well as feminist organizations, such as DEMUS, are now working on the justiciability of women’s rape in the context of the conflict, while previously they had focused on forced disappearances or on sexual or reproductive rights, respectively.
- 162 CVR, *IFCVR*, vol. VIII, 65.
- 163 CVR, *El impacto de las audiencias públicas en los participantes*, <<http://www.cverdad.org.pe>> (accessed 6 April 2005).
- 164 Interviews with Ana María Rebaza, Diana Avila, and Rocío Paz.
- 165 CVR, *El impacto*.
- 166 Defensoría del Pueblo, *Violencia Política*, 63, 70, 86, 87, 91, 101, 105, 126. The CVR’s final report also points out that impunity played a role in all cases of rape. *IFCVR*, vol. VI, 302.
- 167 Regarding the relationship between reparations and access to justice, the PIR proposes that all benefits granted should preclude civil liability complaints against the Peruvian State as a jointly liable party and/or as a responsible third party, but not criminal proceedings. CVR, *IFCVR*, vol. IX, 163. In addition, it states that the right of beneficiaries to file actions against the alleged perpetrator should not be limited, but that, if compensation is obtained in a civil court, such compensation should be reimbursed to the state to the extent that there is a duplication of benefits.
- 168 Rosa Montalvo interview.
- 169 *Ibid.* It can already be said that the inclusion in the Health Reparations Program of mental health measures has given new impetus to the development and design of health policies in the field, after years of neglect by the Ministry of Health.
- 170 Interviews with Iliana Estabridis, Rosa Montalvo, Ana María Rebaza, and Rocío Paz.

- 171 Interviews with Diana Avila, Rosa Lía Chauca, Maruja Barrig, Ana María Rebaza, and Elsa Bustamante.
- 172 CVR, *IFCVR*, vol. IX, 123.
- 173 The CVR recommends promoting a literacy plan focusing on teenage and adult women in rural areas, since experience has shown that women's education has a multiplying effect on development. *Ibid.*, 145. In addition, upon referring to the improvement of conditions in prisons in terms of access to basic services (food and health), the CVR expressly mentions women's health. *Ibid.*, 141.
- 174 Interviews with Rocío Paz and Rosa Montalvo.
- 175 CVR, *IFCVR*, vol. IX, 105.

CHAPTER 4

Women and Reparations in Rwanda:
A Long Path to Travel

*Heidy Rombouts*¹

The 1994 Rwandan genocide was one of the cruelest events of the twentieth century. The shooting down of President Juvénal Habyarimana's plane on the evening of 6 April triggered the genocide; however, several factors had contributed to the severe tension that existed at the time between Hutu and Tutsi, two groups that had lived peacefully together in the past. Economic issues and land shortage, as well as different social roles assigned to the two groups by the former colonial power, had contributed to growing cleavages between them.² A crucial element of this severe tension, before and during the Rwandan genocide, was the diabolizing and dehumanizing of the Tutsi by the media and political elite—the blaming of the “other” for social and economic problems.

The events that occurred between April and July 1994 were extremely grotesque and cruel. Hundreds of thousands of Tutsi and moderate Hutu were slaughtered in three months. In addition to firearms, ordinary agricultural tools were used to eliminate the “enemy.” Killings were accompanied by acts of torture and rape. Soldiers and organized militia groups (Interahamwe) led the genocide. Neighbors killed fellow neighbors. While the killings went on, the international community did little to intervene. The United Nations withdrew most of its troops from the UN Assistance Mission for Rwanda (UNAMIR) assigned to monitor the Arusha Accords, and the UN forces that remained were without mandate or means to intervene. All these aspects of the genocide, especially the significant involvement of the national population and the enormous suffering, have consequences for the transitional justice framework that Rwanda installs.

At the same time, the genocide led to a renewed war in Rwanda between the Rwandese Patriotic Front (RPF) and the Rwandan armed forces. In previous years, the Tutsi-dominated RPF, based in Uganda, had regularly attacked Rwanda and its Hutu-dominated regime.³ Once the genocide started, the RPF again invaded. An RPF military victory over the Rwandan government and its army eventually ended the genocide in July. The RPF campaign also caused

high numbers of casualties, and evidence indicates that RPF troops committed crimes against humanity by attacking and killing unarmed civilians. Whereas the genocide against Tutsi and moderate Hutu is widely acknowledged nationally and internationally, however, the crimes committed by RPF forces are not. The current Rwandan regime recognizes only a small number of isolated cases in which RPF soldiers committed such deeds. Nevertheless, authoritative sources indicate a more systematic and widespread character of such rights abuses.⁴ The fact that both sides to the conflict committed crimes against humanity does not diminish the magnitude and significance of the 1994 genocide. It does, however, shed a clearer—and more complex—light on the Rwandan conflict and the functioning of the transitional justice mechanisms.

Unlike in some countries, in Rwanda there has not been one single path toward reparations or, more generally, to addressing the past. The following provides an introduction to the various transitional justice mechanisms that have been developed at both the national and international levels in Rwanda.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

At the international level, the UN Security Council created the International Criminal Tribunal for Rwanda (ICTR). The ICTR has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda, and Rwandan citizens responsible for such violations committed in the territory of neighboring states, between 1 January and 31 December 1994. The tribunal secured international legal recognition of the 1994 genocide.⁵ However, the ICTR is not generally praised: it has dealt with a small number of cases, despite its large budget and staff; and it cannot award reparation or compensation to genocide victims. Victim-witnesses also complain about maltreatment by the tribunal. The fact that the HIV-infected people in ICTR custody receive decent triple drug therapy, while many HIV-infected victims have no access to such treatment at all, further fuels frustrations and astonishment. Victims also feel anger and distrust towards the ICTR because they feel that they have no role to play in its process.

The tribunal's registrar, Agwu Okali, tried, to some extent, to respond to the lack of compensation with a social service program, launched in September 2000, to provide funding to Rwandan civil society organizations. Five Rwandan women's NGOs were involved: Avega, Haguruka, Pro-Femmes, Rwandan Women's Network, and Asoferwa. The assistance was channeled through women's NGOs only because of the context of the first ICTR trial,

in which the tribunal was confronted with many women who had witnessed extreme forms of sexual violence.⁶ In its judgement, the ICTR recognized rape as an act of genocide; and, because of the particular way in which women were targeted during the genocide, the ICTR decided to do something for women in particular. With this funding, Asoferwa built a peace village in Taba (Gitarama);⁷ Rwandan Women's Network built a "polyclinic of hope" to provide some medical assistance to victims of the genocide; Pro-Femmes organized training on trauma; Haguruka provided some legal training sessions on the rights of victims and ICTR procedures; and Avega gave medical and psychological assistance to victims.

In this very indirect way, and beyond its mandate, the ICTR gave some assistance to Rwandan genocide victims.⁸ However, since this program was mostly symbolic in character, it further reinforced the perception among the organizations involved that the ICTR largely ignores the fate of the victims. In fact, many individual victims are not even aware that the ICTR ever launched this type of program.

THE NATIONAL LEGAL APPROACH

At the national level, the Rwandan government opted initially for a strictly legal approach through individual retributive criminal justice, modifying the regular court system somewhat in order to try genocide suspects. The 1996 Organic Law⁹ created special chambers within the existing courts of first instance to deal with the legacy of the 1994 genocide. This law was quite innovative in distinguishing four categories of perpetrators according to their varying degrees of responsibility: first, the masterminds of genocide and those responsible for sexual violence; second, individuals who (intentionally or unintentionally) killed or who injured people with the intention of killing them; third, individuals who committed serious physical assaults without the intention to kill; and, fourth, those guilty of property crimes committed in the context of the genocide. Those who confessed could receive reduced sentences.

The French system of *partie civile*, or civil parties, was adopted by the Rwandan courts; victims could therefore become party to a criminal trial while making their civil claims before the same judge. In this system, when a perpetrator is found guilty, the judge can at the same time award damages to the victims. The Rwandan courts have awarded compensation in several cases, but there was no consensus on an adequate compensation for various violations: similar losses and damages have resulted in very different compensation being awarded by different judges.

In such cases, the Rwandan state is convicted *in solidum* with the perpetrators and is found liable to pay compensation to the victims, since it was also responsible for the genocide.¹⁰ The condemnation of the contemporary Rwandan state is in line with the international legal principle of the continuity of the state. The 1996 Organic Law also determined that an indemnification fund would be set up for the unidentified victims at the time of the trial (see below).

The regular court system had to face an enormous caseload: at one time the number of imprisoned suspects stood at 122,000. Dealing with all these cases would have meant more than 100 years of work. In response, the Rwandan transitional justice process moved from a classical justice paradigm to a new, community-based approach called *gacaca*.

THE LOCAL GACACA APPROACH

Gacaca is a traditional grassroots process of resolving local conflicts. The entire community participates in the process, which is led by elder “*men of integrity*.” Its precise functioning is dependent upon the local community itself. The main objective of traditional *gacaca* was not punishment but the re-establishment of social order.¹¹ In 2001, a *Gacaca Law* was adopted to deal with the genocide caseload.¹² It introduced a whole set of rules and established more than 11,000 local *gacaca* tribunals. In each tribunal, lay judges are seated and referred to as the *inyangamugayo*, or people of integrity. Apart from these lay judges, the entire local population is supposed to participate in the proceedings at the cell level (i.e., the lowest administrative level in Rwanda). In that way, the *gacaca* system is a community justice system. *Gacaca* tribunals are organized according to administrative levels (cells and sectors¹³), and each level has its own competences. For example, the cell level is responsible for the categorization of the perpetrators, and judges only those suspected of property crimes. The national courts of Rwanda remain responsible for category 1 suspects.

In June 2002, a pilot phase of the *gacaca* process was launched in 12 sectors (one in each province). In November of that year, it was launched in 106 additional sectors. Despite the reconciliatory discourse of the national authorities, the 2001 *Gacaca Law* carries the hallmark of retributive justice. Victims and their concerns are given only a secondary role. This is demonstrated by the issue of reparation or compensation. The *gacaca* tribunals at the cell level have to draw up lists of the victims and the damages suffered. According to the 2001 *Gacaca Law*, the tribunals also had to evaluate the magnitude of the damage suffered and determine the amounts to be awarded. An indemnification fund was then supposed to deal with the payments. The tribunals in the pilot

project compiled lists of victims (deceased) and of the damages to (surviving) victims or family members. However, they never reached the phase of awarding compensation; a new Gacaca Law was adopted in 2004, before the pilot tribunals made judgments.¹⁴

The new 2004 Gacaca Law changed the procedure. Under this law, the gacaca tribunals at the cell level have only to determine the lists of deceased victims and the list of damages. These tribunals only consider compensation or a form of restitution for material damages. The 2004 Gacaca Law announces that all other actions to be taken on behalf of victims (e.g., compensation or reparation for the loss of family members, physical and psychological harm) will be dealt with by a separate law—the so-called indemnification fund, which has still not been adopted. In reality, the whole discussion of an indemnification fund for genocide victims has stagnated since September 2002.

THE INDEMNIFICATION FUND

Before September 2002, in the pre-electoral phase, the issue of an indemnification fund [*Fonds d'Indemnisation*] (FIND) had been discussed and two important FIND draft laws had been prepared. There has never, however, been sufficient political will to fully address the issue of reparations.

The 1996 Organic Law first introduced the idea of establishing an indemnification fund to deal with reparation for unidentified victims in the trials of genocide suspects before the national courts of Rwanda. In 2001, a FIND draft law incorporated a different approach to the fund: it would deal with reparations for all victims of the genocide, even if the national courts of Rwanda had already awarded damages.¹⁵ Under the 2001 FIND draft, victims, family members of deceased, and disabled were also considered beneficiaries of monetary compensation. However, in 2002, before the law was formally passed, a new FIND draft was launched. The approach of the 2002 FIND draft was to award one equal lump-sum payment to all beneficiaries, independent of the magnitude of the harms or losses suffered; alternatively, the beneficiaries could receive social services up to the equivalent of the proposed lump sum. At the time of this writing, the FIND draft has not yet been passed.

It is important to see the connection between the FIND drafts and the gacaca tribunals. Under the 2001 Gacaca Law, the lay judges at the cell level were responsible for drawing up the lists of damages and beneficiaries following the scheme in the 2001 FIND law. At that time, it was believed that the FIND would award reparations on the basis of the lists and judgments made by the gacaca tribunals. However, since the 2004 Gacaca Law, the relationship

between the lists established by the gacaca tribunals and the FIND (now the 2002 FIND draft) is somewhat less clear. It still remains possible that these lists will be used by the FIND, if it ever comes into being, as the basis for awarding reparation. Therefore, it is important for victims to appear on these lists. It is also important to realize that the gacaca lists of damages and victims only include genocide victims and the damages suffered because of the genocide.¹⁶ The damages and victims created by the war that simultaneously took place in Rwanda, as a result of the crimes committed by the RPF, are not addressed by the gacaca tribunals. This has led to major frustrations for victims of RPF crimes, especially in northern Rwanda.

THE FARG FUND

Although the Rwandan government does not display a high level of interest in a comprehensive FIND, or even in the reparations debate, in 1998 it did establish an Assistance Fund for Genocide Survivors [*Fonds d'Assistance aux Rescapés du Génocide*] (FARG). Beneficiaries of this fund are the *rescapés*, or survivors, however, and not necessarily all victims of genocide. It is important to understand the difference between the notion of *rescapé* and the notion of victim. Whereas “harm” or “loss” is central to the notion of victim,¹⁷ central to the notion of *rescapé* is the fact of “having escaped persecution,” which is interpreted in an ad hoc manner. For example, an individual who lost a parent was not necessarily persecuted, since he or she may have been abroad at the time of the genocide. This person would be defined as a victim, but not necessarily a *rescapé*. Moreover, in principle, not all *rescapés* benefit from the FARG: in theory (though not always in practice), only the needy *rescapés* would receive benefits.

FARG measures have taken the form of social service packages in several domains, including education, health, housing, and income generation (detailed measures will be discussed below). The 2002 FIND draft proposed to award a lump sum and to abrogate the FARG in the understanding that FARG measures would be incorporated into the FIND as a form of full reparation. Many Rwandan genocide victims who benefit from the FARG claim that this support should not be considered as reparation, but only as a social service to them because they are poor. This is why they oppose the abrogation of the FARG as announced in the 2002 FIND. However, the conceptualization of the FARG as a development program that distributes social services cannot be easily embraced either because not all poor Rwandans receive its support, only *rescapés*. The FARG takes the element of victimhood into account.

OVERVIEW OF RWANDAN TRANSITIONAL JUSTICE MECHANISMS
AND THE STATUS QUO ON REPARATIONS

1994	ICTR
	Created by UN SC resolution 955/ICTR Statute
MANDATE	Prosecution of serious violations of international humanitarian law in Rwanda and neighboring states between 1 January 1994 and 31 December 1994.
REPARATIONS	No mandate to award reparations. The ICTR, however, launched a service program (2000–2001). This program was largely symbolic. It was distributed through five Rwandan women’s organizations. The assistance measures included monetary contributions to the construction of a “peace village,” and psychological, medical, and legal support to women.
1996	NATIONAL COURTS
	1996 Organic Law
MANDATE	Prosecution and punishment of genocide, crimes against humanity, and war crimes committed between 1 October 1990 and 31 December 1994 in the territory of Rwanda.
REPARATIONS	Courts can award damages/compensation and have done so. Rwandan state, if convicted, must pay damages together with the perpetrators. Downside: none of the damages awarded have been paid. An indemnification fund was announced in the law. The aim of this fund was to cover damages for unidentified victims at the time of the trials. In the meantime, the aim of the FIND has been redefined to cover all victims of genocide. However, so far no fund has been created.
1998	ASSISTANCE FUND FOR GENOCIDE SURVIVORS (FARG)
	FARG Law
MANDATE	Providing certain social service packages to the surviving genocide victims (<i>rescapés</i>). In principle the benefits are only for the poor among the survivors.
REPARATIONS	Measures: social services in the areas of education, housing, health, and income generation.
REMARKS	The means of the fund are limited. There are several problems with implementation both in terms of the identification of the beneficiaries and in terms of the measures awarded. The benefits have not only gone to the poor among the <i>rescapés</i> (e.g., education fees have also gone to rich students).

2001	INDEMNIFICATION FUND (FIND)
	2001 FIND Draft
MANDATE	Awarding monetary compensation to direct victims of the genocide and their family members (both of deceased and disabled victims).
REPARATIONS	Measures: scales of sums are determined for each type of loss that deserves compensation (material damages, loss of life and incapacity).
REMARKS	The draft law has never been adopted. The lay judges of the gacaca pilot phase were trained to apply this draft.
2001	GACACA TRIBUNALS PILOT PHASE
	2001 Gacaca Law
MANDATE	Prosecution and punishment of perpetrators of categories 2, 3, and 4; genocide, crimes against humanity, and war crimes committed between 1 October 1990 and 31 December 1994 in the territory of Rwanda. National courts remain competent for category 1 (this includes suspects of sexual violence).
REPARATIONS	Gacaca tribunals determine lists of damages and estimate the damages. The idea is that payment of the damages is dealt with by the Indemnification Fund (FIND).
REMARKS	This pilot phase never reached the stage at which the gacaca tribunals had to estimate the damages to be awarded. Lists of damages and victims were established by the gacaca tribunals in the pilot phase. The FIND has not yet been established.
2002	INDEMNIFICATION FUND (FIND)
	2002 FIND Draft
MANDATE	Award reparations to the genocide victims.
REPARATIONS	Lump sum of 12 million FRW (US\$21,887 ¹⁸), or social services up to the amount of the lump sum.
REMARKS	The draft has never been adopted.

2004	GACACA TRIBUNALS
	2004 Gacaca Law
MANDATE	Prosecution of the perpetrators of categories 2 and 3 (a new categorization of perpetrators was introduced; old categories 2 and 3 were merged into one category 2); genocide, crimes against humanity committed between 1 October 1990 and 31 December 1994 in the territory of Rwanda. National courts remain competent for category 1.
REPARATIONS	Gacaca tribunals establish lists of victims and their damages. The tribunals at the cell level determine the damages and reparation modality of purely material damages. A separate law will be established to deal with other reparation issues—such law (FIND) has up until now not been adopted. Incorporation of a victim definition (and thus of those who are allowed to establish a list with their damages and losses). The definition includes <i>rescapés</i> , those who have lost family members, or have material losses because of acts of genocide.
REMARKS	Less clear relationship between the lists of victims and damages established by the gacaca tribunals and the FIND. The FIND has not yet been established.

Note: compiled by the author

More than ten years after the events, Rwandans have not yet managed to properly deal with their past. The victims of genocide and war in Rwanda face the severe consequences of their victimhood daily because of the lack of appropriate reparations. This chapter studies the gender-specific aspects of victimhood and reparations in Rwanda. In line with the arguments made by Pablo de Greiff about the problematic character of a strictly juridical approach to reparations in cases of mass victimization, the study will focus on the nonjuridical approaches to reparations in Rwanda, namely the FARG and the FIND.¹⁹ However, reparations have been awarded in Rwandan courts, and are thus part and parcel of the Rwandan reparations debate. Therefore, references will be made to the Rwandan court rulings awarding damages for, amongst other crimes, sexual violence. The discussion of the FIND—aiming to deal with reparations in general, including for sexual violence—is necessarily limited to the draft laws that have been developed, since no law on the FIND has so far been adopted. In order to understand the gender dimensions of harms and reparation measures, the experiences of women and gender relations in Rwanda, and how they were affected by the conflict, need to be discussed.

WOMEN, GENDER, AND THE CONFLICT IN RWANDA

GENDER RELATIONS IN RWANDA

Rwanda is a patriarchal society. This influences not only the direct relationships between men and women, but also the social and cultural positioning of women in society. Gender relations have somewhat changed since the genocide, not only because of its direct consequences, but also because the Government of Rwanda (GoR) has seized the post-conflict period as an opportunity to deal with gender issues. Nevertheless, in many instances women remain in weaker and inferior positions to men.

In general, women are not expected to play an important or assertive role in public. In the home, they are frequently key decision makers regarding household management and child rearing.²⁰ Traditionally, women are regarded as dependents of their male relatives, and their role in society is built around their roles as mothers and wives. A study by the International Red Cross (IRC) indicates that most women portray themselves as faithful, available and submissive to their husbands. Women often consider their public role as being limited to safeguarding the husband's public authority.²¹ In the post-conflict period, the GoR has taken some initiatives to establish gender equality by increasing female participation in public life. Progress has been made in political participation: since the 2002 elections, the Rwandan parliament has had the highest number of female representatives in the world. Unfortunately, this number has to be put in the context of Rwanda's political regime, which is still extremely intolerant towards differing opinions. Further, a critical review of women's emancipation in the public domain reveals the Rwandan government's co-optation of strong women — mostly leaders of women's NGOs — leaving these organizations weakened. In general, women's NGOs, like most NGOs in Rwanda, have little room to maneuver. The many women in parliament face similar constraints due to a lack of democratic culture in the current regime.

Before the genocide, women were legally discriminated against in terms of land ownership and inheritance rights. Access to land is crucial in Rwanda, given the importance of subsistence farming in the country. The lack of clear legal land title for women also impedes access to credit. The number of individuals participating in off-farm income-generating activities is generally low in Rwanda, but for women the number is lower than for men.²² For a long time, an important constraint on women's engagement in off-farm activities has been access to education. The most recent Rwandan statistics demonstrate that female illiteracy is still 40.2%, compared to 28.6% for men. The gap between the sexes is much wider in rural areas than in the city of Kigali. With

regard to primary education, the situation is now improving. According to the 2002 Rwandan Census, the percentage of girls in primary school is even slightly higher than that of boys. However, the high ratio of males to females in vocational training after primary school, secondary school, and higher education demonstrates that women still have more difficulty than men in accessing higher education, especially in rural areas (i.e., the large majority of the country).²³ The importance of land for women thus has to be considered in relation to their education and access to off-farm incomes.

Since the genocide, the GoR has tried to address the unequal position of women through several initiatives. The discriminatory inheritance rules, under which women could not inherit, have been changed (Law No. 22/99).²⁴ Women can now become rightful owners of land. In a more general way, the GoR claimed to mainstream gender concerns in all its policies; for this purpose, it has created the Ministry of Gender and Women in Development. The Poverty Reduction Strategy Plan (PRSP), which creates the general development framework, has also attempted to incorporate a gender dimension.²⁵ And the newly adopted 2003 Constitution explicitly underscores gender equality: it stipulates that all decision-making bodies should be composed of at least 30% women.

Despite all these initiatives, however, socially and culturally embedded values and gender notions still influence gender relations in practice. Examples are the lack of accurate application of the inheritance law and the formalistic approach adopted by the law to ensure equality. One of the law's lacunae is that it can only be applied to couples who are legally married. Many couples in rural areas, however, do not get officially married; consequently, many women are still dispossessed from their land after the death of their husbands. Another reason why women do not inherit in practice is that very small land plots are not allowed to be further subdivided. Given the high pressure on land, land plots are very often already too small to make their exploitation productive. If this is the case, the inheritors have to agree upon sale or common exploitation. It is obvious that in such situations, male dominance in society and in the community may still play an important role, despite all formal initiatives for gender equality.²⁶

Apart from the GoR, other actors in Rwanda, such as national civil society organizations, international NGOs, and international donor agencies, have put the improvement of the position of women on their agendas. The international donor community played an important role in raising awareness and funds for gender justice issues in its development initiatives, but it focused less on developing a gender-sensitive approach to conflict. Most women's NGOs in Rwanda are development organizations. A known exception is Haguruka,

which provides general legal support to women and children, and existed even before the genocide. Unfortunately, the advocacy work of NGOs in Rwanda is in general curtailed by the lack of room for political activism: many political opponents are still apprehended.

Despite initiatives to increase women's public participation, their main role remains in the household. The genocide has had an enormous impact upon households. In its immediate aftermath, 70% of the population was estimated to be female and 50% of all households were headed by women.²⁷ According to the most recent available statistics (the census 2002), 35.2% of all households are female-headed. Butare has the highest proportion of female-headed households at 72.8%, which still reflects the consequences of the genocide and its severity in the province. According to the same census, the general living conditions in households run by women are below those run by men. In rural areas, six out of ten households living in dwellings with plastic sheeting or temporary materials are headed by women, and more female-headed households have to draw water from unreliable sources, such as unprotected wells, rivers, lakes, and ponds.²⁸

The weak structural position of women in society has had an impact on the degree and forms of violence women experience, such as sexual violence, both in times of peace and war. Sexual violence against women was common during the Rwandan genocide and remains prevalent in post-genocide Rwanda. Despite the widespread condemnation of sexual violence during the genocide (in legal, judicial, social, and moral terms), women, but also men and children, are still victims of sexual violence in contemporary Rwanda. It remains extremely difficult for victims of sexual violence to speak out because of the shame, guilt and social barriers they experience and encounter. The dependency status of women and many children in the aftermath of genocide makes them specifically vulnerable. The prospects for survival of many orphans were very limited in the aftermath of the genocide, and many of them ended up living with other families. Some of the "adopting" families had good intentions, but others did not and abused the orphans, both sexually and emotionally.

In general, there is a high incidence of domestic violence in Rwanda. Many women receive threats of physical violence, and a study by the IRC shows that 16% of interviewed women had been slapped. Nearly one out of ten women involved in the IRC study complained about sexual intercourse imposed upon them by their partners.²⁹ The same study also indicates that literate, educated, employed women are most affected by community violence—from verbal obscenities, to psychological violence, to physical violence. This suggests that violence has been a tool to oppose women's emancipation.³⁰ Rape of young

girls—at times extremely young girls—is another problem in Rwandan households today. Often, this type of rape is linked to popular witchcraft that praises sexual intercourse with young virgins as a way to purify one's body and get rid of the HIV virus. Men also face risks of sexual violence. In Rwandan *cachots* and prisons, where many suspects are literally packed together, sexual violence has become an important—yet heavily underreported—problem. All these incidents of violence indicate that, although sexual violence during the genocide was severely and publicly condemned, it is still very present in Rwanda today.³¹

WOMEN'S EXPERIENCES DURING THE CONFLICT AND THEIR IMPACT UPON GENDER RELATIONS

The Rwandan genocide was extremely violent and marked by a very high death toll. The crimes that were committed targeted and harmed both men and women in general. Yet, at times women were specifically targeted, and some of the harms or consequences suffered had different impacts upon women and men. Here I will adopt the useful distinction made by Margaret Walker to understand the gender aspects of crimes and harms in the context of the Rwandan genocide.³² Walker distinguishes among several categories (albeit not exclusive ones) of violence and harm. First, gender-normative violence and harm is specifically inflicted upon women (or men) because they are women (or men). Second, gender-skewed violence and harm refers to situations where the burden or effects turn out to largely or disproportionately affect women or men. Finally, violence may also precipitate further losses or multiply the vulnerability of women or men specifically; this consequence-related aspect of gender violence is called gender-multiplied violence and harm. This categorization indicates immediately that gender violence and harm is about more than just sexual violence. For example, the heavy burdens related to female-headed households (resulting from the genocide) are equally important in terms of the gender aspects of the genocide and reparation.

Although gender violence is much broader than sexual violence, sexual violence against women and the cruelty with which it occurred was characteristic of the Rwandan genocide. The exact number of women raped will never be known, but various reports confirm that it was widespread: thousands of women were individually or gang-raped. Rape during the Rwandan genocide was definitely a form of gender-normative violence, as it was especially aimed at the femininity of Tutsi women. Their sexuality was seen as a way to infiltrate the Hutu community.³³ Rape and sexual violence were employed

explicitly to meet the political goal of total destruction of the Tutsi as a group. Hutu women, especially those married or affiliated with Tutsi men, were also targeted, since they would give birth to Tutsi children. Sexual violence during the Rwandan genocide was fueled by ethnic and gender stereotypes, and encouraged by military and political leaders as well as the heads of militia.³⁴ Sexual violence took different forms, including multiple rape, rape by sharp sticks or gun barrels, sexual mutilation (mutilating breasts and vaginas with knives, sticks, boiling water, machetes, etc.), and sexual slavery. Often these horrendous acts were accompanied by public humiliation, such as forcing women to walk around naked like a group of cattle or raping women in the presence of their children.³⁵ Some rapists told their victims explicitly that they had AIDS and that they wanted to transmit it to the women. Infecting women with HIV through rape constituted a multidimensional weapon: the woman was not only raped, but when she gave birth, the survival chances of the child would be limited and eventually she herself would cripple and die. In that way, rape affected motherhood directly.

The consequences of the widespread sexual violence during the Rwandan genocide have included both gender-skewed and gender-multiplied types of harm and violence. Sexual violence caused a lot of trauma, forced pregnancies, health problems, mutilations, infertility, and HIV transmission. Women's organizations claim that, because of the many women who died of AIDS and the lack of treatment, the genocide continued long after July 1994.³⁶ Many women were impregnated following rape, some of them at a very young age. There was no possibility of lawful abortion, as abortion is illegal in Rwanda. In the turmoil of the genocide, many clandestine abortions took place, often leaving women with serious health problems. Other women gave birth to such "unwanted children." The fate of these children differs significantly. Some women rejected their child, abandoned it, or gave it away for adoption. Others are raising their child; some of these women receive support from their families, but others face rejection. It is extremely difficult to record the actual number of children involved, but some sources estimate between 2,000 and 5,000 were born this way.³⁷

Given the importance of motherhood for women in Rwanda, infertility resulting from sexual violence affects them and their position in society greatly. It jeopardizes their chances of marriage. In general, women are deeply ashamed of what happened to them during the genocide. In addition, reporting cases of sexual violence makes women vulnerable to public rejection and also may lower their chances of marriage or remarriage. At times, victims of

sexual violence even feel guilty about what happened to them. This is especially the case for women victims of sexual slavery, who were forced to have sexual intercourse in exchange for their lives. At times, doubt is cast on their lack of consent in those situations. The trauma women suffer is further aggravated by the fear of rejection or even reprisal by the families of the accused.

Aside from being targeted through gender-based violence, women have also suffered great losses because of the genocide. Both women and men have to face immense human loss and physical impairment in post-genocide Rwanda. Yet, the way they experience the losses and cope with the effects may differ. The genocide's high death toll, its organized character, and the cruelty with which it was carried out (use of agricultural tools, involving neighbors, forcing victims to witness their own children's murder, etc.) have created both physical and psychological scars. Many women and men remain traumatized, but psychological assistance has been almost nonexistent in post-genocide Rwanda. Some trauma counselors are available, but their number and training are often unsatisfactory. Further, there is a large taboo around seeking psychological assistance. Women's organizations have contributed to the acceptance of and access to psychological assistance to some extent. For traumatized men, however, the situation seems even grimmer; because of cultural stereotypes, they cannot rely on organizations or networks for psychological assistance. Mostly, they rely on themselves and their families to deal with the psychological scars, but not on (semi)professional help.

The immense death toll of the genocide—with the majority of those killed being men—has also led to some specific consequences for women. In many instances, entire families were slaughtered, leaving only a mother or a few orphans. The huge number of casualties means that many women were left to their own devices after the conflict. A 1998 census determined that the vast majority of the survivors (*rescapés*) were women: 169,304 women compared to 113,500 men.³⁸ Women often became heads of households, often had very few resources available to them, and sometimes even lacked housing or basic shelter. The 1998 census found that 41,731 households were headed by women survivors, compared to 34,568 by men survivors. Many women were left searching for means to survive (food and shelter) for themselves, their children—if they survived—and the many orphans of close family members they were left with, all the while having to deal with multiple traumas.

The impact of the genocide, in which neighbors killed, tortured, and abused neighbors, on the social fabric and norm setting of Rwandan society was enormous. Women facing the huge economic challenges of their newly

composed families had difficulties relying on their neighbors for any kind of assistance because they had problems trusting them. Because of this social distrust, many women moved and resettled elsewhere, although some still had to cultivate their plots of land close to their old homes. Also, in the aftermath of the genocide, the inheritance rules were still guided by customary law (the new inheritance law only came into existence in 1999). Thus, many women had trouble accessing the property of their husband or father, such as land. Rwandan women's inferior public position and their lower levels of literacy and education also contributed to their vulnerability in such instances, limiting their access to public authorities (e.g., going to court to challenge customary law³⁹).

During the genocide, women were not only victims of violence but were also aggressors. Many women—though to a much lesser extent than men—participated in one way or another as perpetrators. Many are currently imprisoned because of their participation, either through killing or torturing, or through informing the killing militia of the whereabouts or shelters of potential victims. These women were also aware of the sexual abuses committed; they were silent witnesses to these gender-related crimes. The African Rights report *Not So Innocent* illustrates that women, and at times even young girls, hacked people to death (mostly women and children, but also wounded people), intimidated victims with guns, looted the living and the dead, pointed out Tutsi or “unreliable” Hutu (e.g., Hutu who tried to save Tutsi), handed over refugees, and even helped co-organize the genocide at high levels. At times, mothers and daughters were partners in crime.⁴⁰ Women's participation in the genocide further complicates cohabitation for surviving women.

Finally, it is worth underscoring that it was not only the Rwandan army and the militia committing the genocide that caused harm and death in 1994. The RPF was also responsible for severe crimes, especially killing of men in northern Rwanda. These crimes have also made many women heads of households and seekers of their loved ones. The challenges they face are mostly the same as the ones discussed above. In addition, however, the crimes and killings committed by the RPF have never been publicly recognized by the post-genocide regime (largely dominated by the RPF). The specific transitional justice mechanisms discussed above (national courts, gacaca, FARG, FIND) do not recognize these crimes or these victims. In the context of gacaca, it is even prohibited to talk about them. This creates a lot of frustration among these victims.

WOMEN'S INVOLVEMENT IN THE ARTICULATION OF REPARATIONS

In the wake of the genocide, many organizations have formed to defend the interests of victims. At times, these victims organizations were lured by the funding that was available in the immediate aftermath of the genocide, when many international donor agencies were eager to find channels to disburse their support to Rwanda. Although the enthusiasm of the donor community has since been tempered, there are still many victims organizations. Their degrees of activism and their methods differ widely. Some organizations, like Association for the Support of Genocide Survivors [*Association de Soutien aux Rescapés du Génocide*] (ASRG) and Ibuka, deal with all *rescapés*.⁴¹ Other organizations focus on a specific group of victims, such as students (e.g., Student Genocide Survivors Association [*Association d'Etudiants Réscapés du Génocide*; AERG]), orphans (e.g., Association of Orphan-Headed Households [*Association d'Orphelins Chefs de Famille*; AOCM]), or widows (e.g., Avega, an organization that unites the widows of the 1994 genocide). Although these organizations generally seek to cover the entire country, most of them have their seat in the capital of Kigali and are little known beyond the city. The situation is different for Ibuka and Avega, which, having set up local committees in many districts, are widely dispersed and known at the local level.⁴² They are also undoubtedly the best-known organizations at the national level and among other civil society organizations. The different government ministries, including the Ministry of Justice, which has dealt with the draft legislations for the FIND, are also aware of these two organizations.

In terms of gender issues, Ibuka and Avega take very different approaches. Some 50 widows of the genocide established Avega in 1995, which has grown ever since. It has no accurate, up-to-date lists of members, but Avega has distributed about 25,000 membership cards throughout the country.⁴³ It focuses on the widows of the genocide and the specific problems they have to face. In the beginning, the daily survival of women, especially those who headed households, was at the core of Avega's actions. At that time, Avega distributed clothes to needy widows, helped them with housing, and looked for funds to support income-generating projects, such as distributing goats to widows. Once the most acute needs were more or less dealt with, Avega became more involved in problems such as trauma and HIV, although the daily survival of widows remains an important field of action. Overall, Avega's main concern has been to provide assistance to its members. It has been less involved in advocacy work, partly due to the urgency of the needs in the Rwandan hills,

but also because of a lack of adequate skills and because of the closed political environment, which has not tolerated great interference with policy making.⁴⁴ Despite this, Avega has been somewhat involved with reparations. Among other victim organizations, it helped distribute the FARG benefits to the *rescapes* in the hills in an initial phase.

No official body or institution has ever been officially charged with the drafting of a reparation policy.⁴⁵ The drafting processes were located primarily at the Ministry of Justice (Minijust), and the participation of others was only informal, mainly based on personal linkages. Despite this, however, Minijust decided to organize consultations with civil society on the first FIND draft;⁴⁶ Avega participated in these consultation sessions and expressed its overall satisfaction with the draft, underscoring the adequacy of a monetary approach to reparation that would enhance the autonomy of victims. Avega also recommended that trauma, rape, and HIV infections should explicitly be recognized by the FIND as relevant harms in order to estimate the degree of incapacity and thus compensation. Further, Avega argued that not only should “legitimate” widows/wives be recognized as beneficiaries, but also “illegitimate” ones.⁴⁷ Although the comments made by Avega were in principle welcomed by Minijust, their impact was extremely small and the suggestion to include illegitimate widows was ultimately rejected.⁴⁸ Furthermore, when the new FIND draft — with a totally different reparation approach — was launched in 2002, Avega was not even informed by Minijust or by Ibuka. Frustrated by this development, Avega believed that reparations would not occur in the short run, and it decided to focus on its distributive activities, which further undermined its advocacy role in the reparations debate.⁴⁹

The ASRG and Ibuka also participated in the consultation sessions organized by Minijust. They supported Avega’s demand to include illegitimate wives and widows as beneficiaries, especially when they are recognized as wives by their families. The majority of the ASRG’s comments, however, regarded the concrete amounts of money specified in the 2001 FIND draft as well as more technical aspects (such as the contributions to be made by Rwandan citizens and the Rwandan government and the composition of the FIND council).⁵⁰ Ibuka also used this technical approach to the 2001 FIND draft, debating the amounts of money to be paid, the indexation of the amounts, the contributions to the FIND, and so on. Thus, general victims organizations such as ASRG and Ibuka paid little attention to the gender-specific dimensions of reparations.⁵¹ Still, their observations and recommendations may nevertheless be important and have a tangible impact on both men and women in Rwanda. The same can be said of the projects and activities undertaken by ASRG and Ibuka, which

have focused on housing, income-generating activities, and education. This is especially so because, when distributing benefits, victims organizations generally claim to favor the neediest, among whom are widows and women in female-headed households.⁵²

The consultation meetings on the 2001 FIND draft, organized by Minijust, were open to many more civil society organizations, such as Pro-Femmes (the collective of women's organizations). Although the presence of these groups displays their generic interest in reparations, their engagement has not gone beyond that. In general, while many members of civil society have underscored the need for reparation for the victims of genocide, they have some reservations about the way the issue is dealt with in Rwanda. The one-sided character of the reparations debate has caused frustration and discontent; only *rescapés* are considered beneficiaries and other victims of the 1994 conflict, such as those victimized by the RPF, are completely forgotten. This one-sided approach does probably partially explain the lack of strong linkages between women's organizations—which are composed of both genocide victims and nongenocide victims—and genocide victim organizations such as Avega. These linkages do not go much beyond the formal membership of Avega in Pro-Femmes.

Beyond this, a more general remark needs to be made. Despite the presence of gender-based violence, especially sexual violence, during the Rwandan genocide, and the gender-specific consequences of the violence, women and girls have not organized on this basis. As explained, Avega's target group is limited to the widows of genocide—it does not include young girls, married women, unmarried women, or widows who were widows before the genocide or became so after the genocide. Even more, widowhood because of the genocide is at times interpreted in a rather strict way. For example, one woman had lost her husband in a refugee camp during the genocide, but the local division of Avega refused to recognize her as a widow of genocide because her husband died in the camp and not as the result of an act of genocide. All women *rescapés* can become members of the general victims organizations, but these are mainly led by male *rescapés* and do not pay specific attention to gender-related violence or consequences of the genocide. The fact that women have not organized around gender-based or sexual violence (one of the major characteristics of the 1994 genocide) is indicative of the shame and social attitudes of rejection related to it. Setting up such an organization or becoming one of its members would involve a much too explicit and public assertion of the experience of victimization. Women in Rwanda prefer not to throw their experience into the public arena; in the gacaca process, the experiences of sexual violence were also not shared publicly. Although Avega deals with sexual violence, its

membership is mostly based on widowhood and does not involve coming out as a victim of sexual violence. Widowhood is a much safer banner for women.

ENGENDERING REPARATIONS

DEFINING THE HARMS THAT TRIGGER REPARATIONS AND THE BENEFICIARIES WHO DESERVE THEM

The harms suffered after the 1994 Rwandan genocide reach far beyond death and physical incapacity, as discussed above. In addition to the trauma felt by all victims, gender-based violence adds to the complexity of dealing with harms and crimes deserving reparation. This section will discuss the harms and crimes that are recognized by the two mechanisms that deal, or aim to deal, with reparations collectively, namely the FARG and the two FIND drafts. This is followed by a discussion of reparations through the national courts. It is important to be reminded that none of the court damage awards has ever been executed, and that none of the FIND draft laws have been approved, let alone implemented. Only the FARG has been established (in 1998) and is, despite its dysfunctions, providing some reparation to *rescapés*.

THE ASSISTANCE FUND FOR THE GENOCIDE SURVIVORS (FARG)

The 1998 FARG Law⁵³ does not focus on specific types of harms done to victims of human rights violations. In describing the beneficiaries for the purpose of its assistance measures, it relies (partially) on general definitions of genocide and massacres. The two most important criteria to qualify as a FARG beneficiary are being a “*rescapé*” and being “in need.” What being in need means is not defined in a specific way; only three cases are mentioned by way of examples: being an orphan, being a widow and being handicapped.⁵⁴ A *rescapé* is described as a person who escaped the genocide or the massacres committed between 1 October 1990 and 31 December 1994. The FARG law does not provide legal definitions of genocide and massacres; it only refers to the element of intent. The law explicitly states that the genocide and the massacres were aimed at exterminating individuals and destroying their goods because of their ethnic belonging or because of their opposition to the genocide. On the one hand, this means that both Tutsi and Hutu can benefit from the FARG. Tutsi were mainly killed because of their ethnicity⁵⁵ and Hutu were mainly targeted because of their political opinions opposing the genocide (the so-called moderate Hutu). On the other hand, the definition of FARG beneficiaries

clearly excludes individuals victimized by the RPF. Although these individuals were often victims of massacres, they were not targeted because of their ethnic belonging or because of their opposition to the genocide. Further, the law excludes explicitly those who participated in the genocide as FARG beneficiaries. In the context of the Rwandan genocide, this is an important exception, as the categories of victims and perpetrators are not always neatly divided. There are, for instance, many Hutu that participated in the genocide but were later killed or targeted because they protected and hid Tutsi in their houses.

In principle, the use of the categories of genocide and massacres to define the beneficiaries of the FARG has not allowed for explicit reference to the many forms of gender-based violence. For example, victims of rape, sexual violence, and gender-specific mutilations have not been specifically included as FARG beneficiaries. The definition of beneficiary is also insensitive to the gender-specific nature of the ensuing harms, such as different forms of trauma, loss of a breadwinner, loss of reproductive capacity, HIV infections, and forced pregnancies. The only types of harms indirectly recognized are those done to orphans, handicapped, and widows, who are mentioned as explicit examples of groups of people in need that would qualify for FARG benefits. The fact that FARG benefits first target the needy is very much to the advantage of women because they are generally poorer than men, and female-headed households are usually in more precarious situations than male-headed ones. Consequently, women should be the primary beneficiaries of the FARG.

It is worth discussing here the interpretation of the notion of *rescapé*. As explained above, the notions of victim and *rescapé* differ. Adherence to the notion of *rescapé* means that the beneficiaries are not primarily identified on the grounds of violations or ensuing harms but on the fact of having escaped persecution. Additionally, the status of *rescapé* is not awarded by an independent body. Instead, the person has to be recognized as a *rescapé* by neighbors, victims organizations, or local authorities or institutions. In other words, there are no clear guidelines on the interpretation of the notion of *rescapé*. Thus, being or not being recognized as a *rescapé* becomes a very contestable matter.

On the one hand, the notion of *rescapé* has been given a broad interpretation because genocide and massacres have been broadly interpreted. For example, victims of rape have been included as *rescapés* because rape has been recognized as a genocidal act. Women who were humiliated in public and forced to walk around naked are also recognized as *rescapés* and can benefit from the FARG because they were persecuted by the militia and able to escape death — as the militia could also have killed them. Given that, under this interpretation,

most victims of gender-based violence are also *rescapés*, they qualify as FARG beneficiaries.

In other instances, the notion of *rescapé* has been narrowly interpreted, leaving out certain victims of the Rwandan genocide and massacres, mostly Hutu men and women. Because all Tutsi in the country were hunted down, it is understood that they were all persecuted. Hutu, however, have faced a heavier burden of proof, as the initial presumption is most often to their disadvantage.⁵⁶ The effects on Hutu women of the narrow interpretation of the notion of *rescapé* can be especially harsh, not least because of the patrilinearity of ethnicity, that is, the fact that ethnicity is passed on through the father. For instance, Hutu women married to Tutsi men who were killed during the genocide are at times recognized as *rescapés*, but at other times they are not, depending largely on the community involved but also on the position of the woman in that community. Not only can these women be precluded from enjoying FARG measures if they are not recognized as *rescapés*, but very often they are also rejected by both their Tutsi families (especially in cases where the Hutu brothers of the woman killed the husband, as happened often) and by their own (Hutu) families because they were married to a Tutsi and thus have Tutsi children. Local victims organizations do not always welcome these women either, although much depends upon the local structures of the organizations. Some organizations, such as ASRG and especially Avega, have explicitly included these women at the national level.⁵⁷

Although it has been mostly Hutu women who have faced the negative consequences of a narrow interpretation of *rescapé*, some Tutsi women have also been affected. When Tutsi women have family links to a Hutu, there is an often unjustified presumption that they enjoyed protection and hence were not persecuted. In fact, some Tutsi women, married to Hutu who participated in the killings, were lent by their own husbands to their killing companions to be raped multiple times. Sometimes, these women were not accepted by their communities as *rescapés*; it was believed that since they were with their husbands, they must surely have been protected. How could the wife of a *génocidaire* be a *rescapé*?

At times, children also have had to face heavy burdens of proof when trying to get access to *rescapé* status, and consequently to FARG benefits or to membership in victims organizations (such as AERG). Children who lost their “moderate” Hutu fathers have not always been recognized as *rescapés* and thus, as FARG beneficiaries. It is often reasoned that the persecution of their fathers does not imply that they were persecuted as well.⁵⁸

THE INDEMNIFICATION FUND (FIND) DRAFTS OF 2001 AND 2002

In describing the victims eligible for reparation, both FIND drafts refer to genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994.⁵⁹ However, in describing the harms and beneficiaries eligible for reparation, the two drafts differ substantially. The 2001 FIND draft deals with certain types of harm separately, while the 2002 FIND draft does not differentiate between types of harm at all.

First, the 2001 FIND draft does not refer to the notion of *rescapé* but adheres to the notion of victim of genocide and crimes against humanity. The beneficiaries, according to the draft, are direct victims and/or indirect victims (i.e., family members of the direct victims or deceased), and the measures proposed differ according to the harm suffered. Because of these differentiations in terms of beneficiaries and harms, the 2001 FIND draft is the most sophisticated reparation proposal that has ever been discussed in Rwanda. Indeed, the 2001 FIND draft recognizes three types of harm: material loss, loss of life, and permanent incapacity. It is influenced by insurance law and compensation plans for victims of car accidents, which may partly explain the lack of proper attention to the specificity of the genocide and the harms victims have suffered. Harms such as trauma, forced pregnancy, or many others resulting from the gendered nature of the violence or the gendered structure of society have not been explicitly considered.

For material loss, the rightful owner is to receive compensation. This approach would have specific detrimental consequences for women, who almost never held legal titles to property and did not inherit from their husbands during the genocide. Claiming compensation for material losses therefore becomes extremely difficult for them. The same applies to girls; whereas sons do inherit from their father, daughters do not and thus typically become largely dependent upon the goodwill of their close family members. The material losses recognized by the draft are of all sorts of crops (such as soybeans, carrots, tomatoes, pineapples, coffee, tea, sorghum, etc.), houses, animals, and domestic objects (such as tables, cooking utensils, radios, etc.).

With regard to the reparation of moral harm linked to the loss of life, the 2001 FIND draft provides that the following family members have a right to reparation: the surviving, legally married husband or wife; all the legally recognized or legally adopted children; and the parents. If none of these have survived, the following family members become beneficiaries (in descending order): the grandparents, the brothers and sisters, the grandchildren, and finally the uncles and aunts. When the 2001 FIND draft was publicly discussed, Avega

and other victims organizations claimed that *de facto* unions should also be recognized. Couples do not always get legally married, especially in the hills of Rwanda, but nevertheless engage in stable unions, take care of each other, and share children. However, these *de facto* marriages, or marriages under customary law, are not recognized by the 2001 FIND draft. Such stipulations—bluntly denying the reality of Rwandan society—have a severe and negative impact on women who lost their husbands during the genocide. A similar concern can be raised with regard to illegitimate and adopted children, who only qualify as beneficiaries when officially recognized and corroborated by a court judgment. Such a formal approach denies the reality of caretaking in Rwanda, which goes far beyond the nuclear family scheme, and results in the exclusion of illegitimate children and also of the wider range of people who might have been dependents of the deceased.

With regard to permanent incapacity, both direct victims and indirect victims, namely close family members, are considered beneficiaries. The amount of compensation is determined as a function of the age of the victim, the degree of incapacity and, for family members, the degree of kinship. The indirect victims who receive some compensation in the case of permanent incapacity are once again the legal husbands or wives, all the legally recognized children and the parents. The principle of including both direct and indirect victims of incapacity as reparation beneficiaries is laudable. Severe or permanent incapacity of a husband or parent will affect their dependents. Given the high degree of dependency of women and children, a separate reparation measure for them in these cases may offer some alleviation. The other family members can only receive compensation if none of the foregoing survived.

Various degrees of incapacity are recognized by the draft: from 1 to 5%, from 5 to 10%, from 10 to 15%, and so on up to 80%. Three age groups are distinguished: below 18, from 18 to 55, and above 55; these mainly reflect the stages of professional activity in life. Although professional activity is of course relevant for women, more gender-specific age brackets, such as the age of reproduction or marriage, are not truly reflected in these broad categories. What permanent incapacity means, however, is not specifically determined. It is up to a doctor to establish the degree of incapacity, and there are no guidelines regarding what should be taken into account. While such an open approach allows for an inclusive interpretation, it also gives much discretionary power to the doctors involved. It would have been preferable if some types of harms had been explicitly defined as incapacity—even permanent incapacity—such as loss of reproductive capacity and the contraction of sexually transmitted diseases, such as

HIV. Also, the formulation of “permanent incapacity” indicates at the same time that not all types of harm can be included in this category. It is unlikely that, for example, forced pregnancy will be considered as such, despite its permanent consequences. In general, as it stands now, the 2001 FIND draft leaves too many questions unanswered: What about genital mutilation that does not necessarily lead to reproductive incapacity? Can trauma be considered permanent incapacity? How “permanent” must the incapacity be? What about scars on the face? Can rape or severe humiliation lead to something that is considered permanent incapacity? These questions will remain unanswered, as the 2001 FIND draft has been replaced by a new draft. The 2001 FIND draft was discussed with civil society in Rwanda, amongst which victims organizations, in general, expressed their satisfaction. Despite the consultation processes and the general approval expressed by victims organizations, a new FIND draft was created in 2002, taking an entirely different approach.

The 2002 FIND draft does not refer to types of harm at all, and in that regard it takes the same approach as the FARG. Instead, the draft proposes granting one single reparation amount (12 million Rwandese francs) to all beneficiaries. The 2002 FIND draft establishes three categories of beneficiaries: first, the *rescapés* (those persecuted because of their ethnicity or because of their opposition to the genocide); second, the children, legal partners, brothers and sisters, and parents of those killed because of their ethnicity or opposition to the genocide; and, finally, those Rwandans living in Rwanda who were not in the country during the genocide but whose children, legal partners, brothers and sisters, or parents were killed for the mentioned reasons.

This definition of beneficiaries is problematic in several respects. First, if the second group aims to include victims who are not necessarily *rescapés* (first group), but are victims because they lost family members, the added value of the third category is not clear (since they would seem to be included in the second group).⁶⁰ Second, all the remarks made above, with regard to the complexity and difficulties that arise when relying on a contestable notion of *rescapé*, remain a valid concern with regard to the first group of beneficiaries under the 2002 FIND draft. The second category of beneficiaries does, of course, resolve some of the complicated cases dealt with above, as it would include all those who have lost a close family member, independent of their own *rescapé* status.⁶¹ However, only loss of life is, controversially, recognized as a harm. For instance, women who were raped or harmed in many other ways, but who are not *rescapés* and did not lose family members, would not benefit according to this definition of beneficiaries.⁶² Third, it is still not clear whether

illegitimate wives and children are to be included if they are not *rescapés* themselves. Fourth, although it seems from the text of the second category that all who have lost a family member (and did not participate in the genocide) would qualify as beneficiaries, the political climate leads one to think that, in the end, only *rescapés* would be beneficiaries of the FIND. Only the actual implementation of the FIND would be able to resolve this lack of clarity.

In the meantime, the gacaca tribunals are drawing up lists of victims and damages, and there is a high probability that reparations (if ever realized) will be awarded on the basis of these lists. Therefore, the approach taken by the gacaca tribunals will be very important in determining the actual beneficiaries of the FIND. In this regard, it should be underscored that the new 2004 Gacaca Law has its own definition of victim, which includes *rescapés* and those who have lost family members or even suffered material harm during the genocide.

In conclusion, both FIND drafts have not made attempts to recognize gender-normative violence and harm, let alone gender-skewed or gender-multiplied forms of harm. In terms of beneficiaries, the drafts have recognized women as beneficiaries — equal to men — but without dealing with cultural issues or contexts that may render women's access to benefits more difficult. In any event, many questions remain open in terms of determining the actual beneficiaries and the forms of harms to be addressed by both drafts. The laws would need to be adopted and implemented before many of these questions can be answered.

THE NATIONAL COURTS OF RWANDA

According to the 1996 Organic Law,⁶³ the crimes under investigation by Rwanda's regular courts include genocide, war crimes, crimes against humanity, and ordinary crimes committed in relation to the genocide and/or the crimes against humanity (such as the destruction of Tutsi property). Sexual violence is explicitly included when the law defines the categories of perpetrators (category 1). Victims can become "civil parties" in the criminal trials and claim compensation. On the basis of the collection of judgments of the national courts — filed and translated by Lawyers Without Borders⁶⁴ — it becomes clear that members of the nuclear family, and in some cases members of the extended family, are recognized by the Rwandan courts as beneficiaries of compensation awards. Compensation has been awarded for the loss of family members, physical injuries, moral damages, and material losses.

Despite this, none of the awards has ever been paid out. Also, the judgments awarding compensation in genocide cases never motivate or reason the amounts awarded; therefore, it is impossible to estimate what types of harm

have been taken into account when determining the amounts of compensation. For example, it is not clear whether the particular difficulties faced by women in charge of single-headed households have influenced the amounts awarded. In many cases, no compensation was awarded, even when the perpetrators were found guilty. This may in part be related to the difficulty victims have in accessing the courts as civil parties.⁶⁵

As for compensation for victims of sexual violence, information gathered by Lawyers Without Borders indicates that while compensation for rape has been awarded in certain cases, it is not clear in how many other cases rape or sexual violence were disregarded. A Human Rights Watch report confirms that, most often, sexual violence is not addressed by the courts, whether it is genocide-related or a matter of contemporary cases.⁶⁶

The jurisdiction *ratione materiae* of the national courts has changed over time, especially since the 2001 Gacaca Law. In principle, the gacaca tribunals are now supposed to deal with all genocide-related cases, except for those in category 1.⁶⁷ Thus, women who are victims of sexual violence will have their perpetrators judged by the ordinary courts and not by the gacaca tribunals. Women can act as civil parties and claim compensation in the national courts. Nevertheless, the gacaca tribunals will still have to deal with sexual violence to some extent, as it is up to them to put the perpetrators into the various categories on the basis of testimonies given. The 2004 Gacaca Law has introduced special procedures for testifying about sexual violence, allowing victims to testify privately to a single gacaca judge.⁶⁸

With regard to reparation, it seems that victims of sexual violence can raise their claims both during the gacaca sessions and during the criminal trials in the national courts. So far, it remains unclear which procedure women will prefer or which way will be most efficient, but such a two-track system risks making things even more complicated for women. In this context, including sexual violence as a category 1 crime has sometimes been questioned.⁶⁹ For one thing, it seems that women from the countryside face tremendous hurdles in accessing the national courts. Moreover, describing the types of harms they endured in public gacaca hearings may be socially and culturally unacceptable for them (in principle, there is no *in camera* procedure during the sessions in which harms are to be listed⁷⁰). Beyond this, there is the question of whether an individual court approach to reparation for sexual violence is likely to respond properly to the widespread and systematic character of the crimes and the large numbers of victims involved. In this regard, national programs or institutions dealing with reparation may be more likely to provide an adequate response to such mass violations.⁷¹

DEFINING BENEFITS

The various reparation mechanisms/proposals in Rwanda, namely the FARG, the two FIND drafts, and the national courts, have taken different approaches with regard to the types of benefits awarded or planned. Two major types of reparation benefits have been considered in Rwanda: social service packages and monetary compensation. Whereas monetary compensation is a generally accepted form of reparation, the social service package is more controversial because it risks conflation with general development programs. Since the proposed service packages would benefit victims only, and not the entire (poor) citizenry, they can be considered as a form of reparation to victims, as opposed to a general development program; however, victims themselves do not always consider these service packages as a form of reparation, arguing that they have a right to that sort of assistance simply because of their economic status. While some victims laud the nondiscriminating approach of monetary compensation, others prefer reparation through service packages because they believe that this approach responds more adequately to their real needs, and because many victims have little experience with spending money in a sensible and sustainable manner.

SERVICE PACKAGES OFFERED BY THE FARG

The 1998 FARG Law determines that services have to be offered to needy *rescapés* in the fields of housing, education, and health. However, great discretion is left to the FARG itself to determine the exact measures, and in fact the FARG has developed more detailed assistance measures in each of these three fields. Additionally, it has launched some activities in the area of income generation.

On the basis of a census organized by the FARG in 1998—four years after the genocide—it became clear that out of 282,000 *rescapés*, 80,000 women and 53,000 men were without shelter.⁷² The housing problem was thus urgent for many victims, especially women. The same census also asked victims about their preferred type of assistance measure. About 40,500 *rescapés* indicated that finding a house to live in was their top priority. Since 1998, the FARG has built more than 3,000 houses, which is manifestly not enough. It has to be added, though, that many other cooperation agencies, such as the United States Agency for International Development and the United Nations Development Programme, have also constructed houses or assisted the FARG to build additional houses. No up-to-date statistics are available on the overall number of homes provided to the *rescapés*.

In terms of victim satisfaction, it seems that not all *rescapés* are happy with

the houses they received. Often the houses were not entirely finished by the FARG; the idea was that victims themselves would look for the means to properly finish them. However, almost none of the *rescapés* were able to bring together the necessary means. Consequently, heavy rainfalls have demolished walls and unstable roofs. Elderly and sick women were particularly affected by the problem of half-finished houses, which they did not have the means or skills to finish or repair. On the other hand, it deserves to be stressed that receiving a house from the FARG has had social impacts for many women. The new houses were often grouped together, which enabled women to establish contacts with other victims instead of being forced to live with their old neighbors whom they did not trust. The downside of such relocations is that many people now live too far away from the plots of land they used to cultivate; as a consequence, they have to walk hours to reach that land, and watching over it is also difficult. Finally, the accreditation procedure was not truly transparent. To some extent, houses were distributed on the basis of first come, first served. However, the distribution procedures of FARG benefits were not entirely devoid of clientilism. Knowing a person from a victims organization that played a role in the allocation could be a crucial factor. Avega played an intermediary role in the allocation of houses; that is one of the reasons why many widows, especially those living nearby Kigali, received houses. Nevertheless many women and many widows, especially those living far from the capital and in remote areas, remain without proper houses.⁷³

The education program is the most important program of the FARG, and since 2002 it is more or less the only one still on track, to the detriment of all the others. The 1998 FARG census indicated that more than 100,000 *rescapés* preferred educational assistance over all other types of service packages, which can be explained by the high number of youngsters among the *rescapés*. FARG school assistance consists mainly of covering school fees of children in secondary school and of some university students. The fact that since 2002 the FARG focus has been largely on education has made many female victims unhappy, especially those whose children have died or those who need their children's support in the household or in generating some sort of income. Other women have children who are too young to go to secondary school. For example, children of genocidal rape do not yet go to secondary school, and it is still not clear whether, in due course, they will have access to FARG school assistance. Other women, however, think it is right to concentrate on the youth, as it is they who will determine the future of the country. In any event, it is regrettable that the FARG education program does not provide training or education to adult women, even though increasing the professional skills of

women in certain areas (for example, in the field of off-farm activities) could clearly strengthen their economic position. Including this type of training in the FARG educational program would make it more sensitive to the needs of many adult women—who are too old to go to secondary school—and widows. In any event, due attention should be paid to the difficulties of combining a training program with the many other tasks and responsibilities women have, such as ensuring income, food and shelter, and taking care of children.

The FARG has also launched a health program, under which some 44 complicated health cases have received treatment outside Rwanda. The health program inside Rwanda provided medical health cards (about 68,000 medical cards have so far been distributed) with which *rescapés* could go to several hospitals for free medical care. This care was given both for nongenocide-related diseases, such as the flu, and genocide-related diseases, such as wound infections, medical consequences of mutilation, and so on. No statistics are available on the types of care that have been provided, nor on the number of treatments. The FARG also tried to launch a trauma-counseling program, but it never really got off the ground.

Health care definitely responds to a real need among *rescapés*. In principle, all forms of medical care can be covered by these health cards. However, the disadvantage of not specifying what types of assistance are in fact covered is that victims do not always know what to expect. Specific lists of medical assistance to be provided could also have brought gender to the fore, for instance by including the treatments needed by women who suffered sexual violence, were infected with HIV or underwent secret abortions. In a way, the FARG medical program missed the opportunity to make the medical services offered gender sensitive, and thus better adapted to the actual situation of women throughout the country. Also, although no doubt the medical cards were initially advantageous to women and youngsters, several problems in terms of the implementation of the program have undermined its potential overall positive impact.

A final major part of the FARG is the income-generation program, under which credits were given to *rescapés* or small associations of *rescapés*. Several million Rwandese francs have been spent under this program, but its implementation was so poorly managed that most people received and spent the money without ever returning it to the FARG. Because of the huge failure of this program, few data on it are available. It is clear that both men and women had access to these microcredits, especially because Avega was one of the conduits, but it is impossible to estimate at what rates. Ibuka was the most important intermediary, and although this organization comprises both men and women, it is not particularly oriented toward women and their needs. On the

whole, here again the FARG missed an important opportunity to mainstream gender considerations into the service packages it offered. Income and economic survival is a daily issue for many women, especially for those heading households. An income-generation program would no doubt be most relevant for female survivors. However, in order to shape such a program in a meaningful way, much guidance is required, including training sessions on how to spend money, how to generate income, which activities to get involved with, how to organize repayment, and so on. Since many organizations in Rwanda already deal with microcredits for women (e.g., Duterimbere), the FARG could undoubtedly have learned much from their experiences. Due to the overall failure of the program, it is unlikely that it will ever be restarted.

THE FIND DRAFTS AND THEIR DIFFERENT MONETARY COMPENSATION APPROACHES

Although both FIND drafts have embraced monetary compensation as the basic form of reparation, they have taken very different approaches to the concrete compensation measures proposed. The 2001 FIND draft determined scales for each type of loss or harm recognized by the draft (material loss, loss of life, and permanent incapacity), while the 2002 FIND draft proposes to pay one lump sum of 12,000,000FRW (US\$21,887) to each beneficiary. Thus, the 2001 FIND draft required a significant calculation exercise before the amount to be awarded could be known, which depended upon considerations such as the number of family members lost, material losses (crops, houses, cattle, etc.), and the degree of disability of the victim and his or her family members.⁷⁴ Although such an effort to assess harms would have been complicated and time consuming, and although some very important harms were excluded, the various scales contemplated do incorporate some distinctions among harms that are very relevant in Rwandan society and for women, especially for those heading households or those who are the partners of severely handicapped men.⁷⁵

Interviews with the creators of the 2002 FIND draft indicate that the degree of complexity of the scales and amounts contemplated under the 2001 FIND draft was one of the major reasons why a new draft was created.⁷⁶ Whereas the new draft simplifies reparations, however, it does not reflect the severity of the harms suffered, and consequently does not take into account the gender-differentiated impacts of those harms.⁷⁷

As an alternative to the lump-sum payment, the 2002 FIND draft refers to service packages up to the amount of the lump sum. The draft does not provide many details on these alternative service packages, and it is possible that the FARG service packages and the FARG itself would be abrogated if

the FIND is implemented. A two-track approach (lump sum or service package) risks being quite detrimental, especially to women. One of the risks is that the most vulnerable victims (with a larger percentage of women) would receive reparation through service packages, while nonvulnerable victims would receive a sum that represents quite a substantial amount of money in poor Rwanda. Some *rescapés*—mostly men—have been able to re-establish their lives in a fair manner, at least in economic terms. Given that many brothers and family members have died, some men have inherited several plots of land. These men may not be in desperate need of services. Women, on the other hand, were not able to inherit land, and their economic situation is much more precarious than that of male victims. Women desperately need services and several types of assistance. Thus, the two-track approach—a lump sum and service packages (whose monetary value might be more difficult to calculate or keep track of)—may in practice entail severe gender discrimination in the distribution of resources. This two-track approach therefore needs serious reconsideration in light of the different social and economic positions of men and women. Indeed, during interviews women indicated that, despite the many disadvantages, monetary compensation has the one big advantage of being equal for everybody.⁷⁸ Be that as it may, this all remains hypothetical, as none of the FIND drafts have been approved, let alone implemented.

THE MONETARY APPROACH OF THE NATIONAL COURTS

The national courts have awarded monetary compensation in several instances, yet none of these compensation judgments has ever been executed. In their findings, Lawyers Without Borders realized that the amounts awarded differed highly, even within the same jurisdictions and with regard to the same kinds of losses. For example, the amounts awarded for the loss of a sibling vary between 100,000FRW (US\$182) and 6,000,000FRW (US\$10,909); and those awarded for a child vary between 250,000FRW (US\$454) and 11,000,000FRW (US\$20,000).⁷⁹ Analyzing the reasons that lie behind such disparate treatment and whether or not they have gender implications is not possible, as the compensation judgments have never been enacted.

THE CHALLENGE OF GENDER-SENSITIVE IMPLEMENTATION OF REPARATIONS

In terms of implementation of reparation measures, the record is truly poor. At the time of publication, neither of the bills establishing the FIND have been

approved, the compensation awards of the national courts have never been executed, and the FARG is facing serious constraints due to financial problems and mismanagement.

THE FIND: STILL NOT ESTABLISHED

While both FIND drafts exist, for the moment neither has become law primarily because of lack of political will. Further, there is an issue of financing: both FIND proposals face serious challenges in terms of implementation because of the huge amounts of money needed—amounts that do not seem to be available and have not been provided by the government. Although the international donor community sponsors gacaca, there is little will to finance or cofinance reparation programs. The hesitant attitude of the international donor community can to some extent be explained by the fact that it refuses to acknowledge (even partial) responsibility for the genocide. Many countries, such as Belgium, fear that contributing to reparations could be interpreted as such an acknowledgment. The fact that all reparation programs focus exclusively on the victims of the genocide, while leaving out people victimized by the RPF, has also contributed to the hesitant attitude on the part of the international donor community, as many donors fear that such an exclusionary approach is unlikely to contribute to reconciliation in Rwanda.

So far, the exact relationship between the FIND and the gacaca tribunals has also remained somewhat unclear. Gacaca tribunals are establishing lists of victims and of harms suffered. Under the 2001 FIND draft, the idea was undoubtedly that the gacaca tribunals would determine the amount of compensation, and this information would then be transferred to the FIND. However, under the 2002 FIND draft and the new 2004 Gacaca Law, the relationship is less clear. Although the lump-sum approach of the 2002 FIND draft would not require detailed lists of losses, the gacaca tribunals are still creating these lists. It thus remains unclear whether a victim could only benefit from the FIND if his or her name figures on a gacaca list. If the latter was the case, this localized system of determination of beneficiaries has both advantages and disadvantages. On the one hand, a local approach facilitates access for many victims, especially those who face problems of transport and communication. Most often, it is women living in the far hills that face these problems. Therefore, from this point of view, it can be argued that the FIND should take advantage of the gacaca structures that are already set up at the local level to identify the beneficiaries. On the other hand, the downside of determining the beneficiaries at the local level is that such recognition can be influenced by local power

relations, tensions, and interpretations. Given the weaker status of women in society, they would undoubtedly suffer most under such power relations. In addition, many victims fear reprisals, especially when perpetrators or their family members are present at gacaca hearings. Fears of reprisals seem greater when reparation claims or the identification of harms suffered are linked to specific perpetrators, as is done during the gacaca trials.

A final consideration is that women, because of their fragile situation and daily struggle with extreme poverty, depend very much upon their social environment for survival (e.g., for harvesting, searching for water and food, when they are sick, etc). Very often, they depend upon family members of nonvictims or even perpetrators. Given the extent of poverty in the Rwandan hills, important economic reparation measures that would truly help these women and relieve them from their precarious situation, such as a substantial amount of money, also risk jeopardizing the social network on which women depend. Whereas some women indicated that, if they had enough money, they would not care about these social networks, others were more careful and expressed serious concerns about the potentially divisive effects of such measures.⁸⁰ If ever implemented, this issue deserves to be taken into consideration: the last thing reparations should do is provide fodder for further conflict.

THE FARG: FROM A CENTRALIZED TO A DECENTRALIZED IMPLEMENTATION

The FARG was initially organized in 1998 in a very centralized manner, with its only office in Kigali. At that time, victims organizations—especially the large ones, such as Ibuka and Avega—played an important role in determining actual beneficiaries by awarding “certificates” testifying that the victim in question was indeed a *rescapé* in need. With these certificates, usually accompanied by a similar certificate awarded by the local burgomaster, victims could go to the FARG in Kigali to claim assistance, such as payment of school fees or medical cards. Field experience demonstrated that it was at times important for victims to be acquainted with a person from an organization awarding these certificates, or to know a person who would take up their defense. This means that connections and social positions seem to have played a role in obtaining FARG assistance, and victims testified that some local burgomasters refused at times the necessary certificates or signatures. Given women’s lower socioeconomic status, this may have had a particular impact on their capacity to access FARG assistance.

The microcredits were also awarded to the *rescapés* by victims’ organizations, especially Ibuka and to a lesser extent Avega, without any interference

from local authorities or the FARG. It seems that microcredits were given on a first come, first served basis, without rules on the amounts to be awarded: some received twenty times as much as others (amounts awarded ranged from 10,000FRW to 250,000FRW). No system of repayment was set up, and consequently almost none of the amounts were paid back, leading to a major failure of the program. Here again, knowing a person from an organization proved to be very important. Since Avega could also award microcredits, women had access to these, but widows living far away from Kigali and victims who were not members of Avega faced much greater hurdles. Once Ibuka and Avega gave away all the money, the program collapsed. Thus, even among women, there can be important differences in terms of access hinging on several factors, including membership in a strong victims organization, personal connections, living in Kigali or having means of transport to reach Kigali easily.

In 2001 and 2002, the FARG started to decentralize. Now it has offices in each province and district. This at least facilitates access for rural women. The beneficiaries are identified by a local committee composed of four victims and six members of the Community Development Committee (CDC), part of the government's decentralized structure. The degree of women's active involvement in the identification procedure varies greatly. Much depends on the position of women at the local level, or the presence of some leading women, and on the number of *rescapés* in certain administrative units. Nevertheless, the problems that are related to the definition of "*rescapé*" remain a valid concern despite the decentralized approach taken by the FARG.

In general, the FARG has faced severe problems of implementation and management. It has to deal with a government that does not pay its contribution in time, while dealing with schools and hospitals that claim contributions from the FARG under the education and the health programs, contributions that the FARG has not always been able to pay in time. On one occasion, some schools decided to send home all *rescapés* supported by the FARG because they had not received the school fees. Many hospitals have also halted cooperation with the health program for the same reason, and the hospitals remaining in the program are often too far away for victims.

In addition to these general problems, the education and the medical programs have given rise to social problems. Given the overall poverty of the Rwandan population, many parents lack the means to send their children to school. The fact that *rescapés'* children can go to secondary school with the support of the FARG has generated social tensions at the local level. The health program faces similar challenges. Many victims, both men and women, testify that they do not dare to use the medical cards any longer; they fear

maltreatment because nurses and doctors question why they deserve free care while others have to pay. For this reason, they prefer to pay too. This complete lack of trust between *rescapés* and hospital personnel is very problematic, especially for women who need treatment to deal with the consequences of sexual violence. Harm to intimate body parts or psychological trauma require a basic trust between the patient and the doctor. The expressed fears about hostility from nurses and doctors indicate that social relationships in Rwanda still suffer from the genocide's legacy, and that this legacy hinders adequate implementation of reparation measures.

IMPLEMENTATION OF NATIONAL COURTS' JUDGMENTS

When trials first started, it was difficult for victims to find and obtain the necessary certificates from the authorities, and especially to cover the costs of legal defense. Paralegals from Ibuka assist victims and direct them to the authorities for the necessary documents. These paralegals have also collaborated with Lawyers Without Borders, an NGO providing legal assistance for both suspects and victims. However, in general there were still many victims who could not find a lawyer or attend the trials because of transport/distance problems. A government ruling stating that all documents had to be provided for free solved the problem of the costs of the certificates, but the issue of transportation and access to formal authorities remains at times a true challenge, especially for illiterate women living in remote areas. Communication in general also proved to be a problem; often victims did not know when trials would take place. Women are, again, more likely to be affected because they have less dense informal networks and more difficulty accessing modern communication systems, such as radio. In terms of sexual violence, the barriers are still huge for women. First, there is the cultural hurdle to overcome. Further, there are few female prosecutors or lawyers who can deal properly and sensitively with sexual violence. The burden of proof is often high, given the lapse of time and the lack of effective data gathering immediately after the genocide. Fears of reprisal and social stigmatization are well-grounded obstacles. A Human Rights Watch report found that many genocide rape survivors believe that it is at least as important to ensure accountability and punishment of those who killed their families as of those who sexually assaulted them.⁸¹ This may also explain why so few cases of sexual violence have ever reached the courts and even the *gacaca* tribunals.

GENDER, REPARATIONS, AND TRANSITIONAL JUSTICE : CONCLUDING REMARKS

There are gender-specific aspects of the entire transitional justice process. Two issues in particular deserve comment. First, although the testimonies of Rwandan women are extremely important for the success of the gacaca tribunals, in general women have not been very involved in conceiving Rwanda's transitional justice mechanisms. Second, from a social point of view, women's perspective on issues such as the implementation of reparation and truth-telling mechanisms seems to differ at times from that of men.

First, all transitional justice mechanisms in Rwanda have primarily been conceived of by the government and not by victims. For example, many victims still oppose gacaca and consider it as a general amnesty. The decisions made by the Rwandan government in 2003 and 2005 to provisionally release genocide suspects who have confessed have only added to this perception.⁸² Victims organizations, such as Avega, have communicated their views on gacaca to the government, but have never been true interlocutors. The same goes for the annual commemoration services, during which victims perform and take the floor, but which are created and organized by the Rwandan government. Even more, the government uses these services for its own political ends (for example, to convey its interpretation of the current war in the Democratic Republic of the Congo and the Rwandan involvement there). The political discourse during these services does not primarily intend to commemorate victims, as there is little room for serene commemoration and remembrance.⁸³ Despite the fact that the majority of the survivors are women and that commemorating should primarily be a survivors' issue, women are not involved in conceiving the official ceremonies. The spokespersons for the victims at the official ceremony are generally men. Avega and other victims organizations develop yearly alternative, low-profile commemoration services that coincide with the period of the 1994 genocide. The need for such shadow commemoration services illustrates the lack of victims' true engagement with the official ceremony.

Second, an issue that is very relevant to implementing reparation measures, but that reaches beyond the issue of reparation, concerns the social dependency of women. As discussed above, indiscriminate use of monetary compensation may jeopardize women's social relations on which they count for daily survival (for example, in case of illness, women depend upon their neighbors, especially the many women who have lived on their own or with small children since the genocide). Furthermore, while the gacaca tribunals and the

truth-telling process depend largely upon the many women survivors of the genocide—often, they are the only ones who know certain stories or are aware of the involvement of certain people—women who participate may fear for their safety. Several women have testified about reprisals and intimidations; they were often afraid. There has even been a case in which *rescapés* were murdered after having testified in gacaca. The Rwandan government has reacted vehemently in this particular case and the murderers have been tried, yet it remains uncertain whether this will suffice to provide a secure enough environment for women to speak openly during the gacaca sessions. Additionally, testifying may endanger women's fragile social mechanisms of daily survival. Because of this, certain women prefer not to tell what they know. They try to focus on the future and leave the past alone. Certain women refuse to accuse neighbors during the gacaca trials; they see the trials as a continuation of the conflict, and prefer to try to move on. Within transitional justice literature and the widespread belief in the benefits of "truth telling," this position and the choice for closure made by women deserve to be taken into account.

In conclusion, the transitional justice process in Rwanda has not been very gender sensitive. The weak links between women's organizations and victims organizations undoubtedly play a role in this, as does the generally weak position of women in Rwandan society. The reparation debate is unlikely to be a steppingstone for the general improvement of women's position in Rwanda. Not only is the reparation debate not gender sensitive, but additionally there is no advocacy that links the fate of female victims to that of all women in Rwanda. (Whenever such a link might be possible in the future, however, care should be taken not to exploit the fate of female victims for other causes.)

The reparation measures that are applied or discussed in Rwanda could, however, be made more gender sensitive. Service packages represent the mechanism that could be best modified in this way. For example, by specifying treatments and harms, the medical cards could respond better to the needs of women. This is important because it is at times difficult for women to discuss the human rights violations that they suffered; moreover, they are not always aware of the treatments available. The monetary compensation approach, which has the advantage of allowing victims to choose how they will dispose of their benefits, could also be made more gender sensitive. This could be done, for example, by making certain services more easily available to victims—services that would now be affordable thanks to the compensation. Nevertheless, risks remain regarding lump sums. First, many victims have no experience with large amounts of money and need some guidance in making

spending decisions. Second, a lump-sum approach does not address the differential impact of violations on victims. A two-track approach, in which needy victims have access to social services and non-needy to a lump sum, risks having severe discriminatory effects on women, who are almost always in more fragile positions. The imbalances of such a two-track approach should be seriously considered.

In terms of implementation, it is extremely important to make reparation measures accessible—especially to women in remote areas, with little means of transport and communication. With regard to the medical cards, for example, this means that hospitals participating in the program have to be close enough to victims. If not, there risks being severe discrimination against victims not living near the capital. In terms of identifying beneficiaries, it can be concluded that decentralized procedures are preferable because they facilitate access to vulnerable people—often women. However, some safeguards need to be built in because local social relations can at times have a negative impact upon local identification procedures. Clientelism and personal linkages are common in Rwanda, and research illustrates that even the role of victims organizations, which are often indispensable links to victims, especially in remote areas, is not always constructive. Although victims organizations can play an important role in terms of access (for example, certain information reaches widows in the Rwandan hills through the Avega network), they can also be involved in mismanagement and abuses.

It has to be concluded that, while general awareness of gender issues has increased in Rwanda, women still have a long path to travel.

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INTERVIEWS

In the course of previous research, I conducted many interviews in Rwanda in 2002–2003. I choose explicitly not to mention names of these interviewees. Only the interviews specifi-

cally used for this paper are referred to below. For the provision of up-to-date materials and information on topical (gender) issues, I am particularly grateful to Jean-Pierre Hitababyaye, Léonilla Musengimana, Jean-Charles Kayibanda, and Christine Uwayenzeza.

Interviewee AERG-UNR, Butare, 14 August 2002.

Interviewee ASRG, Kigali, 31 July 2002.

Interviewee Avega, Kigali, 12 July 2002.

Interviewee Avega, Kigali, 18 July 2002.

Interviewee Avega, Kigali, 29 July 2002.

Interviewee Duhozanye, Butare, 14 August 2002.

Interviewee FARG, Kigali, 8 July 2002.

Interviewee FARG, Kigali, 23 July 2002.

Interviewee FARG, Butare, 19 July 2002.

Interviewee Ibuka, Kigali, 28 August 2002.

Interviewee Ibuka, Kigali, 9 August 2002.

Interviewee Minijust, Kigali, 16 August 2002 and 8 August 2002.

Interviewee Pro-Femmes, Kigali, 3 July 2002.

Interviewee Sixth Chamber–Gacaca department, Kigali, 28 May 2002.

Several interviews with local *rescapés* and non-victims in Byumba and Gitarama in August and September 2002.

Observation of FARG identification day, Kansi–Kibingo–Butare, 2 August 2002.

Visit to an Imidugudu (village) with Avega, Kimironko–Kigali, 4 June 2002.

ACRONYMS

AERG	<i>Association d'Etudiants Rescapés du Génocide</i> (Student Genocide Survivors Association)
AOCM	<i>Association des Orphelins Chefs de Menages</i> (Association of Orphan-Headed Households)
ASRG	<i>Association de Soutien aux Rescapés du Génocide</i> (Association for the Support of Genocide Survivors)
FARG	<i>Fonds d'Assistance aux Rescapés du Génocide</i> (Assistance Fund for Genocide Survivors)
FIND	<i>Fonds d'Indemnisation</i> (Indemnification Fund)
GoR	Government of Rwanda
HRW	Human Rights Watch
ICTR	International Criminal Tribunal for Rwanda
IRC	International Red Cross
RPF	Rwandese Patriotic Front

NOTES

- 1 I would like to thank Ruth Rubio-Marín for her critical reading, useful remarks, stimulating suggestions and persistence, which all contributed substantially to this chapter.
- 2 For example, Tutsi were systematically given higher positions in the administration; they were considered more competent than their Hutu colleagues.
- 3 The RPF consisted of Rwandan refugees who had fled their country because they disagreed with, or felt discriminated against or victimized by, the Hutu-dominated regime.
- 4 Examples of such crimes include massacres of assembled unarmed civilians, many of whom were women and children, at so-called meetings (e.g., a massacre in the Byumba stadium in northern Rwanda). For the best account of RPF crimes see Human Rights Watch, *Leave None to Tell the Story. Genocide in Rwanda* (New York: HRW, 1999), 702–35. A UN High Commissioner for Refugees (UNHCR) mission headed by Robert Gersony concluded that the RPF had engaged in “clearly systematic murders and persecution of the Hutu population in certain parts of the country.” The report of the “Gersony mission” remains confidential but is cited in Human Rights Watch as given above. UNHCR, *Note, la situation au Rwanda* (UNHCR: unpublished, 1994). For a wider variety of sources see Serge Desouter and Filip Reyntjens, *Rwanda. Les violations des droits de l’homme par le FPR/APR. Plaidoyer pour une enquête approfondie* (Antwerp: Centre for the Study of the Great Lakes Region, 1995).
- 5 The International Crisis Group also stresses the important political contribution of the ICTR in discrediting and neutralizing the extremist Hutu leaders in power during the genocide, many of whom fled afterwards to then-Zaire. International Crisis Group, *International Criminal Tribunal for Rwanda: Justice Delayed* (Brussels: International Crisis Group, 2001), 7–8. For some more criticism, see also International Crisis Group, *Tribunal Pénal International pour le Rwanda: Pragmatisme de Rigueur* (Brussels: International Crisis Group, 2003). In September 2003, the Gambian judge Hassan Boubacar Jallow was appointed as the new ICTR prosecutor instead of Carla Del Ponte. The ICTR is supposed to close down its activities in 2008.
- 6 The first person convicted by the ICTR was the former mayor of Taba, namely Jean-Paul Akayesu. Many women testified about rape during this trial. Paul Magnarella, *Justice in Africa. Rwanda’s Genocide, Its Courts, and the UN Criminal Tribunal* (Aldershot: Ashgate, 2001), 100–3.
- 7 The “peace village” consists of 23 newly constructed houses for poor people of Taba, including genocide victims. In that way, the village aimed to contribute to the cohabitation of Rwandans. The “peace village” in Taba was the aspect of the ICTR program that received most public attention and that was most symbolic.
- 8 The president of the ICTR also expressed her concern about reparation for victims in 2000. The seventh annual ICTR report similarly indicates that the international community in general, and the UN Security Council in particular, should address the issue of

compensation for victims. On the basis of the ICTR Statute and the Rules of Procedure, the ICTR cannot award compensation to victims. An alternative for dealing with compensation or reparations would be the creation of a fund operating independently from the ICTR. UN, letter dated 28 September 2000 from the President of the ICTR addressed to the Secretary-General, S/2000/925. United Nations, *Seventh Annual Report of the ICTR for the period from 1 July 2001 to 30 June 2002* (New York: UN A/57/163, S/2002/733, 2002). Despite these actions, the issue of reparations for victims is not at all within the main concerns of the ICTR.

- 9 “Loi Organique du 30 août 1996 sur l’organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l’humanité, commises à partir du 1er octobre 1990 jusqu’au 31 décembre 1994,” *Journal Officiel*, no. 17, 01/09/1996. Referred to as the 1996 Organic Law.
- 10 *In solidum* is a notion used in continental law systems and refers to the fact that both of the convicted (i.e., the state and the perpetrator) are jointly liable for the full amount of damage awarded. This means that when the loss of a relative is estimated at an amount X, victims may request that both the perpetrator and the state pay that full amount X. It is up to the parties convicted to recover a part of the amount or the full amount from the other convicted party.
- 11 On the traditional gacaca, see Filip Reyntjens, “Le gacaca ou la justice du gazon au Rwanda,” *Politique Africaine* (1990), 31–41.
- 12 “Loi Organique no. 40/2000 du 26 janvier 2001 portant création des ‘juridictions Gacaca’ et organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l’humanité, commises entre le 1er octobre 1990 et le 31 décembre 1994,” *Journal Officiel*, no. 6, 15/03/2001. Referred to as 2001 Gacaca Law. The Gacaca Law has been very much criticized, both from a human rights perspective—there are many conventional trial guarantees, such as the right to defense, that are not well protected in the law—and from the perspective of traditional and reconciliatory justice. See, for example, Amnesty International, *Rwanda. Gacaca: a question of justice* (London: Amnesty International, 2002); Jeremy Sarkin, “Promoting Justice, Truth and Reconciliation in Transitional Societies: Evaluating Rwanda’s Approach in the New Millennium of Using Community-Based Gacaca Tribunals to Deal with the Past,” *International Law Forum du droit international* (2000), 112–21; Jeremy Sarkin, “The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide,” *Journal of African Law* 45 (2001), 143–72.
- 13 Under the 2001 Gacaca Law, tribunals were also organized at district level. Under the 2004 Gacaca Law, gacaca tribunals are organized at the cell and sector level.
- 14 “Loi Organique no. 15/2004 du 19/06/2004 portant organisation, compétence et fonctionnement des juridictions gacaca chargées des poursuites et du jugement des infractions constitutives du crime de génocide et d’autres crimes contre l’humanité commis

- entre le 1er octobre 1994 et le 31 décembre 1994,” *Journal Officiel* (2004). Referred to as the 2004 Gacaca Law. Another important change introduced by this law is a simplified categorization of the perpetrators. Instead of four categories, only three categories remain. The old categories 2 and 3 are merged into one category 2. In terms of punishment, differentiation remains between the old categories 2 and 3.
- 15 In these cases, the idea was that the damages awarded by the FIND would replace the amounts awarded by the court. It would be up to the FIND to reclaim the amounts due from the convicted perpetrators. There was, however, no guarantee that the amount awarded by the court would be the same as the one awarded by the FIND. Of course, this idea is contrary to the rule of law.
- 16 The distinction between genocide and war is not always made in the various laws, but it is very much in the political discourse (e.g., by Kagame at the launching of gacaca in 2002), in the practice of prosecution, and during the training sessions of the lay judges.
- 17 See the conception of the notion of victim in the 1985 “UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.” The “Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law” as adopted by the UN Commission for Human Rights in 2005 incorporate the same general notion of victimhood.
- 18 Calculated at the exchange rate of October 2005. US\$1 is +/- 550 Rwandese Francs.
- 19 Pablo de Greiff, “Justice and Reparations,” in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006). The reason for the problematic character of the juridical approach is that it has been developed in light of the resolution of relatively isolated cases of violations, harms, or crimes.
- 20 United States Agency for International Development (USAID), *Gender Assessment and Action Plan for USAID/Rwanda* (Washington, DC: USAID, 2002).
- 21 International Red Cross, *Research report on ‘violence against women in Rwanda from 1998 to 2003’* (Kigali: Ministry of Gender and Family Promotion, 2004), 6.
- 22 Ministère du Genre et de la Promotion de la Femme, *Rapport sur le profil de la situation de la femme et de l’homme au Rwanda* (Kigali: Ministère du Genre et de la Promotion de la Femme, 2002), 40.
- 23 Republic of Rwanda, *A Synthesis of the Analyses of the 2002 Census of Rwanda* (Kigali: Republic of Rwanda, 2005), 47–50 and 103–10.
- 24 “Loi No. 22/99 du 12/11/1999 Loi complétant le livre premier du code civil et instituant la cinquième partie relative aux régime matrimoniaux, au libéralités et aux successions,” *Journal officiel de la République Rwandaise*, 15 novembre 1999, 2–20. Hereafter Law 22/1999.
- 25 Elaine Zuckerman, *Why Engendering PRSPs Reduce Poverty and the Case of Rwanda* (Washington, DC: United Nations University and World Institute for Development Economics Research, 2001). See also Ngóné Diop-Tine, “Rwanda: Translating government commit-

- ments into action,” in Debbie Budlender and Guy Hewitt, eds., *Gender Budgets Make More Cents* (London: Commonwealth Secretariat, 2002).
- 26 Also, in the case of remarriage, a family council has to decide upon the property; see Law 22/1999. Jennie Burnet and Rwanda Initiative for Sustainable Development, *Culture, Practice and Law: Women’s Access to Land in Rwanda* (Kigali: Rwanda Initiative for Sustainable Development, 2001).
- 27 Human Rights Watch, *Shattered Lives. Sexual Violence during the Rwandan Genocide and Its Aftermath* (New York: Human Rights Watch, 1996).
- 28 Republic of Rwanda, *A Synthesis*, 109.
- 29 International Red Cross, *Research Report*, 6.
- 30 Ibid. On the contrary, women at reproductive age are normally less likely to suffer from community violence.
- 31 On the difficulties faced by women and children victims of sexual violence in Rwanda, see Human Rights Watch, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda* (New York: Human Rights Watch, 2004).
- 32 Margaret Walker, “Violence against Women through the Lens of Reparations.” Draft paper prepared for ICTJ project on gender and reparations.
- 33 Human Rights Watch, *Shattered Lives*, 2. Tutsi women were seen as objects of temptation for Hutu men and in that way a threat to the homogeneity of Hutu descent. Françoise Nduwimana, *Women and Rwanda’s Genocide: What Goes Unsaid* (2004), <www.whrnet.org/docs/issue-women_genocide.html> (accessed July 2005).
- 34 Human Rights Watch, *Shattered Lives*, 11.
- 35 Human Rights Watch, *Leave None*, 215–16.
- 36 It is of course impossible to identify the number of people who were infected with HIV because of the genocide. Nevertheless, the number of infected people has increased enormously after the genocide. The fact that victims do not easily speak about sexual violence and the general tendency in Rwanda to hide HIV infection further complicate accurate data gathering.
- 37 National Population Office, as referred to by Human Rights Watch, *Shattered Lives*, 3.
- 38 Minaloc, *Recensement des rescapés les plus nécessiteux* (Kigali: Minaloc, 1998). The document is only available in Kinyarwanda.
- 39 Some courts have ruled in favor of women’s rights; see Human Rights Watch, *Shattered Lives*, 4.
- 40 African Rights, *Not So Innocent. When Women Become Killers* (London: African Rights, 1995).
- 41 Ibuka, which literally refers to remembrance, is both the collective of all victim associations and an organization with its own structures.
- 42 At times the local structures reach the lowest administrative level, namely the cell level.
- 43 Avega has no means to keep an up-to-date record of membership. The number of

- 25,000 refers to the number of membership cards that have been distributed, without knowing how many members are still alive or are active Avega members today. The figure may also include some overlaps (e.g., of women who have received a membership card in one province and received another in another province when they moved). Therefore, the number is merely indicative.
- 44 Both aspects reinforce each other. When the political environment is closed, the best alternative to advocacy may become distributing benefits (second-best option for organizations). In that way, the distributing role of organizations becomes more important than their representative role.
- 45 Given that a FIND was announced in the 1996 Organic Law, the executive should draft such a law.
- 46 In 2000, a preparatory seminar was organized. Minijust, *Séminaire sur la réparation pour les victimes du génocide et des crimes contre l'humanité commis au Rwanda entre le 1er octobre 1990 et le 31 décembre 1994* (Kigali: Minijust, 2000); Minijust, *Rapport du séminaire sur l'indemnisation des victimes du génocide et des massacres* (Kigali: Minijust, 2000); Minijust, *Compte rendu de l'atelier de travail sur le projet de loi portant création du fonds d'indemnisation des victimes du génocide* (Kigali: Minijust, 2002).
- 47 Minijust, *Compte rendu*.
- 48 Ibid.
- 49 With regard to reparation claims in the national courts, Avega has not been truly active, as it lacks sufficient legal skills to do so. It has left the task mainly to the paralegals of Ibuka. These paralegals assist victims in finding lawyers, searching for the right documents to claim reparation, and informing them about the trials and the names of the accused persons. The paralegals of ASRG (located in Butare) and Ibuka worked to some extent together with Lawyers without Borders in order to assure the legal defense of civil parties.
- 50 ASRG, *Compte rendu de la réunion de consultation sur le projet de dédommagements aux rescapés. Lettre au Ministre de la Justice* (Kigali: ASRG, 2002).
- 51 Ibuka, *Compte rendu de la réunion de consultation sur le projet du Fonds des dédommagement tenu le 24 janvier 2002 au siège d'Ibuka* (Kigali: Ibuka, 2002).
- 52 In spite of this, field research shows that the patterns of distribution are not clear at all and that personal relations can be just as important in gaining access to the benefits distributed by victims organizations. Heidy Rombouts, *Victim Organisations and the Politics of Reparation: A Case Study on Rwanda* (Antwerp: Intersentia, 2004).
- 53 "Loi No. 02/98 du 22/01/1998 portant création du fonds national pour l'assistance aux victimes les plus nécessiteuses du génocide et des massacres perpétrés au Rwanda entre le 01 octobre 1990 et le 31 décembre 1994," *Journal Officiel*, No. 3, 1998, 221–24. Although the title of the law refers to "victims," the law clearly limits the beneficiaries of the FARG to *rescapés*.

- 54 FARG Law, Article 14.
- 55 However, it is not strictly limited to Tutsi. For example, when Hutu women married to Tutsi were killed, they were also killed for the cause of ethnicity, namely that of their husband.
- 56 For example, in Gitarama, I met a Hutu man whose Hutu wife was killed by the militia while they were searching their house for Tutsi. This man was refused *rescapé* status because he could not prove that he was targeted during the genocide—he did not seek shelter after his wife was killed and apparently this proved that he was not persecuted and that he did not have to fear for his life. One could say, though, that he ought to clearly be considered a victim of the genocide.
- 57 It has to be remarked that in the first years, Avega was much more hesitant towards taking on these cases. Now it is a clear element of its policy to include Hutu widows, and although not all Hutu widows in the hills have been able to gain Avega membership, during my fieldwork, we were able to confirm that Hutu women are members of Avega even outside the capital of Kigali.
- 58 In Butare, I found the case of an illegitimate girl with a Hutu as her biological father and a Tutsi mother. As mentioned, children normally inherit the ethnicity from their father, except in cases where the parents are not married and the father does not recognize the child. In that case the child receives the ethnicity of the mother. The mother of the girl (Tutsi) was killed during the genocide. Instead of killing the little girl, the militia remembered that her father was Hutu and brought her to the house of the Hutu grandparents with whom she had never lived before. After the genocide, she was rejected by the Hutu family. Despite this rejection and the fact that she lost her mother, she was refused *rescapé* status on the basis that she was safe in her grandparents place during the genocide, and she was not hunted down or searched for with the intent of being killed. Therefore she could not be considered as having “escaped” the genocide and was therefore not accepted as a FARG beneficiary.
- 59 The 2001 FIND draft states explicitly: “without any distinction between victims of genocide and of crimes against humanity.” From a legal point of view, this would also mean that people victimized by the RPF could become beneficiaries. However, the political environment in Rwanda does not allow victims of both sides to be treated in the same way. In practice, the entire reparation debate in Rwanda only regards those victimized as a result of the genocide or for political moderateness.
- 60 More on the changes and problems of interpretation of the second and third categories of beneficiaries can be found in Rombouts, *Victim Organisations*, 418–21.
- 61 This means that Hutu children who have lost their Hutu father, and Hutu women who have lost their Tutsi or Hutu husband, are able to benefit from the FIND.
- 62 This may be a rather hypothetical case, however, as almost all women who were raped, mutilated, or publicly insulted lost close relatives.

- 63 See note 9.
- 64 Lawyers Without Borders has collected five volumes of genocide jurisprudence. *Avocats Sans Frontières, Recueil de jurisprudence contentieux du génocide et des massacres au Rwanda, V Volumes* (Kigali: Supreme Court of Rwanda and Avocats Sans Frontières, 2002–2004).
- 65 See Martien Schotsmans and Claude Gakumba, “L’état de la jurisprudence sur l’indemnisation liée au contentieux du génocide.” Presentation for a seminar on indemnifying genocide victims, Kigali 3 April 2000.
- 66 Human Rights Watch, *Struggling to Survive*, 19–20, 44.
- 67 Reminder: this category includes the masterminds of the genocide and those responsible for sexual violence for whom the ordinary national courts remain responsible.
- 68 Article 38 of the 2004 Gacaca Law prohibits individuals from publicly confessing to rape in order to protect the victims of sexual violence.
- 69 Stephanie Huber, *Discriminatory Practices at the Gacaca Courts in Post-genocide Rwanda. A Hindrance to Truth, Justice and Reconciliation? The Cases of Victims of Sexual Violence and Victims Belonging to the Hutu Ethnicity* (Essex: University of Essex, 2005). Another consequence of placing sexual violence under category 1 is that perpetrators are extremely reluctant to confess to sexual violence.
- 70 The in camera hearing is provided for during the sessions in which victims can accuse suspects, after which the cell gacaca tribunals have to categorize the suspects. It is advisable that the harms mentioned during such sessions will also be taken into account during the gacaca session in which harms are listed. The latter is in principle a public session.
- 71 See de Greiff, “Justice and Reparations.”
- 72 For these statistics, see Minaloc, *Recensement*, also referred to in this paper as the FARG census. Odette Nyiramilimo, “Assistance aux rescapés du génocide des Tutsi de 1994 en particulier aux plus vulnérables d’entre eux,” in *Conférence Internationale sur les génocides: ‘la vie après la mort’* (Kigali: Ibuka, 2001), 1–11.
- 73 The relocation of rescapés into grouped houses has to be distinguished from the general villagization policy of the Rwandan government. Under this policy, the GoR has forced people to leave their houses; it even burned down houses and relocated people—involuntarily—into new villages. The houses people received under this policy were often of very poor quality. For a critical analysis of this policy, see Human Rights Watch, *Uprooting the Rural Poor* (New York: Human Rights Watch, 2001).
- 74 By way of illustration, some of the scales are: Beans (price per kilo): between 50 and 100 FRW (exchange rate in October 2005 was US\$1 = +/- 550 FRW); soybeans (price per kilo): between 100 and 200 FRW; banana plants (price per plant): between 100 and 700 FRW; coffee plants (price per plant): between 300 and 900 FRW; a cow: between 10,000 and 100,000 FRW; a table: between 2,000 and 50,000 FRW; loss of a (legal) partner: 3,000,000 FRW (US\$5,471); loss of a parent: 2,000,000 FRW (US\$3,647) for each child;

loss of a child: 1,500,000 FRW (US\$2,735) for each parent; victim aged under 18 with a loss of capacity between 40 and 45%: 1,000,000 FRW (US\$1,823); same person with a loss of capacity over 80%: 2,000,000 FRW (US\$3,647); a victim aged between 18 and 55 and with a loss of capacity over 80%: 4,000,000 FRW (US\$7,295); a child of the latter person: 500,000 FRW (US\$911). All these scales are determined in an appendix to the 2001 FIND draft.

- 75 For instance, the highest amount is the one for a person between 18 and 55 with a degree of incapacity over 80% (4,000,000 FRW or US\$7,295). The draft stipulates that the partner of this person receives 1,000,000 FRW (US\$1,823). The ages between 18 and 55 are indeed those for which needs seem to be highest, especially in terms of caretaking and education of children.
- 76 For the 2002 FIND draft, staff of the Rwandan Ministry of Justice collaborated closely with some key persons from Ibuka, the collective of victims organizations. However, the member associations of Ibuka—such as Avega—were not aware of this evolution.
- 77 A further question is whether awarding such an amount of money to all *rescapés* would be at all feasible. I have expressed doubts about such feasibility. See Rombouts, *Victim Organisations*, 438–41.
- 78 With both Avega representatives and women on the hills in Gitarama and Byumba.
- 79 Schotsmans and Gakumba, “Les difficultés,” 6–7.
- 80 Local interviews with women in Byumba and Gitarama.
- 81 Human Rights Watch, *Struggling to Survive*, 38.
- 82 The reasoning for these releases was that those people—often already in prison for years—risked being in prison longer than they should, taking sentence reduction into account. Victims protested that guilty people were released even before the gacaca trials had taken place.
- 83 For more discussion on this issue and the politicization of victimhood, see Rombouts, *Victim Organisations*, 305–309. See also Claudine Vidal, “Les commémorations du génocide au Rwanda,” *Les temps modernes* 613 (2001): 1–46.

CHAPTER 5

Gender and Reparations in Sierra Leone:
The Wounds of War Remain Open

Jamesina King

Sierra Leone, a small country of about 4.5 million people situated on the coast of West Africa, was the scene of horrific atrocities and human rights abuses on a massive scale during its 11-year civil war. The war started on 23 March 1991, when rebels attacked Bomaru, a town near the border with Liberia. The rebels identified themselves as the Revolutionary United Front (RUF), a movement supported by then Liberian President Charles Taylor. Accounts of violence throughout the country escalated in May 1997, when members of the national army overthrew the democratically elected government, invited the rebels into the capital city, Freetown, and established a junta regime that ruled the country until February 1998. Under the junta regime, Sierra Leone experienced a complete breakdown of law and order, as well as massive and widespread human rights violations.

In February 1998, the Economic Community of West African States Cease-fire Monitoring Group (known as ECOMOG), a regional intervention force, removed the junta. Violence broke out again on 6 January 1999, when the rebels and factions of the national army overran Freetown for the second time. The warring factions finally signed the Lomé Peace Accord in 1999, following several negotiation and peace efforts. However, the violence was not yet over: on 8 May 2000, a peaceful demonstration outside the home of rebel leader Foday Sankoh turned violent when about 20 unarmed demonstrators were killed.

Many factors caused the war in Sierra Leone. Decades of bad governance, an insensitive and unresponsive political elite, corruption, human rights abuses, economic repression, military coups, and a breakdown of democratic institutions created an environment in which the rebels, as well as members of the national army, could commit egregious crimes against unarmed civilians throughout the country. The government-supported Civil Defence Forces (CDF), known as the “Kamajors,” and the troops of the regional intervention force, ECOMOG, also allegedly committed violations against civilians.

A Truth and Reconciliation Commission (TRC) was established by the Lomé accord and was inaugurated by H.E. Ahmad Tejan Kabbah, the president of Sierra Leone, on 5 July 2002. The Truth and Reconciliation Commission Act authorized the TRC to make recommendations to help prevent the repetition of human rights violations, to respond to the needs of the victims and to promote healing and reconciliation, but it did not establish a reparations mechanism, nor did it use the word “reparation.” Nevertheless, in order to achieve its objectives, the commission recommended the implementation of a reparations program to provide redress to the victims of human rights violations. Although the term “reparations” is not common in Sierra Leone, some of its concepts are known, and many people believe that the government must alleviate the suffering of victims of the war.

The TRC presented its completed report to the government on 5 October 2004. The report included recommendations for a reparations program, which has not yet been implemented. Thus far, some of the victims have received assistance from various international and local relief nongovernmental organizations (NGOs), including medical and counseling facilities, housing and microcredit schemes. With the withdrawal of the relief organizations, victims fear that their plight will worsen. It is therefore of the utmost importance and urgency that the government ensures the implementation of the reparations programs in a way that is responsive to the needs of the victims of the war, particularly women.

WOMEN DURING THE CONFLICT: DISCRIMINATION, VICTIMIZATION, AND WORKING FOR PEACE

WOMEN IN SIERRA LEONE

The victimization and agency of women during the conflict and the peace process should be seen within a broader context of discrimination. The laws of Sierra Leone discriminate against women by denying, curtailing, and limiting their rights. The 1991 Constitution prohibits laws that are discriminatory in intent or effect, and prohibits discriminatory treatment in the public sector. This constitutional provision, however, is subject to certain exceptions related to customary law and does not protect women in the areas in which they suffer the most, such as marriage, divorce, inheritance, and other matters of personal and customary law.

The unequal role, status, and rights of women are evident in the area of marriage and family relations. Early and forced marriages are common, partic-

ularly under customary law and Muslim law. There is no expressed minimum age for marriage, and girls as young as 10 years of age are given in marriage to suitors old enough to be their grandfathers. The laws that protect children from physical and sexual abuse shield the perpetrators of sexual activities with girls, even under the age of 13, if such activities occur within a marriage or in a relationship that the perpetrator believes to be a marital relationship.¹ Sierra Leone has one of the highest maternal and infant mortality rates in the world. The unavailability of affordable, accessible, and efficient health care has further worsened women's reproductive health and general physical well-being. The marriage and divorce laws under the multiple legal systems reserve worse treatment for women than men. Beyond this, unmarried couples who live together as man and wife do not have any rights to inherit each other's property, unlike couples who are legally married.

Sierra Leone's multiple inheritance laws—namely statute law, Muslim law, and customary laws—provide rules that favor men. Under such laws, men have more opportunities to own property than women. Many women have been rendered homeless or forced from the farms they cultivated as a result of the multiple inheritance laws on distribution, which apply throughout the country.² Under Muslim law, only the male members of the family are allowed to administer the deceased's estate, thereby denying wives and daughters the right to administer their husbands' and fathers' estates. Under certain customary laws, the wife does not have any inheritance rights: she is simply regarded as a chattel to be inherited. Under the general law, after a man is widowed, he is entitled to his wife's entire property, but if a woman is widowed, she is only entitled to one-third of her husband's property.

Violence against women in Sierra Leone, particularly wife beating, is accepted, and research has revealed that the leading causes of domestic violence include suspected infidelity, a wife's demands for money that the husband considers unreasonable, an alleged failure by the woman to look after the home and provide proper care for the children, and an "argumentative" woman whose conduct is considered to be disrespectful by the husband or her in-laws.³ Female circumcision is also prevalent, and is considered a requisite cultural passage rite from childhood to puberty.⁴ The absence of laws on domestic violence and the inadequacy of the laws on sexual violence continue to perpetuate a culture of impunity in relation to such crimes and have contributed to the untimely death of victims and, in some cases, offenders. In addition, women feel powerless in accessing justice for the abuses they suffer. Thus, although the law recognizes common crimes of violence against women, they are seldom reported and prosecuted in a persisting culture of silence. Women who

experience violence sometimes blame themselves for it and suffer in silence.

In the post-conflict context, the issue of women's rights, the need for legal reform and the repeal of discriminatory laws and practices have become paramount. For the first time in the history of Sierra Leone, following the 1996 elections, the government created a Ministry of Gender Affairs in the cabinet to address and coordinate the issues affecting women. This ministry has produced two policies. The National Policy for the Advancement of Women seeks to improve the status of women and to address the discrimination they face in all sectors. The Policy on Gender Mainstreaming sets out the government's commitment to pursue a gender-sensitive approach in all of its programs and development activities throughout the country. As of this writing, these policies have not been implemented.

WOMEN IN THE CONFLICT

The civil war in Sierra Leone did not spare women and children. Instead, their vulnerability was deliberately exploited. They were used and abused, killed, maimed, mutilated, tortured, raped, gang-raped, abducted, forced into sexual slavery, and drugged; their houses were destroyed and property looted; they were internally displaced and lost their livelihood.⁵ Women occupied a precarious position and were targeted by the various armed factions. They were suspected and accused of sympathizing with the opposing warring factions and passing on sensitive information.

Given the widespread violence and brutality that women and girls experienced during the conflict, the Truth and Reconciliation Commission Act asked that special attention be given to the needs of women and girls, particularly with regard to their experience of sexual violence. Why was so much violence perpetrated against women? Did the origins of this violence lie in the cultural and traditional history of Sierra Leone? Did the fact that women endured such a low status in sociopolitical life in the country even before the conflict make them easy targets? Was it because men perceived females to be mere chattel symbolizing male honor that women became enemy targets? These were some of the questions the commission addressed.⁶

In seeking answers, the commission reviewed the multiple roles of women in the armed conflict, recognizing that women also often took on the role of perpetrator and/or collaborator, usually out of conviction and/or the need to survive. The TRC also assessed the impact of the conflict on women and on notions of honor, and its contribution to the breakdown of the extended African family structure and social fabric. Women were also subject to random

violence committed against civilians, and targeted as family members of collaborators or suspected collaborators.

The TRC, in keeping with its mandate, compiled the crimes perpetrated during the conflict, making specific findings with respect to women and the impact violence had on them. It recorded many violations against women, including killings, rape, sexual violence, sexual slavery, slave labor, abductions, assaults, amputations, forced pregnancy, detention, torture, enforced sterilization, trafficking, mutilations, enforced cannibalism, displacement, and economic violations such as looting, extortion, theft, and destruction of property. The TRC found that children aged 10–14 were especially targeted for forced recruitment, and that girls in that age group were targeted for rape and for abuse as sexual slaves. The commission further found that many humanitarian workers assisting women victims exploited their extreme vulnerability and violated their rights by compelling them to barter their bodies in order to access aid to survive. The main armed groups accused of perpetrating sexual violence against women and girls during the conflict were the RUF, the Armed Forces Revolutionary Council (AFRC), and the Civil Defense Forces (CDF).

The forms of rape committed against women included vaginal, anal, and gang rape. The perpetrators introduced various objects, such as sticks, stones, umbrellas, other substances, and body parts into victims' sexual organs.⁷ Some women and girls were abducted, detained and used as sex slaves. Forced marriage was another form of sexual slavery widely committed against women and girls, who were given as “wives” to commanders and combatants. When such “marriage” involved forced sex, or the inability to control sexual access and exercise sexual autonomy, it constituted sexual slavery.⁸ Other crimes of the war in Sierra Leone included forced pregnancy, enforced sterilization and other forms of sexual violence.⁹

Various forms of torture were also commonly employed by the rebels and other armed factions during the war. Daughters, including virgin daughters, were raped in front of their fathers or mothers, and women, including young mothers, were raped in the presence of their partners and children. One rape victim interviewed recounted her experience when the rebels killed her husband and burnt their house in her presence.¹⁰ Some of the women and girls who were victims of sexual violence have lost their reproductive capacity as a result of the violence itself or the medical procedures they had to undergo. Others have faced various forms of ostracism and victimization because they were impregnated and abducted by the rebels.

The exact number of victims of the war is not known. There were 14,995 victims reported to the TRC, but the age category and sex are known for only

11,429 of them; out of this number, 33.5% were female. Female victims reported to the TRC comprised 31.9% of adult victims, but made up 44.9% of the child victims. Among the violations reported to the TRC, rape and sexual slavery were committed exclusively against females.

Women continue to experience secondary harms as a result of the war: harms stemming from the increase of female-headed households; unwanted pregnancies; health problems including sexually transmitted diseases; increasing poverty; prostitution; discrimination; and increased responsibility as caregivers for victims and children born as a result of sexual crimes. The conflict has also led to a very high incidence of trafficking of children and youth (particularly those affected by the war) from Sierra Leone to other countries.

WOMEN IN THE PEACE PROCESS

Women's efforts and contribution towards the achievement of peace demonstrated their desire to participate in the establishment of transitional and post-conflict processes. The women in Sierra Leone were in fact pioneers of the peace process and the return to democratic rule. In response to their experiences of the war's devastating effects, described above, women's organizations and associations established pressure groups and undertook initiatives aimed at ending the war and restoring democracy. The bravery, vibrancy, and effectiveness that women's groups displayed were unrivalled in the history of the country. They led and participated in the conferences and demonstrations demanding that the military government hold elections and hand over power to a democratic government, a goal that was achieved in 1996.

The Women's Forum of Sierra Leone, a coalition of women's groups, as well as a group of prominent women including Shirley Gbujama (the current Minister of Social Welfare, Gender and Children's Affairs), Zainab Bangura (the former director of the Campaign for Good Governance, a civil society organization), and activists Lottie Betts-Priddy (who attended the negotiations between the warring factions) and Amy Smythe (a minister of government in the 1996 cabinet of President Tejan Kabba), to name just a few, played an instrumental role in motivating, leading and expressing the views of women during this period.

After the peace accord was signed in 1999, the rebels defaulted by capturing and detaining more than 500 United Nations peacekeepers and their ammunition. The women responded with a peaceful demonstration at the rebel leader's house in Freetown on 6 May 2000, demanding the release of the peacekeepers and a number of girls abducted since 6 January 1999, as well as the cessation of hostilities in accordance with the Lomé accord.

The initiatives undertaken by women's groups cut across factional divides. Sierra Leonean women in the diaspora, who had fled the country as a result of the conflict and sought refuge in other countries, formed networks and pressured the Sierra Leone government and the international community to initiate measures to end hostilities and restore peace. The late Lady Patricia Kabbah, former wife of the current President Ahmad Tejan Kabbah, and lawyers and activists Yasmin Jusu Sheriff and Isha Dyfan, as well as the Mano River Women's Peace Network (MARWOPNET), a regional women's organization, worked tirelessly to direct the international community's attention to the violations perpetrated by the rebels during the junta rule. The solidarity amongst women and women's groups in pursuit of peace not only strengthened existing women's groups, but also gave impetus to the establishment of new ones, like the 50/50 Group of Sierra Leone¹¹ and the Network of Women Ministers and Parliamentarians. There were also more employment opportunities for women in relief organizations and NGOs in the country.

Regardless of this progress, however, and despite the role of women in the effort to end hostilities, the peace negotiations gave only token consideration to the needs of women. Only two women attended the negotiations that led to the signing of the Lomé Peace Accord in 1999.¹² In the post-conflict period, the Government of Sierra Leone and the ongoing transitional processes have yet to convince the public that they are willing to effectively address the issues affecting women and seriously take into account the abuses women suffered and continue to experience, as well as to adequately recognize their contribution to establishing peace.

WOMEN'S INVOLVEMENT IN THE ARTICULATION OF REPARATIONS: LIMITED AGENCY IN THE TRC PROCESS

Women's agency in the articulation of reparations can be divided into three stages. First, women undertook initiatives with regard to reparation before the TRC commenced operations. Second, they participated in and contributed to the design of the reparations measures recommended by the TRC. Third, women worked towards the implementation of the reparations program after the TRC's report was published.

WOMEN'S AGENCY IN THE ARTICULATION OF REPARATIONS PRIOR TO THE TRC

Before the Truth and Reconciliation Commission and the Special Court for Sierra Leone (set up, with support from the United Nations and the

international community, by the government to try those who bear the greatest responsibility for crimes committed during the war) commenced operations, women's groups formed the Women's Task Force on the role of women in the Truth and Reconciliation Commission and the Special Court—a coalition of representatives of civil society groups, women's groups, and international and local nongovernmental organizations—to ensure that crimes suffered by women were adequately identified and addressed.

Women victims did not mobilize in groups or organizations that identified with crimes against women during the conflict. Rather, they mobilized individually and within the larger context of women's associations, including the Sierra Leone Women's Forum, the Forum for African Women Educationalists (FAWE), the Women's Forum and other civil society groups such as the Campaign for Good Governance, which work to have the harms women suffered and continue to suffer addressed. The Women's Task Force advocated for reparation for victims of the war, especially female victims. Although victims were not included in the task force itself, they participated in its meetings, providing insight on the violations and harms that needed to be addressed.

The various amputee associations throughout the country have also been very active in the movement for reparations. Amputation was used as a weapon of war and as a tool to intimidate the general population. Women, both young and old, had their limbs amputated, although the exact number of women amputees is not known. The Amputee Association in Freetown has a membership of about 230 victims, of whom approximately 35 are women. In addressing the victims' needs, however, the amputee organizations do not address the specific concerns of women and girls.

Worth mentioning also is the War Widows Organization, an association comprising widows of government soldiers killed in action. It is the only victims organization with a large presence of women, and it made continuous demands to the government for pensions under their husbands' terms and conditions of employment. While these pensions were eventually paid, it is important to note that this settlement was not part of a reparations program. It was much easier for the war widows of soldiers to mobilize than other victims because they knew each other and had their husbands' military identification. In fact, widows who were victims of the war but whose husbands were not part of the army or the police have not received any compensation or assistance for their loss, and will have to make their claims individually to the agency implementing reparations. They have not been identified by any government agency, and have not formed a victims organization.

Reparations were discussed in general terms in several meetings among various women's groups, including the Women's Task Force, before the TRC began operating. These discussions included the demands for housing and medical facilities for victims; developmental needs in various areas such as agriculture, education, and trade; and the urgency of reforming laws that discriminated against women. Women activists believed that these demands were relevant to the issue of reparations, especially in view of the increase in female-headed households and widowhood following the war, as well as women's overall low socioeconomic status. Of particular concern at these meetings was the need to support and assist victims of rape and sexual violence and the children born as a result of these violations. According to the Women's Task Force, as well as many activists who testified before the commission, the government had an obligation to provide victims of sexual violence and their children with free and continuous medical facilities, education, and counseling.

Women's organizations facilitated meetings in both urban and rural areas that provided opportunities for women to examine their collective and individual needs. The needs expressed by women in rural areas included assistance for victims of sexual abuse, increased land ownership, the provision of agricultural equipment, processing facilities, transportation and marketing facilities, and reconstruction of the social structures and facilities that were destroyed. In addition, women's organizations advocated legal reform in relation to sexual and domestic violence, the inheritance laws and other laws that discriminated against women, all of which impede their advancement. Women's groups expressed concerns that crimes against women were not prosecuted and often condoned.

Victims themselves, in their contribution to women's groups and the Women's Task Force, advocated individual reparations in the form of monetary compensation, given the poverty, forced displacement, widowhood, and other factors affecting their livelihood. Victims of sexual abuse also repeatedly requested medical and psychological assistance, housing, and skills training and education for themselves and their children.

The extension of microcredit facilities and skills training for victims was also an important component of the discussions among women's groups and the Women's Task Force. Several such schemes were provided by various relief organizations working in the country, and the women observed that providers and intermediaries of microcredit schemes encountered some difficulties in the repayment of the loans given to women affected by the war. Women activists advocated instead that reparations ought to include skills training, pension

plans, the provision of housing facilities, and other measures to rebuild the social structures women depended on.

Women also fought, with some degree of success, for representation on the TRC and the Special Court, and to ensure that gender-sensitive means were adopted to encourage women victims to testify, such as protection for witnesses, counseling for victims, confidentiality, and the creation of a safe environment for women victims, to prevent their revictimization or retraumatization.¹³ The Women's Task Force noted that, despite their contribution to the peace process, the selection panel defined by the Truth and Reconciliation Commission Act did not include women. The task force therefore prepared a petition with more than 100 signatures urging gender balance among the staff of both the TRC and the Special Court. In the end, three out of seven commissioners in the TRC were women as were three out of 11 judges in the Special Court, two in the trial chambers and one in the appeal chambers. The task force also organized radio programs to discuss issues relating to the TRC. It published press releases and sent petitions to the president of Sierra Leone and the UN Secretary-General advocating for the inclusion of women in these processes and for the harms suffered by women to be recognized and addressed. The task force also lobbied the attorney general and minister of justice to ensure that their objectives were met.¹⁴

WOMEN'S AGENCY IN THE TRC

The Truth and Reconciliation Commission requested and engaged the views of women's rights activists, women's groups, and women victims. As noted above, three of the seven TRC commissioners were women. One of them was a retired high court judge in Sierra Leone, one was a Gambian educationist and former minister of government in Gambia, and one was from South Africa and had participated in that country's Truth and Reconciliation Commission. Women also participated in the work of the commission by giving statements and testifying at public and closed hearings nationwide, as well as at the special thematic hearings on women, which took place in Freetown from 22 to 24 May 2003. There were also special closed hearings for women nationwide at the request of female witnesses. Submissions and statements received by the commission included recommendations on appropriate remedies and assistance for women, including victims of rape and sexual violence as well as female ex-combatants, and recommendations to strengthen, improve, and advance the cause and status of women more generally.¹⁵

During the TRC's thematic hearings on women, women's groups marched

through the streets of Freetown in support of the hearings, carrying banners with slogans calling on the government to address the violence women suffered during the war and continue to experience today. These were the best attended hearings in Freetown during the commission's period of operation. Thematic hearings in general were designed to explain the past in relation to a number of identified themes.¹⁶ They allowed the TRC to address patterns of abuse and perform a broader social analysis of the enabling background conditions. Although there were no special hearings on reparations, the issue came up in the recommendations made to the commission in the testimonies and submissions it received, as well as in the responses of both victims and other witnesses to specific questions asked by the commissioners.¹⁷

Many women victims made statements to the commission and testified during the hearings. Nongovernmental organizations, such as FAWE, that had provided assistance to victims, including victims of sexual violence, encouraged them to share their experiences with the commission. Initially the victims were reluctant to testify because, first, they did not fully understand the TRC's objectives, and, second, they did not think the commission would meet their immediate needs of medical assistance, microcredit schemes, and shelter programs. After the commissioners explained the TRC's objectives to victims, including the possibility that it would recommend a reparations program, however, women were more willing to talk about the violations perpetrated against them and their families.¹⁸ The commissioners engaged most of the victims who testified by asking them about their needs and recommendations. Furthermore, it was the commission's policy that interviews of witnesses whose testimonies related to a sexual violation were to be conducted by female commissioners.¹⁹

All of this facilitated the design of a reparations program that sought to provide for the needs of the victims. For example, the provision of medical facilities and assistance, housing, and skills training and education for their children were needs expressed by most victims of sexual violence who testified, some of whom were interviewed for the report.²⁰ In all, the commission received 7,707 statements in the course of its work and the statement givers identified needs in order to deal with the harms suffered during the conflict.²¹ These needs included the provision of shelter, education, medical care, cash, jobs, justice, and religious rites. The strongest demands of the victims, including female victims, were related to socioeconomic issues such as the provision of shelter, medical facilities for themselves and their children, skills training for themselves, and education facilities for their children. The victims stated that addressing these needs should be the obligation of the government.²²

The TRC also elicited and received submissions and other types of assistance from civil society groups (many of them working closely with victims), in particular from women's groups such as FAWE, the Market Women's Association, Women's Forum, the Women's NGO Coalition, and the Coalition on Women's Rights in Conflict Situations.²³ The thematic hearings on women especially attracted submissions from women's groups, as well as women victims and the Ministry of Social Welfare, Gender, and Children's Affairs. The United Nations Fund for Women (UNIFEM) also assisted nongovernmental organizations and civil society groups in making their submissions to the commission on issues affecting women.²⁴ International NGOs, such as the International Center for Transitional Justice, provided the commission with advice on reparations with an emphasis on gender issues. The ultimate goal of these groups was the recognition of women and their experiences of the war, as well as to ensure that the proposed reparations scheme effectively provided redress for women.

Some of the victims of sexual violence have approached the Ministry of Social Welfare, Gender, and Children's Affairs seeking meaningful assistance from the government for their children and to discuss issues of reparation.²⁵ One victim told me that the government should demonstrate an interest in the welfare of the children who were born as a result of sexual abuse during the conflict by putting mechanisms in place to ensure that these children are taken care of and not subject to abuse.²⁶ Another victim was of the view that a reparation program should include a children's home for children born to her and other victims as a result of rape. She was willing to grant custody of her child to the government, as she could not take care of him on her own. Apart from some clothing, the government has not provided these victims with any plan or program to address such demands. The commission, however, recognized children of victims of sexual violence as eligible beneficiaries of reparation programs.

In these ways, women's involvement in the TRC had a significant impact on the issue of reparations. In the end, the commissioners realized that there could be no talk of reconciliation if the needs of the victims were not effectively addressed through reparations. Their views were further strengthened and informed by the reparations programs that had previously been designed by the Chilean and South African Truth and Reconciliation Commissions.²⁷ Reparations ultimately became an important issue and one of the goals of the TRC. Nevertheless, the commission was constrained by limited time and resources. Many people believe that women's agency in the TRC process would have been even more successful if more time and resources had been available.²⁸ Furthermore, although the commission was receptive to the claims and

needs of victims, it was also constrained by the government's financial ability to implement a reparations program.

WOMEN'S AGENCY IN REPARATIONS DISCUSSIONS FOLLOWING THE PUBLICATION OF THE TRC REPORT

Women's participation in the discussions on reparations after the publication of the Truth and Reconciliation Commission's report has been rather limited, partly because of the government's failure to widely disseminate the report, as required under the TRC statute and in the TRC's recommendation. Civil society organizations, such as the Forum of Conscience and the Truth and Reconciliation Working Group (a coalition of civil society groups advocating for the implementation of the reparations program, including the amputee association), have called on the government to implement the reparations program in the TRC's report. One of the specific demands of the Truth and Reconciliation Working Group is for the government to immediately establish the Special Fund for War Victims.²⁹

Women's organizations have added their voices in support of the implementation of the reparations program. However, as of this writing, women's groups have not joined the debate on the specific aspects of the reparations program with the same momentum created by women before the TRC hearings. Many women's groups are still trying to get copies of the report to study its provisions before deciding what strategies to adopt towards implementation.³⁰ Most women and women's groups have not yet had the opportunity to read the report.³¹ The Women's Forum has plans to organize programs to disseminate the contents of the recommendations for the reparations program.³² There is a need for women both individually and collectively to organize and mobilize effectively to put pressure on the government to ensure that the reparations measures are implemented.

Alhaji Lamin Jusu Jaka, the national chair of the War-Affected Amputee's Association, is very vocal on issues affecting the group's membership, and constantly engages the government and the general public on the need for reparations. At a meeting in September 2005 with the attorney general and minister of justice, soon after the TRC report was made available to the public, Jaka called on the government to pay a monthly sum of US\$3,000 as reparation to each amputee. Conflict Management and Development Associates, WITNESS (an organization piloting the TRC follow-up project), as well as other civil society groups, such as Campaign for Good Governance in collaboration with International Center for Transitional Justice, are facilitating the drafting of an omnibus bill to implement the imperative recommendations of

the commission. Although reparation measures are not included among the imperative recommendations, if this legislation is passed it will be a first but important step taken by the government towards implementation of the TRC recommendations— one that can be used as leverage to get the government to implement the reparation program.

MARWOPNET, a regional organization of women, has on its agenda for the current year a symposium to help facilitate an action plan for the implementation of the recommendations of the TRC, including the reparations.³³ This organization has developed programs to benefit war victims, particularly women, and serves as a pressure group to ensure that there are measures in place that will restore dignity to the victims. Other women's organizations have made a number of suggestions regarding the provision of reparations to victims of the war. These include: the government should facilitate centers for women throughout the country to provide counseling, resources, rape crisis interventions, and general information on employment for women;³⁴ there should be an emphasis on rehabilitating markets, where a majority of women buy and sell, and making them accessible through facilities for women with disabilities, particularly victims of the war; medical and housing facilities should be affordable and accessible to women;³⁵ victims of the war with disabilities should be put on the same pension scheme as retired civil servants; the government should give tax rebates to companies and other business enterprises that donate to the Special Fund for War Victims;³⁶ tills should be set up at supermarkets, gas stations, and stadiums to collect money for the fund; churches and mosques should be encouraged to dedicate one day every year or month to acknowledge and remember war victims, during which special offerings should be raised for the fund; and, finally, measures to ensure that conflict does not reoccur should be enacted, such as the establishment of a vibrant and effective Human Rights Commission.

ENGENDERING REPARATIONS

DEFINING THE VIOLATIONS THAT TRIGGER REPARATIONS

In designing the reparations program, the Truth and Reconciliation Commission adopted the definition of a victim generally accepted in international law:

A person is a “victim” where as a result of acts or omissions that constitute a violation of international human rights and humanitarian law

norms, that person, individually or collectively, suffered harm including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a dependent or a member of the immediate family or household of the direct victim as well as a person who in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm.³⁷

According to the TRC, for a person to be eligible for reparations, the event or injury sustained must have occurred between 23 March 1991 and 1 March 2002.³⁸ The commission did not ascertain the number of victims of the conflict, however, so the elaboration of a reparations program was hampered by the lack of data on the number of potential beneficiaries.³⁹

The commission realized that many, if not all, of the people of Sierra Leone suffered during the conflict, but it also recognized that not all the victims could receive reparations.⁴⁰ On the other hand, the TRC did not limit the victims and potential beneficiaries of the program to those who participated in and cooperated with the commission, as was done in South Africa. If the commission had proceeded that way, it would have excluded a large proportion of the victims, many of whom were women who did not participate because of the stigma attached to their experiences during the conflict. In addition, the reparations program did not make a distinction between victims on the basis of nationality—a person does not need to be a Sierra Leonean to qualify as a victim.⁴¹

Nor did the TRC make a distinction between civilians and ex-combatants for the purpose of their eligibility for reparations. Women who were involved in the conflict as combatants (either because they believed in the cause or were forcibly conscripted) and did not benefit from the Demobilization, Disarmament, and Reintegration (DDR) programs—which provided benefits to ex-combatants who had participated in the conflict—are eligible to benefit from the reparations program.⁴² Women ex-combatants faced many difficulties in accessing benefits from a DDR program that was not gender sensitive and favored male over female ex-combatants. Ex-combatants who have received benefits under the DDR program are not eligible to become beneficiaries of the reparations program. The disallowance of double benefits to victims, however, is to be applied with some flexibility, as a victim who has received a certain benefit under one scheme might require a different form of assistance that is provided by the reparation program. The commission therefore advised that

each individual should be assessed on the merits of his or her case and, when necessary, a beneficiary of other schemes may also receive benefits from the reparations program.⁴³

Because of the state's inability to provide for the needs of all victims, the commission decided to prioritize reparations for certain categories of victims. It used the concept of "vulnerability" to do so, judging that *amputees*, other *war wounded*, *victims of sexual violence*, *children*, and *war widows* were the victims in most dire need of urgent care. The TRC established that, while victims might have suffered from multiple human rights violations, for categorization purposes it is only necessary that one of the crimes suffered classify them as part of the special categories. The commission recommended that the beneficiaries in these categories be entitled to specific benefits, which will be discussed in the next subsection.

Amputees are defined as war-wounded victims who lost their upper or lower limbs as a result of the conflict.⁴⁴ The commission defined the "reduction of earning capacity" as a prerequisite to qualify for certain benefits, and made reference to the second schedule of the Workmen's Compensation Act of 1955 to determine the level of reduction of earning capacity of certain victims. It fixed the benchmark at 50% for amputees⁴⁵—all amputee victims are presumed to have a 50% reduction in their earning capacity irrespective of their gender and whether they had the capacity to earn before the event.⁴⁶ The application of this presumption actually favored women, who formed the bulk of the unemployed and generally lacked basic education and skills, compared to their male counterparts. It suggests that certain harms endured by women had a great impact on their income-earning capacity even though they might not have earned any income before their amputation. Similarly, using the same analogy, victims of sexual violence, whose chances of marriage have been considerably reduced as a result of the stigma and injuries associated with their experience, can be argued to have had a reduction in their earning capacity.

Other *war wounded* are defined as victims who have become physically disabled temporarily or permanently, totally or partially, other than through amputation, as a consequence of the conflict.⁴⁷ Examples include victims who received lacerations, who lost body parts other than limbs, such as fingers, ears, lips, and toes or who have gunshot wounds, bullets, or shell fragments in their bodies, and are totally or partially disabled as a consequence. These victims are entitled to varying amounts of reparations, based on their particular injuries or disabilities. The second schedule of the Workmen's Compensation Act indicates the various percentages of loss of potential income with respect

to the body parts lost, which are also applied to war-wounded victims.⁴⁸

It is not clear whether physical limitations less directly related to the loss of body parts, such as the inability to have children as a consequence of the violation suffered, will qualify as total or partial disability under the reparations program. Victims interviewed have expressed the view that child-bearing capacity, and society's recognition of that capacity, must be taken into account. In general, for violations not specifically covered in the schedule, such as the mutilation of sexual organs, the implementing body (with the assistance of the Ministry of Health and Sanitation) is to consult medical experts to determine the reduction of earning capacity.⁴⁹ Similarly, this procedure will also determine the entitlement for victims who contracted sexually transmitted diseases as a result of sexual violence. However, if the implementing body is not gender sensitive, it may hold the view that such victims do not qualify because the injury does not amount to the loss of a body part.

Victims of sexual violence, another category of vulnerable victims prioritized by the commission, are defined as those women and girls who were subjected to such acts as rape, sexual slavery, mutilation of genital parts or breasts and forced marriage.⁵⁰ Boys and men who suffered from sexual violence will also be beneficiaries. The commission did not use the reduction of earning capacity test in this case because many of the victims suffer from tremendous stigmatization; however, it is not clear which criteria were in fact employed.⁵¹ It is also not clear whether the commission was inferring that the earning capacity test was grossly inadequate and inappropriate to apply to such victims, even though the loss of earning capacity may be a consequence of sexual violence. As a result of the shame, stigma, and rejection that such victims face, some have been forced to leave their communities where they previously had a social support network and livelihood and, as a result, have become poverty stricken, without husbands or any social structure to support themselves and their families.⁵² The TRC considered that victims of sexual violence would receive reparations in the form of basic gynecological services at the primary health level, and recognized that some of these victims may need additional assistance, such as fistula surgery for victims who suffer from vesicant-vaginal fistula (VVF, a rupture between the bladder and the vagina) and recto-vaginal fistula (RVF, a rupture between the rectum and the vagina).⁵³ The commission was of the view that identifying the specific type of assistance these victims require, as well as effectively implementing the reparations program, was a way for the government to acknowledge the unique nature of such harms.⁵⁴

The TRC report categorizes *children* eligible under the reparations program

as follows: children with physical injury, such as amputees or victims of sexual violence; children whose parents were killed as a consequence of any abuse or violation described in the report; children born out of an act of sexual violence and whose mothers are single; children who suffer from psychological harm; and war-wounded children.⁵⁵ Children are eligible if they were 18 years of age or younger on 1 March 2002. Children are excluded from the reduction in earning capacity test; reparations for children centers around health or educational benefits, for which it is not necessary to determine reduced earning capacity.⁵⁶

Finally, the commission identified *war widows* as beneficiaries of the program. War widows are defined as women whose husbands were killed as a consequence of any abuse or violation and who, as a result, have become the primary breadwinners for their families.⁵⁷ The exclusion of husbands and widowers from benefiting in this category was not considered to be gender discrimination, since husbands and widowers are usually already the breadwinners of their families, and are therefore economically independent.⁵⁸

DEFINING BENEFICIARIES AND BENEFITS

The commission recommended reparations measures in the form of health care, pensions, education, skills training, microcredit projects, and community and symbolic reparations.⁵⁹ It recommended the provision of free primary, secondary, and tertiary physical health care, including surgery, for all eligible beneficiaries based on their needs.⁶⁰ Beneficiaries are entitled to free individual or group counseling and psychosocial support.⁶¹ Additionally, all adult amputees, other war wounded who experience a 50% or more reduction in earning capacity, and victims of sexual violence are entitled to a monthly pension of at least Le60,000 (approx. US\$20); the exact amount for each victim is to be determined by the implementing body.⁶² The commission further recommended that the government assist organizations and agencies that already provide skills training to expand their efforts to reach all victims.⁶³ The skills-training programs include a small-scale business management training course.⁶⁴

AMPUTEES AND THEIR IMMEDIATE FAMILY MEMBERS

The commission recommended that all amputees be provided with free physical health care for the duration of their lives,⁶⁵ including surgery when necessary. It also recommended the provision of free prosthetic and orthotic devices to those amputees who need them,⁶⁶ including upper and lower artificial

limbs, as well as other assisting devices such as wheelchairs, crutches, orthopedic shoes, splints, and so on. Finally, the commission recommended the provision of free rehabilitation services to the amputees, including training on the use, repair, and maintenance of the prosthetic devices, as well as physiotherapy and occupational therapy to enhance the functionality and autonomy of the amputees.⁶⁷

Women play a unique role in the family. Women amputees will be limited in carrying out their everyday domestic activities, thus devaluing them particularly in their role as caregivers.⁶⁸ The difficulties expressed by women amputee victims relate to the challenges they face in carrying out household chores, which were their main source of livelihood before they sustained injury.⁶⁹ The provision of medical facilities, orthopedic devices, drugs, and other facilities to aid victims to handle their disabilities would be of tremendous benefit to women. Such assistance may, in the long run, reduce victims' total incapacity and dependency on other caregivers, allowing them to carry out simple domestic tasks that are extremely significant for women's well-being. The concern, however, is whether women would access these medical facilities. These women may require regular and consistent medical care, but they are prone to seek medical treatment for family members rather than for themselves.⁷⁰ The provision of pensions and skills training, therefore, would contribute to these women's autonomy, and seems particularly important for those who were deserted by their husbands because of their disability.⁷¹

The commission also recommended that the immediate family members of amputees, such as wives and children under the age of 18, should also be eligible to receive free physical health care.⁷² They are also entitled to counseling and psychosocial support, if needed.⁷³ This is especially meaningful for women, who tend to be the primary caregivers to the amputee husbands or children; some may even have to give up their jobs to care for the victims.⁷⁴ The provision of medical facilities and counseling will assist women in coping with the trauma and burden of having their husband (the usual breadwinner of the family) incapacitated. The commission should have also, however, considered an allowance for women who care for amputees, a provision that would help women to provide for themselves and their families.

OTHER WAR-WOUNDED INDIVIDUALS AND THEIR IMMEDIATE FAMILY MEMBERS

The provision of health facilities, counseling, and psychosocial support will be of tremendous help to other war-wounded victims, most of whom continue to experience medical difficulties flowing from the violations they

suffered.⁷⁵ Other war-wounded individuals who are in need of rehabilitation are also entitled to the provision of physiotherapy and occupational therapy. The skills-training and business management course provides victims with opportunities to engage in sustainable enterprises, which will provide the income necessary to take care of their families.⁷⁶

The families of other war-wounded victims who experienced a 50% or more reduction in earning capacity as a result of the violation may also be eligible for some form of compensation: wives and children under 18 years of age are entitled to free physical health care as long as the direct beneficiary is continuing to benefit from the provision of the health care.⁷⁷ They are also entitled to counseling and psychosocial support.⁷⁸ Note that this provision is limited to wives and children, and not husbands. This suggests the presumption that the victims in this category are men and that wives who are direct victims in this category are not the breadwinners of their home. In reality, however, women are the providers of basic necessities in the home, and may be the ones meeting all of their families' financial obligations.⁷⁹

Both other war-wounded victims and family members must be assessed by a doctor to determine eligibility for benefits. They are entitled to a three-month grace period to receive health benefits when all services permanently cease to be administered.⁸⁰

VICTIMS OF SEXUAL VIOLENCE AND THEIR IMMEDIATE FAMILY MEMBERS

Free physical health care for victims of sexual violence includes surgery for those in need, especially for those victims who suffer from VVF and RVF, as well as free HIV/AIDS testing, and testing for sexually transmitted infections (STIs).⁸¹ Victims of sexual violence who test positive for HIV/AIDS or any other STI are further entitled to free medical treatment, including medicines and antiretroviral medication.⁸²

It should be noted that the recommended minimal monthly pension of Le60,000 is not commensurate with the injuries of shame and rejection that victims of sexual violence experience on a daily basis.⁸³ The commission recommended that the amount of the monthly pension for each beneficiary should be directly linked to reduction in earning capacity, which is inconsistent with its position that the reduction of earning capacity test was irrelevant for victims of sexual violence.⁸⁴ In any event, because the schedule of the Workmen's Compensation Act does not include injuries of sexual violence in the criteria for determining the reduction in earning capacity, these cases will have to be decided by the implementing body.⁸⁵ This may require asking the

beneficiary to discuss the experience of the violation repeatedly, which may lead to further depression, stigmatization, and victimization. Some victims of sexual violence expressed their displeasure over the repeated requests by interviewers to talk about their experiences during the conflict.⁸⁶ It would therefore be in the interest of victims of sexual violence not to have to go through an earning capacity test.

Since a large number of women experienced sexual violations during the war in Sierra Leone, the provision of skills training and pensions will contribute to empowering women to provide for their families.⁸⁷ The recommendations do not state what kind of skills should be provided in skills-training programs. Skills that will engage women in viable and profitable businesses are preferable to those that are normally reserved for women but are not economically viable. Most importantly, the business management component of the skills training will contribute to women's success in commercial enterprises.⁸⁸

The various reparations measures contemplated by the TRC recognize some of the harms that victims of sexual violence had to endure, which is likely to help victims overcome the family and communal ostracism they sometimes experience. However, the concrete measures that have been recommended fall far short of the substantial and immediate financial, medical, and psychosocial support and sustainable employment that victims need for themselves and their families. One needs to take into account that a victim's chances of marriage, access to income, access to male support, and the protection that a husband or father provides have been greatly reduced.

Victims have expressed the feeling that ostracism and rejection have not only come from family members and society in general, but also from the government.⁸⁹ Most victims feel that the government simply does not care about them and the children born as a result of the violations.⁹⁰ The reparation measures for such victims presume that all of the mothers will want to raise their children. However, given a choice, some women might rather have the government take care of such children.⁹¹ (Not all victims feel this way;⁹² some find that such children are the only reliable company they have and do not want to be separated from them.⁹³)

The commission recommended that immediate family members of victims of sexual violence (children under 18 years of age and wives) also be eligible to receive free physical health care, as long as the direct beneficiary continues to benefit from the provision of health care⁹⁴ (also with a three-month grace period to receive health benefits when all services permanently cease to be administered⁹⁵). Family members can also receive free medical treatment

for HIV/AIDS and STIs,⁹⁶ as well as counseling and psychosocial support.⁹⁷ Male spouses are entitled to free medical treatment for HIV/AIDS; however, they will only be eligible for counseling and psychological support if the term “dependent” is interpreted as including the male spouse. In view of society’s general attitude of ostracizing victims of sexual violence, it is important that male spouses also receive counseling and psychosocial support. This support should also encourage husbands of such victims not to abandon their wives or further stigmatize and victimize them.

CHILDREN

In addition to the benefits recommended for all beneficiaries, children who still have letters branded by the fighting forces on various parts of their bodies are entitled to scar removal surgery.⁹⁸ Children victims are to be provided with free physical health care until the age of 18, except if the injury requires further care.⁹⁹ Children are also entitled to free individual or group counseling and psychosocial support.¹⁰⁰ Free education up to senior secondary level is to be provided to the following eligible children: children who are amputees, otherwise war wounded, or victims of sexual violence; children who suffered abduction or forced conscription; orphans; and children of amputees, other war-wounded victims, and victims of sexual violence who are eligible for reparations. Children who have been through the DDR program and are undergoing schooling or other training from that program are excluded from this list. The provision of these benefits for children is significant for women, who usually have the primary responsibility to raise them.

WAR WIDOWS

War widows will not be eligible for pension or medical benefits, but the commission recommended that the government assist organizations and bodies that provide skills training to expand their efforts to all widows.¹⁰¹ Granting widows some form of pension would have helped them to provide for their families, especially when the husbands were the sole breadwinner. Additionally, free or reduced-cost education should have been provided for the children of widows.

SYMBOLIC REPARATIONS

The commission considered the need to place individual reparations within a wider social and political context, to provide continued public acknowledgement of the past and to address the needs and demands of the victims for

remembrance.¹⁰² It therefore recommended that public apologies should be made by individuals, groups, bodies, and organizations that bear any responsibility for the abuses committed during the war.¹⁰³ The commission further recommended that the government acknowledge the suffering of Sierra Leoneans during the conflict, and unreservedly apologize to the people for all actions and inactions of all governments since 1961.¹⁰⁴ Additionally, it recommended the establishment of at least one national war memorial, as well as other memorials to the victims of the war in different parts of the country;¹⁰⁵ both victims and their communities should be consulted on the establishment and placement of appropriate memorials.¹⁰⁶ Moreover, the commission recommended that the president, as the “Father of the Nation” and head of state, as well as the leadership of all political parties, acknowledge the harm suffered by women and girls during the conflict and offer an unequivocal apology to them on behalf of preceding governments of Sierra Leone.¹⁰⁷

Beyond this, the commission recommended that traditional and religious leaders organize commemoration ceremonies for victims of the war, as well as symbolic reburials for those victims who have not been buried in accordance with religious and traditional customs.¹⁰⁸ It also recommended that the government declare a national reconciliation day to honor the victims on 18 January,¹⁰⁹ the day the president declared the end of the conflict in 2002, and support various commemoration activities all over the country on that day. The identification of mass graves of victims of the conflict and reburials in consultation with victims were also called for.¹¹⁰ The commission recommended that the Monuments and Relics Commission be entrusted with the coordination of the symbolic reparations. Symbolic reparations, particularly those that will assist in identifying remains of victims and reburial after religious and traditional ceremonies, are important for women because they provide the satisfaction of performing one’s duty towards loved ones.

COMMUNITY REPARATIONS

According to the commission, the government should consider the various assessments of the destruction of the country’s infrastructure and, in consultation with communities and groups concerned, especially women and youth, establish a program for the reconstruction and rehabilitation of the most war-affected regions.¹¹¹ This is most relevant for women, as their livelihoods will improve if schools, hospitals and other basic infrastructure are rebuilt. It will also prevent the need for migration to other communities with better services and infrastructure.

THE CHALLENGE OF GENDER-SENSITIVE IMPLEMENTATION OF REPARATIONS: REPRESENTATION, IDENTIFICATION, AND SUSTAINABLE PEACE

The TRC recommended that its report, including the proposal for a reparations program, be disseminated publicly on a large scale and translated into local languages.¹¹² Following a significant delay in its printing,¹¹³ in August 2005 the commission finally launched the report and distributed it to civil society groups, libraries, local and nongovernmental organizations, political parties, and government ministries and agencies. There are also plans to produce an abridged version to be widely circulated, as well as for a textbook on the report for the use of senior secondary school students.¹¹⁴

The commission also made several recommendations regarding the implementation of the reparations program, including its implementing bodies, funding, and timeline, all of which will have gender-specific implications. These are given below.

IMPLEMENTING BODIES

The TRC recommended that two bodies be created to implement the reparations program. First, the report called for a subunit to be created within the National Commission for Social Action (NaCSA), an existing governmental agency, to implement the program and coordinate all activities pertaining to it. The NaCSA has, to a large extent, already successfully implemented the government's disarmament, demobilization, and reintegration program for ex-combatants. It is also currently involved in rehabilitation and resettlement efforts and the rebuilding of clinics, schools, and housing facilities. However, these initiatives are not part of the reparations program, and the government has not yet created a subunit for the implementation of reparations. Also worrisome is that the NaCSA does not have a gender-specific objective in its current mandate, although it has female employees.

Second, the commission recommended the establishment of an advisory committee, comprising representatives of the government and governmental departments, civil society, victims organizations, and the international community. That committee will assist the NaCSA and oversee the actions of the implementing body of the reparations program. The TRC report, however, does not make it mandatory to include women in the advisory committee.

FUNDING FOR REPARATIONS

The funding of reparations has been of great concern to the TRC and other civil society organizations. Most victims, including those who participated in the TRC process, believe that reparations should be paid by the state;¹¹⁵ reparations provided by donors will not absolve the state from this responsibility. The Commission recommended that a Special Fund for War Victims, to be administered by NaCSA, be established within three months of the publication of the report; a fund-raising board would solicit contributions. Moreover, the commission recommended that contributions to the Special Fund for War Victims should come from a variety of sources, including regular budgetary allocations by the government, revenues from mineral resources and a “debt relief for reparation” scheme, the imposition of a reparations or peace tax, donor support, seized assets from convicted persons who profited from the conflict, and funds from “other legal sources” that may become available.¹¹⁶

TIMELINE FOR THE IMPLEMENTATION OF REPARATIONS

The TRC recommended that the implementation of the most urgent reparations should start within six months of 5 October 2004, the date when the report was handed to the president, and that implementation of the reparations program should not exceed six years, except for the provision of lifetime benefits.¹¹⁷

However, the government has not yet established the subunit in the NaCSA, the Special Fund for War Victims, or the Advisory Committee. Instead, the government’s main response to the findings and recommendations in the TRC report has come in the form of a “White Paper” on the TRC report, published in June 2005. The government stated that it accepted in principle the findings and recommendations of the TRC on reparations. It further stated that it would make its best efforts to ensure the full and timely implementation of the various reparations measures recommended, subject to its available resources and the assistance provided by the international community.¹¹⁸ However, the government has not established a timeline for the reparations program.

GENDER CONCERNS IN THE IMPLEMENTATION OF REPARATIONS

Presently, there is an absence of violent armed conflict in Sierra Leone, and the government has undertaken various measures to reconstruct schools, hospitals, and other infrastructure. But many Sierra Leoneans, particularly the victims interviewed, fear that the country has not attained sustainable peace because issues such as reparations have still not been fully addressed.¹¹⁹

Victims often cannot go back to their homes because they have no homes. They still experience the consequences of the harms inflicted upon them during the war on an everyday basis.¹²⁰ They see the benefits that ex-combatants enjoy under the government's DDR programs, and feel rejected and disappointed by the absence of reparation measures and the delay on the part of the government to address their many needs.

Reacting to the government's failure so far to implement the reparations program, the national president of the Women's Forum recounted the invaluable role women played in the peace process and their participation in the transitional justice mechanisms. The government should demonstrate its recognition of this role by implementing reparation measures to provide redress for victims, particularly women. However, little has been done yet for victims in general, or for women specifically.

Adequate representation of women and gender-trained personnel in the implementing agency would contribute towards an effective and gender-sensitive implementation of the reparations program. The commission is of the view that the proposed reparations measures can fit into existing programs currently implemented by donor agencies and NGOs.¹²¹ If this is done, however, the reparations program will lack the government's crucial participation. It may pose a problem for women if these specific institutions are gender insensitive. The commission therefore suggested that the government be obliged to assist those existing institutions in faithfully executing the recommendations.¹²² This assistance may require the government to provide a service where an organization or body does not have the capacity or the mandate to maintain its activities, or to seek outside financial or donor support for any given measure in the program.¹²³ The commission also recommended that the government play a coordinating role in assisting amputees to access the organizations that provide prosthetic and orthotic devices.¹²⁴ The government should therefore consult with the organizations that are already providing assistance to victims in order to provide possible coordination and assistance. It should assess the likely duration of these activities and be prepared to take them over when the donor community no longer provides the services.¹²⁵

Implementation will also depend on the identification of victims. The TRC compiled two lists of victims, based on the statements it collected. In keeping with its mandate to pay specific attention to the needs of women and children, the commission devoted its first list to victims of sexual violence and forced conscription.¹²⁶ The information collected has been deliberately limited to protect the privacy of the victims. The second list comprised victims of other

violations. However, the total number of victims of the war and their eligibility for specific reparations benefits are still unknown; the government did not embark on any form of registration of victims during or after the war. This may hamper the successful implementation of the reparations program, since the deserving beneficiaries may be difficult to identify. The TRC recommended a careful registration and identification of beneficiaries to avoid the risk of under-registration and the likelihood of abuse in the registration process. Additionally, instead of creating new procedures and bodies, the commission recommended reliance on pre-existing structures, such as traditional chiefs, religious leaders, NGOs, and community-based organizations, with a focus on women and youth organizations.¹²⁷ Some organizations, like the amputee associations, have already issued their membership with identification cards, which will assist the agency implementing reparation measures to identify potential beneficiaries.

The identification of victims of sexual violence requires special mention. Some of these victims have testified before both the Truth and Reconciliation Commission and the Special Court, but remain frustrated by the government's failure to respond to their needs.¹²⁸ Their attempts to maintain and sustain an organization to further their cause have been unsuccessful because of the government's lack of response to their request for assistance.¹²⁹ Moreover, the victims are often embarrassed and fear stigmatization by society, preferring to avoid contact with any association that will identify them as victims of sexual abuse.¹³⁰ This means that identifying such victims so that they can benefit from reparations will be an uphill task. Most victims of sexual and gender-based violence depend on nongovernmental organizations, such as FAWE, to advocate reparations for them.¹³¹ These organizations can provide assistance to the reparations agency in identifying victims enrolled in its program. However, many victims were never part of such programs and may not benefit even though they wish to do so.

GENDER, REPARATIONS, AND TRANSITIONAL JUSTICE: CONCLUDING REMARKS

THE BROADER POST-CONFLICT CONTEXT

The debate on reparations in Sierra Leone has to be set in a broader post-conflict context of discussions and initiatives on topics such as reconciliation, development, prosecutions, and the disarmament, demobilization, and

reintegration of ex-combatants, all of which are playing an important role in the country's transition.

The TRC's reconciliation activities have been varied, and have often begun with sensitization efforts to encourage specific groups of victims and perpetrators to participate. They have included reconciliation ceremonies (bringing together victims and perpetrators with their communities) and memorial ceremonies (naming victims who died during the conflict and establishing monuments and memorials where the hearing was held or at the site of a mass grave). Towards the end of its operations, the commission also organized a large-scale national reconciliation march (with participants from the various political parties, the police, the army, and war-affected groups), and a series of workshops and consultations with civil society, involving discussions of factors that both help and impede reconciliation.

The government has also undertaken several development programs that fall within the framework of the TRC's recommendations. The compilation of the Poverty Reduction Strategy Paper (PRSP), for example, seeks to support the implementation of the recommendations.¹³² Other such initiatives include projects led by the NaCSA, the Justice Sector Reform, and the Law Reform Commission, all of which have components that seek to eliminate discrimination and encourage the empowerment of women.

Beyond this, through the Ministry of Social Welfare, Gender, and Children's Affairs, UNICEF, and other child protection agencies, the government developed a Family Tracing and Reintegration Programme aimed at assisting abducted children who had escaped or been released by giving them temporary accommodation while their families are traced for reunification. The increase of street children and orphans as a result of the war also led the government to establish the National Commission for War Affected Children. This institution is charged with facilitating the reintegration and rehabilitation of street children and other children affected by the war into normal and community life.

Prosecutions of perpetrators have also played a role in the country's transitional process. As mentioned, the Special Court was established to try those who bear the greatest responsibility for the atrocities committed during the war, including sexual and nonsexual crimes committed against women. Women victims have testified in this court. Notwithstanding the importance of the court in making perpetrators accountable for the human right violations, however, some women have expressed concerns. They fear that the court's functioning might reignite old tensions, eroding the fragile peace that has been achieved. Furthermore, it was difficult for them to appreciate the rationale behind prosecuting only a handful of the perpetrators while the majority

were free and compensated through the government's DDR program. Another concern raised by women is that most of the perpetrators of the crimes against women were children. Some women were therefore reluctant to support the prosecution of children, knowing that the punishment for such serious crimes under the national legal system is the death penalty. Finally, women's skepticism toward the Special Court may also be related to the general culture of impunity and silence regarding the abuses they also suffer during peacetime, and because most of them are genuinely unfamiliar with judicial processes and procedures, especially the Special Court's international procedures and standards. The Special Court outreach team is working towards sensitization of the community on its work.

POSITIVE AND NEGATIVE LESSONS LEARNED

Although the implementation of reparations has not yet occurred, there are both positive and negative lessons to be learned from Sierra Leone's discussion of and experience with gender and reparations, at least at the level of policy recommendations. Unlike the DDR program, the proposed reparations program in Sierra Leone took into account both gender concerns and the specific needs of women. The commission decided, for example, that the potential list of victims should be kept open in order to ensure the widest possible access to the reparations program by victims.¹³³ The proposed reparations program gives unrestricted access to victims and many women will be encouraged to access it. The commission also argued that the state had a legal obligation to provide reparations for violations committed by both state and private actors.¹³⁴ This is important for women, who are not always able to identify the perpetrators or their affiliation. Furthermore, the rebels, and not state forces, perpetrated most of the sexual violations that women experienced.¹³⁵

Also, the commission embraced a harms-based approach that focused on vulnerability (and not just violations) when prioritizing reparations for victims; it therefore recognized the harms done to the more marginalized groups, including women and children. Moreover, the inclusion of victims of sexual violence as a prioritized category was very positive: although the commission's mandate did not refer specifically to victims of sexual violence as women, most of the victims of such crimes were women. If the measures are effectively implemented, women who were subjected to sexual violence will get adequate medical assistance and some financial support, however minimal, to help them cope.¹³⁶ Furthermore, in making recommendations to address structural inequality, economic empowerment, and discrimination against

women, the commission identified war widows, elderly women, girl mothers, victims of displacement, and female ex-combatants as particularly vulnerable groups.¹³⁷ Finally, the commission recognized the effects of violence on the family structure, especially on women, and not just the individual victim. For example, it added war widows as one of the privileged categories for reparations, and included immediate family members (and hence so-called indirect victims) as beneficiaries of many measures, such as adequate medical and psychological treatment.

On the negative side, beyond the lack of implementation, there is the insufficiency or inadequacy of some of the recommended reparations measures themselves. War widows, for example, are only recognized as beneficiaries of skills-training programs, but will not receive indemnification or pensions. Overall, the recommended measures, especially for victims of sexual violence, do not adequately address the issue of stigmatization. Clearly such victims require counseling, but there should also be measures that target more specifically the other family members and the community where victims reside to ensure that the victims are not ostracized. In a related matter, the proposed reparation measures do not give sufficient priority to providing psychological support to male spouses of victims of sexual crimes. Finally, it was assumed that victims who had children as a result of rape would be willing to care for and raise such children, which is not necessarily the case. The reparation measures do not provide such mothers with the choice of an alternative care system for their unwanted children.

Although peace has returned to Sierra Leone, many of the wounds of war still remain open. The survival, health, and general well-being of women who were victims of the conflict remain compelling challenges. Women and girls bear the scars and must face the consequences of the horrible experiences of the conflict. An effective and gender-sensitive implementation of the reparations program designed by the TRC would certainly contribute to restoring their dignity.

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- 2 John Caulker, chair, Truth and Reconciliation Working Group, Freetown, 23 August 2005.
- 3 Hannah Gbangbay, human rights officer, Forum for African Women Educationists (FAWE), Freetown, 31 May 2005.

- 4 Celia Nicol, curator of the Sierra Leone Museum, member of the Monuments and Relics Commission, and member of the War Memorial Committee, Freetown, 31 May 2005.
- 5 Marion Kargbo, FAWE, Freetown, 31 May 2005.
- 6 Marian Sesay, FAWE, Freetown, 31 May 2005.
- 7 Akiatu Royston Wright, FAWE, Grafton Freetown, 1 June 2005.
- 8 Isatu Coker, FAWE, Grafton Freetown, 1 June 2005.
- 9 Lucie Coker, FAWE, Grafton Freetown, 1 June 2005.
- 10 Kadiatu Conteh, FAWE, Grafton Freetown, 1 June 2005.
- 11 Fatmata Kainessie, FAWE, Grafton Freetown, 1 June 2005.
- 12 Mohamed Jaka, son of the national chair of the Amputee Association, Aberdeen Amputee Camp in Freetown, 3 June 2005.
- 13 Rosaline Macarthy, Women's Forum national chair, Freetown, 23 May 2005.
- 14 Sallay Kamara, women's rights activist and national chair of Women's Forum, Freetown, 23 May 2005.
- 15 Yasmin Jusu-Sheriff, MARWOPNET, Freetown, 3 June 2005.
- 16 Amie Tejan Kella, Rainbow Center International Rescue Committee, Freetown, 23 May 2005.
- 17 Millicent Campbell, women's rights activist and counselor, Freetown, 29 May 2005.

ACRONYMS

AFRC	Armed Forces Revolutionary Council
CDF	Civil Defense Forces
DDR	Disarmament, Demobilization, and Reintegration
ECOMOG	Economic Community of West African States Ceasefire Monitoring Group
FAWE	Forum for African Women Educationalists
MARWOPNET	Mano River Women's Peace Network
NaCSA	National Commission for Social Action
RUF	Revolutionary United Front
TRC	Truth and Reconciliation Commission
UNAMSIL	United Nations Mission in Sierra Leone
UNIFEM	United Nations Fund for Women

NOTES

- 1 *Prevention of Cruelty to Children Act*, Chapter 31 of the Laws of Sierra Leone 1960, protects children under 16 years of age from physical and sexual violence.
- 2 An individual's personal law governs inheritance, marriage, and other areas of a personal nature. The individual's personal law may be customary law, Muslim law, or the general law, depending on the individual's history, religious practice, and to a certain extent, particularly for men, the choices they make.
- 3 Government of Sierra Leone, *Situation Analysis of Women and Children* (Freetown: Government of Sierra Leone, April 1999).
- 4 *Ibid*; referring to a Norman Survey of females in Freetown and Makeni in 1994, which revealed that 71% of female respondents were circumcised.
- 5 Interviews with several Forum for African Women Educationists (FAWE) beneficiaries who were victims of some of these crimes, Freetown, May 2005.
- 6 Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Freetown: Graphic Packaging Limited GCL, 2004), vol. 3b, 87, para. 14; hereafter TRC, *Report*.
- 7 Corrine Dufka, "Getting Away with Murder, Mutilation, and Rape: New Testimony from Sierra Leone," *Human Rights Watch* 11, no. 3 (June 1999); Amnesty International, *Sierra Leone: Rape and other forms of sexual violence against girls and women*, 29 June 2000, AI: Index AFR51/035/2000.
- 8 Gay J. McDougall, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery, and Slavery-Like Practices during Armed Conflict, Final Report," UN Doc. E/CN.4/sub.2/1998/13 (22 June 1998), para. 45.
- 9 Human Rights Watch, "We'll kill you if you cry": *Sexual Violence in the Sierra Leone Conflict* (Human Rights Watch: New York, January 2003).
- 10 Interview with victim, Sierra Leone National Museum, Freetown, 30 May 2005.
- 11 A group advocating equal gender representation in leadership and decision-making bodies in the country.
- 12 TRC, *Report*, vol. 3b, 87.
- 13 The author participated in these discussions, which were facilitated by civil society groups and some international nongovernmental organizations. Also see TRC, *Report*, vol. 3b, 88, para. 16.
- 14 Women's Task Force minutes of meeting on 15 June 2001.
- 15 TRC, *Report*, vol. 2, 168, paras. 321 and 322.
- 16 *Ibid*, vol. 1, ch. 5, 234.
- 17 Most of the beneficiaries of the FAWE program stated that they informed the commission during their testimony of the measures and benefits they needed.
- 18 Interview with Justice Laura Marcus Jones, TRC commissioner, Freetown, 23 August 2005.

- 19 TRC, *Report*, vol. 1, ch. 5, 241.
- 20 Ibid.
- 21 Ibid., vol. 2, 235.
- 22 Ibid., 236, para. 33.
- 23 Ibid., 234.
- 24 Ibid., vol. 3b, 90, para. 31.
- 25 Interviews with Marion Kargbo and Marian Sesay, at FAWE office, Freetown, 31 May 2005.
- 26 Ibid.
- 27 Interview with Justice Laura Marcus Jones.
- 28 See also TRC, *Report*, vol. 2, 242, para. 54.
- 29 Interview with John Caulker, Truth and Reconciliation Working Group, Freetown, 23 August 2005.
- 30 Interviews with Sallay Kamara, Women's Forum, Freetown, 23 May 2005 and Celia Nicol, curator, Sierra Leone Museum, Freetown, 31 May 2005.
- 31 Interview with Rosaline Macarthy, national chair of Women's Forum in Freetown, and interview with a member of LAWYERS (female lawyers' organization) in Freetown, both conducted on 23 May 2005.
- 32 Ibid.
- 33 Interview with Yasmin Jusu Sheriff, MARWOPNET, Freetown, 3 June 2005.
- 34 Ibid.
- 35 Interview with Amie Tejan Kella, Rainbow Center International Rescue Committee, Freetown, 23 May 2005.
- 36 Interview with Yasmin Jusu Sheriff.
- 37 TRC, *Report*, vol. 2, 234.
- 38 Ibid., 248, para. 87.
- 39 Ibid., 247, para. 81.
- 40 Ibid., 242, para. 53.
- 41 Ibid., para. 55.
- 42 Ibid.
- 43 Ibid., 245, para. 69.
- 44 Ibid., 243, para. 58.
- 45 Ibid., 248, para. 90.
- 46 Interview with Justice Laura Marcus Jones.
- 47 TRC, *Report*, vol. 2, 249, para. 92.
- 48 Ibid., para. 93.
- 49 Ibid., para. 94.
- 50 Ibid., 250, para. 95.
- 51 Ibid.

- 52 Ibid., para. 96. Also, interviews with Isatu Coker, Lucie Coker, Kadiatu Conteh, and Fatmata Kainessie at the FAWE skills training center for mothers and pregnant women, Grafton Freetown, 1 June 2005 (hereafter, Interviews with FAWE beneficiaries).
- 53 TRC, *Report*, vol. 2, 256, para. 140.
- 54 Ibid., 235.
- 55 Ibid., 250, para. 97.
- 56 Ibid.
- 57 Ibid., para. 99.
- 58 Ibid., 242, para. 66.
- 59 Ibid., 250, para. 100.
- 60 Ibid., 252, para. 109; 254, para. 126; 255, para. 134.
- 61 Ibid., 258, para. 159.
- 62 Ibid., 259, para. 168; Le60,000 is equal to approximately US\$20, which is just enough to feed a regular family of 10 for one day.
- 63 Ibid., 262, para. 188.
- 64 Ibid., 263, para. 190.
- 65 Ibid., 252, para. 109.
- 66 Ibid., 253, para. 113.
- 67 Ibid., para. 119.
- 68 Interview with Mohamed Jaka, son of Alhaji Jusu Jaka, the national chair of the Amputee Association, at Aberdeen in Freetown, 3 June 2005. Mohamed is very familiar with the plight of women who are amputees and provided assistance to them, having lived in the Aberdeen camp where amputee victims of the war have resided for a number of years.
- 69 Ibid.
- 70 Interview with Millicent Campbell, women's rights activist and counselor, Freetown, 29 May 2005.
- 71 Interview with Justice Laura Marcus Jones.
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- 73 Ibid., 258, para. 159.
- 74 Interview with Rosaline Macarthy.
- 75 Interview with Sallay Kamara.
- 76 Ibid.
- 77 TRC, *Report*, vol. 2, 254, para. 128.
- 78 Ibid., 258, para. 159.
- 79 Interview with Sallay Kamara.
- 80 TRC, *Report*, vol. 2, 254, paras. 129 and 130.
- 81 Ibid., 255, para. 135.
- 82 Ibid., 257, para. 150.

- 83 Interviews with FAWE beneficiaries.
- 84 TRC, *Report*, vol. 2, 259, para. 170.
- 85 *Ibid.*, 249, para. 94.
- 86 Interviews with Marion Kargbo and Marian Sesay.
- 87 Interviews with FAWE beneficiaries.
- 88 *Ibid.*
- 89 Interview with Marion Kargbo.
- 90 Interviews with FAWE beneficiaries.
- 91 Interview with Marion Kargbo. She had pioneered an association of victims of sexual violence and attended to their needs, but the organization no longer exists as it did not have any support from the government or other organizations.
- 92 *Ibid.*
- 93 *Ibid.*
- 94 TRC, *Report*, vol. 2, 255, para. 136.
- 95 *Ibid.*, paras. 137 and 138.
- 96 *Ibid.*, 257, para. 150.
- 97 *Ibid.*, 258, para. 159.
- 98 *Ibid.*, 258, para. 156.
- 99 *Ibid.*, 254, para. 127; 255, para. 135.
- 100 *Ibid.*, 258, para. 159.
- 101 *Ibid.*, 262, para. 188.
- 102 *Ibid.*, 263, paras. 195 and 196.
- 103 *Ibid.*, para. 197.
- 104 *Ibid.*
- 105 *Ibid.*, 264, para. 199.
- 106 *Ibid.*, para. 200.
- 107 *Ibid.*, 167, para. 317.
- 108 *Ibid.*, 264, para. 201.
- 109 *Ibid.*, para. 202.
- 110 *Ibid.*, para. 204.
- 111 Such assessments have been made by the United Nations Office for the Coordination of Humanitarian Affairs, the United Nations Mission in Sierra Leone, the United Nations Development Programme, the National Commission for Social Action, the UK Department for International Development, and the Sierra Leonean Rural Reintegration Project, among others. See TRC, *Report*, vol. 2, 265, paras. 207 and 208.
- 112 *Ibid.*, 264, para. 203.
- 113 Government of Sierra Leone “White Paper” (hereafter, “White Paper”) on the TRC *Report*, June 2005, 4.

- 114 The compilation of the simplified version is to be co-coordinated by the Human Rights Section of UNAMSIL and the production of the textbook will be supervised by the Truth and Reconciliation Working Group.
- 115 TRC, *Report*, vol. 2, 236, para. 33.
- 116 *Ibid.*, 269, para. 227.
- 117 *Ibid.*, 270.
- 118 “White Paper,” 12.
- 119 Interviews with FAWE beneficiaries.
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- 122 *Ibid.*, para. 83.
- 123 *Ibid.*, 251, para. 101.
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- 125 *Ibid.*, 251, para. 102.
- 126 *Ibid.*, 273, para. 6.
- 127 *Ibid.*, 248, para. 86.
- 128 Interviews with FAWE beneficiaries.
- 129 Interview with Marion Kargbo.
- 130 *Ibid.*
- 131 Interviews with FAWE beneficiaries; interviews with Marion Kargbo and Marian Sesay.
- 132 Preliminary Draft of the Sierra Leone Poverty Reduction Strategy Paper, August 2004.
- 133 TRC, *Report*, vol. 2, ch. 4, 229.
- 134 *Ibid.*, 231, para. 21.
- 135 Interviews with FAWE beneficiaries.
- 136 TRC, *Report*, vol. 2, ch. 4, 243, para. 64.
- 137 *Ibid.*, 168, para. 322.

CHAPTER 6

Learning to Engender Reparations in Timor-Leste:
Reaching Out to Female Victims

Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira¹

25 YEARS OF CONFLICT IN TIMOR-LESTE

My house was burned by UDT² in 1975 during [the] coup d'état. I never saw my husband again after he joined the Falintil³ [uprising] on August 20, 1982. After the referendum in 1999, my house was burned by the Mahidi⁴ militia.⁵

The fall of two authoritarian regimes — one in Portugal, the other in Indonesia — opened and closed 25 years of violent conflict in Timor-Leste. The fall of the Salazar/Caetano regime in Portugal in April 1974 marked the beginning of civil unrest in East Timor⁶ as the population contemplated the possibility of self-governance, and newly formed political parties began jousting for power and dominance. By August 1975, political tensions had escalated into civil war, and according to international observers, anywhere from 1,500 to 3,000 people died and thousands were detained and displaced.⁷ Within a few months, the dominant and left-leaning party, Fretilin, had secured control over most of the territory, and unilaterally declared independence on 28 November 1975.

With tacit approval from the United States, Indonesia launched a full-scale invasion in December 1975. Retreating from advancing Indonesian troops, Fretilin forces executed detainees of the civil war who hampered their escape into the mountains. From 1975 to 1979, Fretilin organized collectives to grow food for the civilians and its forces in areas under their control. However, Indonesian bombings and military advances forced people to move from location to location, and food became scarce. Thousands died from hunger and related diseases. In November 1979, Fretilin's leadership agreed to allow civilians to surrender, as it was no longer able to sustain them. Emaciated women, children, and men began coming down from the mountains into camps controlled by the Indonesian army. The Indonesian army oversaw the distribution of aid, and food and medical care remained insufficient to halt the impact of famine. The arrival in the 1980s of international agencies that directly distributed aid eventually stopped the famine, after tens of thousands of unnecessary deaths.

During the next two decades, Indonesian forces continued to conduct large-scale operations against the civilian population, which included extrajudicial killings, disappearances, illegal detentions, torture, rape, sexual slavery, and forced displacement.

After the fall of Indonesia's President Suharto in May 1998, a political solution to the conflict became possible. The following year, an agreement brokered by the United Nations secured Indonesia's commitment to hold a popular referendum on two choices for East Timor: special autonomy within the Indonesian state and a withdrawal of its troops or independence. Opposing this political move, the Indonesian military established militia groups across the territory in a campaign of violence to terrorize the population into voting for autonomy.⁸ Following an overwhelming vote for independence,⁹ the militia and Indonesian military retaliated by looting and burning thousands of buildings and houses. About 1,500 people were killed, and more than 250,000 refugees fled or were forcibly deported to West Timor, Indonesia.¹⁰ The Indonesian government finally agreed to allow in UN peacekeepers to stop the violence, and on 25 October 1999, Indonesia handed over the territory to the United Nations. After several years of transitional administration by the UN, Timor-Leste became an independent nation on 20 May 2002. However, approximately 30,000 refugees—mostly members of the Indonesian security forces, militia, and civil servants—remain in West Timor as of this writing.

During its 24 years of occupation, Indonesian security forces recruited a large number of East Timorese as members of their auxiliary forces—soldiers, civil defense members, militia, and informers. Timorese members of UDT and other smaller parties, particularly those with family members who were victims of Fretilin atrocities, joined the Indonesian forces during the invasion. Some of these recruits benefited from their association with the Indonesian military, accumulating relative power and wealth. Some participated in criminal activities, taking advantage of the climate of total impunity enjoyed by the Indonesian forces.

Despite the Indonesian military's reign of terror and widespread abuse, the Indonesian government was wont to boast of its development of the territory. However, statistics compiled since Indonesia's surrender of the territory suggest that this "development" showcased a physical infrastructure designed to support Indonesian economic interests, but which did little to improve the health and education of the majority of East Timorese.¹¹ After two decades of Indonesian "development," Timor-Leste now ranks as the "worst performer" in East Asia and the Pacific in terms of human development.¹² Forty percent of the people in Timor-Leste still live in poverty (earning less than \$1 a day),

standards of education are among the lowest in the world and health services remain inadequate—all of which affects women disparately.¹³

The violence of Indonesia's occupation resulted in a significant flow of emigration of some of Timor-Leste's "brightest and best" over the years. Meanwhile, large numbers of Indonesians migrated to Timor-Leste, where they were employed, particularly at upper and middle echelons, to administer basic services, while East Timorese women remained on the lowest rungs of the administrative hierarchy. Indonesians also controlled important political and judicial positions.¹⁴ The widespread and systematic violence following the 1999 referendum destroyed a large portion of Timor-Leste's infrastructure,¹⁵ and caused the exodus of thousands of civil servants and government officials. Large infusions of foreign support and personnel following Indonesia's surrender of Timor-Leste to the UN were needed to assist not only in rebuilding the physical infrastructure, but also in running a country with relatively few trained and experienced Timorese. The years 1999 and 2000 saw a huge flip-flop in terms of the control and administration of public and private institutions (save, perhaps, for the Catholic Church), with Indonesians surging out and foreigners and diaspora East Timorese surging in.

DEALING WITH THE PAST

The abuse of human rights in Timor-Leste did not begin with the Indonesian invasion. However, the systematic abuse by the Indonesian military—particularly during the period leading up to and immediately following the referendum of August 1999—has received international attention, and has been the focus around which a number of judicial and nonjudicial responses to human rights crimes have developed. These have included a UN Commission of Inquiry (1999);¹⁶ a special Indonesian investigative commission (1999–2000);¹⁷ a Serious Crimes Unit (SCU) and Special Panel (court) for Serious Crimes in Timor-Leste (2000–May 2005);¹⁸ an Indonesian Ad Hoc Human Rights Court for East Timor (2003); a Commission of Experts (CoE) appointed by the UN Secretary-General to assess progress of judicial mechanisms in Indonesia and Timor-Leste for bringing to justice perpetrators of serious human rights violations (February–May 2005);¹⁹ and, amid growing international skepticism that an international war crimes tribunal for Timor-Leste is feasible, a controversial Truth and Friendship Commission (TFC).²⁰

A credible mechanism for processing past gross human rights violations in Timor-Leste—those not only committed in 1999, but since the beginning of intensified armed conflict in 1975—is unlikely without strong support from

the international community. The SCU and the special court have been discontinued, and the court's arrest warrants are not backed by authority to extradite those outside the country. The Indonesian Ad Hoc Human Rights Court managed to convict only one of the 18 men who were tried. This man, who is an East Timorese militia commander, remains free pending appeal.²¹ Prospects for bringing to justice high-ranking Indonesian military officials responsible for serious crimes seem as remote as ever with the establishment of the joint Indonesian/Timor-Leste Commission, the emphasis of which is on reconciliation and institutional responsibility rather than individual accountability, and the mandate of which does not permit recommendations for prosecution.²²

THE COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION (CAVR)

In January 2002, the Commission for Reception, Truth and Reconciliation of Timor-Leste, commonly known by its Portuguese acronym CAVR (*Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste*), was established under the interim UN government. The CAVR had three main aims: (1) uncover the truth about human rights violations that took place from 1974 to 1999; (2) assist in the reintegration of those who committed "minor criminal offences" through a community-based reconciliation process; and (3) assist in rehabilitation of dignity for victims of human rights violations. At the end of its mandate, the CAVR was required to produce a final report, including its findings and recommendations, which would help "to prevent the repetition of human rights violations and to respond to the needs of victims of human rights violations."²³

The CAVR was established to work in parallel with the Special Panel for Serious Crimes. It was obligated to refer statements from deponents who came forward to participate in the community reconciliation process to the Office of the General Prosecutor. The prosecutor, who had exclusive jurisdiction on serious crimes, allowed a reconciliation hearing to proceed if the perpetrator was not implicated in a serious crime. The CAVR also had authority to refer cases to the prosecutor as a result of its truth-seeking function.

A decision to put the needs of victims at the heart of the CAVR's activities and programs led commissioners to establish a special victim support division in the commission's executive body to look after these needs, and to develop and administer an urgent reparations program. The CAVR also formulated a reparations program as part of its recommendations to the Timor-Leste government and parliament.

There has been little work on reparations in Timor-Leste, other than the interim measures developed by the CAVR. In the wake of the post-referendum

violence in 1999, many international and local NGOs, and some government agencies, developed specific programs for victims of human rights violations, but none of these initiatives raised issues around reparations. More recently, the Timor-Leste government's drive to make peace with the Indonesian government has dominated the official agenda on justice. Believing that national security can only be achieved by appeasing Indonesia, the Timor-Leste leadership has chosen to sacrifice the pursuit of criminal accountability. Caught between the government's mobilization efforts for reconciliation with Indonesia and sectors of civil society that opposed this position, the soft voices of victims asking for reparations are barely audible.

WOMEN DURING AND AFTER THE CONFLICT: VICTIMIZATION AND AGENCY

Traditionally, East Timorese women have been restricted by the gendered norms of culture and custom. The majority of East Timorese women live in rural villages, where the sexual division of labor demands that they carry the heaviest burden. Besides a range of domestic tasks—gathering firewood and water, cooking, caring for children, the elderly and the ill—they also work alongside men in the fields. Men, on the other hand, have economic and political advantages derived from their rights to land and property, as well as their traditional role as negotiators in the public sphere. The economic security offered a woman through the custom of *barlaque* (bride price) in reality means that at marriage a woman simply moves from her father's domain of power, influence and control into the domain of her husband and his family, a process that, in effect, excludes her from access to basic economic, social, and political rights. According to the United Nations Children's Fund (UNICEF), in Timor-Leste the maternal mortality ratio is 800 per 100,000 live births, and many women are anemic, which increases the risk of hemorrhage during delivery. More than 80% of births take place in the home, and there is a high incidence of low birth weight.²⁴ Female-headed households now stand at 14%, female literacy is 35% and the few women in the labor force are concentrated in low-skilled jobs.²⁵

Years of armed conflict and violence disrupted rural life and traditional gendered relations. As fathers and husbands were disappeared, killed, or became fighters on both sides of the conflict, women were compelled to redefine their roles. The struggle for independence, for example, politicized many women. The withdrawal of the Portuguese in 1974 gave new energy to many

East Timorese, enthused about possibilities for developing a new, independent nation. Prior to Indonesia's invasion, women participated in youth and women's organizations affiliated with the newly formed political parties. One of these organizations, the Popular Organization of Timorese Women [*Organização Popular das Mulheres de Timor*] (OPMT),²⁶ had a dual purpose: to participate in the anticolonial struggle and to oppose all forms of violence and discrimination against women.²⁷ It challenged the customs of polygamy and *barlaque*, both of which were outlawed in Fretilin's political manual distributed prior to the Indonesian invasion.²⁸ After the invasion, this group provided food, clothing, and medicine to East Timorese guerrillas who fought the Indonesians. Some women bore arms and joined the armed resistance, whereas others took on the risky task of communicating messages between the guerrillas in the forest and the clandestine movement in the urban areas.

**WOMEN DURING THE CONFLICT :
FINDINGS OF THE CAVR ON GENDER-BASED ABUSE²⁹**

Although gender-based abuse occurred during periods of occupation and conflict prior to the arrival of Indonesian security forces,³⁰ the CAVR, in line with its mandate of investigation from April 1974 through October 1999, found that systematic patterns of abuse occurred during the Indonesian occupation. Concerning the reasons underlying the violence women experienced, the CAVR found that women and girls who suffered sexual abuse and other forms of violence, including detention, extrajudicial killings, and torture by the Indonesian military, can be divided, more or less, into three categories. One group of women targeted were those involved directly in resisting the Indonesian occupation (as combatants, members of OPMT, and other clandestine groups), some of whom played an important logistical role in the resistance through the provision of food, medicine, and so on, and as members of the clandestine network. A second group of targeted women were those related to men involved in the opposition, or who were from communities suspected of collaboration with the opposition.³¹ Women and girls from these two groups were often detained, tortured, and sexually abused. A third group of women and girls were those with no clear connection to the resistance—either directly or indirectly—but who suffered as the result of large-scale military operations that targeted civilian populations.³²

Of a total 7,669 statements that the CAVR received on human rights violations,³³ 1,642 (21.4%) were from women who were either victims of, or wit-

nesses to, human rights violations. The majority of men and women deponents reported violations experienced by others; only about one third of both male and female deponents reported violations against themselves. From these statements, the CAVR documented more than 85,000 counts of violations, which included extrajudicial killings, forced disappearances, death by deprivation, illegal detention, torture, ill-treatment, forced displacement, forced recruitment, sexual violence, and property and economic violations. The three violations most reported by men were detention, displacement, and torture, whereas those reported most often by women were detention, displacement, and killings. This suggests that extrajudicial killings, of which most victims were men, had a disproportionate impact on women.³⁴

Of all reported violations, the CAVR documented 853 counts of sexual violence.³⁵ The most frequently reported form of sexual violence was rape at 46.1% (393 out of 853 cases), followed by an aggregate of other forms of sexual violence at 27.1% (231 out of 853), and sexual slavery at 26.8% (229 out of 853).³⁶ The overwhelming majority (92.7%, or 791 out of 853) of sexual violence incidents were committed by Indonesian security forces,³⁷ 3.3% by members of the resistance movement (28 out of 853), and 4% by others (34 out of 853). Of all reported incidents of sexual violence, 16.7% (142 out of 853) occurred during the violence surrounding the referendum in 1999.³⁸

Using statistical projections, the CAVR found that an estimated 18,600 killings and a minimum of 100,000 famine-related deaths took place during the conflict.³⁹ From its statement-taking process, the CAVR documented 5,120 incidences of extrajudicial killings and 836 incidences of disappearances. Most of these fatal violations were targeted against men—86.9% and 90.5%, respectively. Thus, only 669 counts of extrajudicial killings and 80 counts of disappearances of women were reported to the CAVR. In terms of nonfatal violations, which included illegal detention, torture and ill-treatment, sexual violence, forced displacement, and destruction of property, the CAVR documented about 60,000 incidents. Of those reported violations, 14% (8,355 out of 59,715) were committed against women and 86% (51,360 out of 59,715) were committed against men.

Although Timorese women, like other women in Indonesia, were also the particular target of violations of reproductive rights, very few cases were reported.⁴⁰ The CAVR documentation of these violations includes six cases where women were coerced (directly or indirectly) to use birth control,⁴¹ three cases where pregnant women were tortured and subsequently miscarried, and two cases where perpetrators of sexual slavery forced women whom they

had impregnated to have an abortion. The CAVR was unable to substantiate allegations of forced sterilization.⁴² The small number of reported cases of reproductive rights violations may reflect the fact that, contrary to widespread beliefs, relatively few Timorese women were successfully forced to accept birth control. It is also possible that both male and female deponents were unaware that reproductive violations are human rights violations.

The CAVR's quantitative and qualitative research reveals a pattern that points to the gendered experience of the conflict. Timorese men, seen as political opponents, were targeted by large-scale Indonesian military operations in which they were killed, disappeared, detained, and tortured. Women suffered these gross human rights violations in smaller numbers, but were the main victims of sexual violence. However, when male members of the family were killed, detained, disappeared, or maimed, women suffered the consequences. They became sole breadwinners and protectors of their families, with few, if any, resources to support themselves and their children, and they became increasingly vulnerable to abuse by members of security forces or other civilians. Also, as victims of sexual violence, women experienced not only a violation of their physical integrity, but often a lifetime of marginalization and discrimination by members of their community. Community misperceptions of nonconsensual sexual relations lead to the view of women victims of sexual violence as immoral "fallen women." The slippery slope of victimization is steeper for women, who have fewer footholds and places to grasp to soften their fall.

WOMEN'S PARTICIPATION IN THE TRANSITIONAL PROCESS IN TIMOR-LESTE

As in other post-conflict societies, the women of Timor-Leste walk a tightrope between the opposing polarities of exhilarating change and traditional customs. With the withdrawal of Indonesian forces, many women who had been active in the struggle for independence continued to deal with past abuses while also advocating for gender equality in the process of nation building. Timorese women took the lead in the emergency and rehabilitation phase of the transitional process by providing emergency shelter, counseling, and support for victims of violence.⁴³ The transitional process has also been marked by women's mobilization that has resulted in significant positions for women in the government. Women also played an active role in the CAVR as commissioners and staff members, as those who gave testimony and participated in various CAVR programs and as members of women's organizations that were involved in the implementation of some CAVR programs.

WOMEN'S PARTICIPATION IN CIVIL SOCIETY

During the UN Interim Administration,⁴⁴ Timorese women mobilized to demand political recognition and rights and, through the establishment of several new women's NGOs, to serve and empower women.⁴⁵

A key political event of this transitional period was the Women's Congress organized by Rede, a newly formed network that sought to unify women's groups of divergent political affiliations.⁴⁶ In June 2000, about 400 women from across the country gathered to discuss human rights and reconciliation, domestic violence, gender discrimination, and economic opportunities for women. Delegates developed an action platform for the advancement of Timorese women in which they demanded special programs to support women, special guarantees for women to hold government positions, and opportunities for women to participate in decision making. While recognizing the need for reconciliation, the congress explicitly called for an international tribunal to address violations against women and to ensure that perpetrators be brought to justice, the formation of a truth commission, a special court for women, and rehabilitation programs for victims of violence, including moral support to help victims mitigate their trauma.⁴⁷

Prior to the election of Timor-Leste's Constituent Assembly in August 2001, women's groups lobbied for a 30% quota of seats for women. The interim National Assembly, appointed by the UN administrator, voted not to accept the demand. However, UN regulations encouraged women to be candidates and, in the end, 27% of those elected to the Constituent Assembly were women, one of the highest percentages in the Asia-Pacific region.⁴⁸ A working group on women and the constitution also led a successful campaign to include women's rights in the new constitution of Timor-Leste, which enshrines principles of gender equality in Section 17.⁴⁹ Following the 2001 Constituent Assembly elections, the Office of the Advisor to the Prime Minister for the Promotion of Equality was established to safeguard gender mainstreaming and address issues related to gender-based violence and women's empowerment. In December 2002, the new nation ratified all major human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women.⁵⁰

Amid these important political developments, Timorese women have continued to struggle for gender equality and justice, particularly in their private lives. Domestic violence remains rampant.⁵¹ Women's groups that campaigned in opposition to military violence against women during the Indonesian occupation are now criticized for "supporting the break-up of families" as they shift their focus to domestic violence. Many of the young women who

valiantly stood up to Indonesian security forces must now deal with personal relationships in which they themselves face issues ranging from the threat of violence from a spouse to unequal distribution of labor at home.

WOMEN'S PARTICIPATION IN THE CAVR

Even before the CAVR was established, women played important roles in the process that gave birth to the commission. Two prominent East Timorese women sat on the steering committee that consulted with individuals and groups across the country to obtain input into the design of the commission.⁵² Special sessions were organized with women's NGOs and advocates in Dili as well as in the districts. Subsequently, a selection panel that included a representative from Rede conducted a public consultation to determine members of the commission.⁵³

In January 2002, seven individuals were sworn in as national commissioners to mark the official establishment of the CAVR; two of them were women, both strong proponents of women's rights. Olandina Caeiro, who carried the commission's treasurer portfolio, was a member of the district parliament in Dili (1997–99) and of the Indonesian Commission for the Elimination of Violence against Women. She is, at this writing, director of the East Timorese women's NGO Etwave, and current president of Rede. Isabel Guterres, who carried the commission's portfolio on reception and victim support, had worked in Timor-Leste with several international humanitarian aid agencies, had been an electoral commissioner for village council elections, and is, at this writing, a board member of the Timor-Leste Red Cross.

UN Regulation 2001/10, which established the CAVR, mandated that a gender perspective be integrated into all aspects of its work.⁵⁴ This overall gender strategy was evident in the composition of the commission's staff at district, regional, and national levels. Regional commissioners, typically balanced between males and females, led 13 district teams.⁵⁵ Each district team consisted of a team coordinator, statement takers (two male, two female), victim support staff (one male, one female), community reconciliation staff (one male, one female), and a logistics officer. In the national office, the executive director (male), supported by a program manager (a female activist experienced in the field of gender and human rights), coordinated all aspects of the CAVR's work. A senior management team consisted of the executive director, program manager, and coordinators of the six main divisions of truth seeking, community reconciliation, reception and victim support, community outreach and public information, administration, and finance. Also, a training unit was established at the national office to periodically conduct trainings for staff and commis-

sioners, including sensitization to gender issues.⁵⁶

Women also participated in a number of the CAVR's programs at both national and district levels. Female regional commissioners and district staff members gave special attention to women in an integrated program of community outreach across the country, which involved taking statements from victims and perpetrators of human rights violations, and facilitation of community discussions on the collective impact of human rights violations. Although one in five community discussions per subdistrict was targeted to be exclusively for women, only 24 of 297 community discussions documented were women-only meetings, an imbalance that district teams themselves felt was a problem. District teams sought also to involve women in community reconciliation hearings and victim hearings at the subdistrict level.⁵⁷

At the national level, a special six-month research project on women and conflict was conducted in cooperation with two East Timorese women's NGOs. A team of five women interviewed nearly 200 women throughout Timor-Leste. This team's findings were drawn upon heavily in writing the chapter on sexual violence and other chapters for the CAVR *Final Report*. Gender sensitivity was also evident in the work of the reception and victim support division,⁵⁸ a unique innovation to operationalize the commitment to put victims at the heart of the commission's work. This division oversaw the implementation of the healing workshops and urgent reparations program, and also supported the work of victim support staff in the subdistricts.

One of the CAVR's eight national public hearings was on women and the conflict.⁵⁹ The 13 women invited to speak were selected through a process that sought balanced representation in several ways.⁶⁰ Other speakers, who identified patterns of gender-based violence and shared recommendations for the future, included a former governor of Timor-Leste, a health worker with knowledge and experience of Indonesia's coercive birth control program, and representatives of three women's groups—a group of Timorese women activists, the Indonesian National Commission for the Elimination of Violence against Women, and the West Timor Humanitarian Team.⁶¹

Women victims spoke in national and subdistrict hearings not only about the abuse they received from primary perpetrators, but also the suffering they experienced due to discrimination and ostracism by their communities. As one survivor of sexual slavery blatantly stated at a subdistrict victims hearing:

*Yes, you in the back there, who are laughing and judging me. You who call me "whore" behind my back. Today I will speak about what happened to me and maybe you will stop judging me.*⁶²

Besides giving statements, speaking in public hearings, community discussions, and reconciliation events, women also participated in the CAVR's healing workshops.

A third dimension of women's participation in the CAVR was through women's organizations that partnered with the commission in several ways. The director of Fokupers, a women's advocacy group, was involved in selecting members of the women's research team, and shared office space and facilities with the team. Fokupers staff members with experience in psychosocial and group counseling joined with CAVR staff to conduct healing workshops. Fokupers also submitted to the CAVR its database of approximately 300 interviews with women victims and witnesses of human rights violations that had predominantly taken place in 1999. A number of prominent Timorese women, including the prime minister's advisor for the promotion of equality, met several times with the CAVR's women's research team to provide input into the selection of participants for the women's national public hearing. Several Timorese and Indonesian women's groups participated directly in the women's hearing by presenting submissions. Two key women's NGOs—Fokupers and Etwave—were also involved in the design and delivery of the CAVR's collective reparations program.

Overall, women's participation in the CAVR was moderate, whereas efforts made to ensure a gender balance in implementation of CAVR programs succeeded to varying degrees.⁶³ In general, women's participation was better in activities coordinated by the national office that had strict quotas for women, such as the national public hearings and healing workshops. District teams struggled to engage rural women in CAVR activities, which was not an easy task, given that most of them had to juggle difficult working conditions and faced community resistance to women's participation in public activities. However, without these multiple strategies to engage women, their participation would have been even weaker, and the CAVR would have failed to hear the distinct voices of both men and women affected by the conflict.

WOMEN'S INVOLVEMENT IN THE ARTICULATION OF REPARATIONS

Women's role in the articulation of reparations has been limited. Since Indonesia's withdrawal, women's mobilization efforts have focused more on women's rights in reconstructing the present and imagining a new future than on repairing the past. In November 1999, women's groups marched in the capital of Dili, placing flowers at sites where women were known to have been detained and were subjected to violence. In retrospect, this symbolic act, initiated by women

to remember women who had suffered on behalf of independence, sought to bring public closure to that past rather than open a new chapter of struggle on behalf of gender equality in reparations.

Recognition of women's contributions to the struggle and their needs for reparations has been largely neglected by official organizations. The Government of Timor-Leste implemented RESPECT, a two-year program for "the social and economic integration of vulnerable groups of society: veterans, ex-combatants, widows and unemployed youth."⁶⁴ This program funded employment and livelihood activities such as labor-intensive infrastructure rehabilitation (roads, irrigation, markets, schools, reforestation), vocational training, and support for agricultural and small-business endeavors. It has also supported the development of a "peace garden" — a memorial garden where the remains of unidentified resistance fighters are buried — and the work of a commission to verify the list of veterans of the resistance army.⁶⁵ Although the program engaged with many victims of human rights violations, it did not use the language of reparations, but rather stressed the importance of achieving stability. It remains to be seen how many women, including widows, were able to benefit from the program.

At the same time, women's participation in victims groups has not been notable. Only a handful of these organizations exist in Timor-Leste, and several of them are facing organizational challenges. The Association of Ex-Political Prisoners probably has the highest profile, as some of its members are now political and business leaders. However, even this group does not yet have a functional permanent secretariat, staff or program. It does, however, act as an influential political pressure group. AKKOH, a national association of families of the disappeared, also suffers from lack of resources and organizational structure. An association of families of victims of 1999, which was established as part of the ongoing campaign for an international tribunal, remains active, but is mainly an advocacy group on justice, and does not address other issues around victim rehabilitation and reparations. These national victims groups have women members, but are predominantly led by males.

Other victims groups in which women play a leadership role are community-based self-help widows groups formed in the aftermath of the massacres in 1999. Supported by women's NGOs, these groups were formed to provide mutual support, address issues of economic survival, and continue the demand for justice and disclosure regarding the whereabouts of those who were disappeared.⁶⁶ Again, these victims groups have not organized around reparations and are hampered by continuing problems related to the basic running of the organization, lack of resources, and internal conflicts.

Women in Timor-Leste have not been totally silent on the issue of reparations. In 2000, before the establishment of the CAVR, two NGOs—Fokupers and the Law, Basic Rights, and Justice Foundation [*Hukum, Hak Asasi, dan Keadilan*] (HAK)—were involved in advocacy efforts on behalf of victims of sexual slavery perpetrated during the Japanese occupation of Timor in World War II.⁶⁷ Also, during the public hearing on women and conflict in April 2003, a group of women activists presented a submission on behalf of the women of Timor-Leste.⁶⁸ The submission outlined the forms of violence that Timorese women experienced during the civil war and the Indonesian occupation. These included killings, disappearances, rape, sexual slavery, forced marriage, and forced family planning. It also raised the issue of cultural and religious practices that discriminated against victims of sexual violence, and the lack of recognition given to women for their contributions to the resistance movement and peace building. In conclusion, the group articulated the following demands: the recognition of all human rights violations and patterns of violence experienced by women; the establishment of a museum to promote this recognition, and to promote peace, unity, and equality; further documentation of women's experiences in the conflict; civic and human rights education on gender equality, including through the school curriculum; legal reform to ensure gender equality; and accountability for crimes committed against women. In terms of reparations, the group demanded that the government ensure the provision of social and psychological support, including special programs for physically and mentally disabled women. It also demanded that reparations for victims in Timor-Leste should include victims of the Japanese occupation during World War II, victims of the civil war and of the Indonesian occupation, and should provide economic empowerment, education, health services, and reconciliation initiatives for women victims.

In general, however, the strongest mechanism for the articulation of victims voices has been in the context of the CAVR's work. As a part of its process, the CAVR encouraged victims to make recommendations, which individuals often made after giving a statement or at the end of oral testimonies during hearings. Collective recommendations followed group discussions during healing workshops and community mapping exercises. Many victims of past violations talked about reparations, but usually not from the stance of demanding a right. Although some victims expressed a feeling of natural entitlement, it was usually couched in a language of powerlessness. These recommendations, in turn, formed the basis for recommendations in the CAVR *Final Report*, particularly recommendations regarding reparations policy.

WOMEN'S VIEWS ON REPARATIONS

A review of recommendations taken from a sample of 50 female victims across 11 districts provides a snapshot of only a few of the hundreds of recommendations the CAVR received.⁶⁹ Almost 50% (or 23 out of 50) of these women asked for government assistance for their children's education. Fourteen of them recommended assistance for the most vulnerable, specifically widows, the disabled, and orphaned children. Ranked third (recommended by 11) was the demand for justice. Other recommendations included access to health services (5), adequate housing (4), recognition of the role and sacrifices of women throughout the conflict (3), assurances of a good price for agricultural products (2), and guarantees of peace (2). Individual women also spoke of ensuring that lessons from the conflict were taught in schools, that efforts continue to bring home all refugees, that victims have continued opportunities to give statements about human rights violations they suffered, that information be provided about specific disappearances, that the role of the Church continue to be recognized, and that the government be close to its people.

Many female victims who testified before the commission expressed fear that the violations committed against them caused them and their children to be left behind in independent Timor-Leste. Many women said they could not support their children's education and feared that this would cause their children to suffer next-generation discrimination. Parents with physical or mental health problems, and single mothers whose husbands were killed due to violations or who bore children due to rape, often felt unable to provide adequately for their families. Many women said their continued poor health had to be addressed if they were to adequately support their families and live their own lives more fully. Sometimes these health problems were the direct result of violence committed against them; sometimes they were compounded by the poverty caused or exacerbated by the violence against them. Women victims also spoke of the need for justice. Often this took on a complex definition, combining traditional forms of justice and formal justice delivered by the courts. The need to see justice done was often expressed in the context of the impunity and freedom enjoyed by those people most responsible for the suffering that victims still felt. Most of these perpetrators were Indonesian and Timorese members of security forces and militia groups in Timor-Leste who now live in Indonesia.

To further explore current attitudes about establishing a reparations program in Timor-Leste, members of Fokupers interviewed 12 key members of civil society, mostly women and human rights activists, and women survivors

of the conflict. Three main themes emerged from these interviews: affirmation that a reparations program must be developed and implemented by the government; the need to involve victims themselves in the design of a reparations program; and the need to develop a special program for victims of sexual violence. One respondent stated that rehabilitation should include victims of both the Japanese and Indonesian occupations of Timor-Leste, and that an inventory of those eligible is necessary. According to her, whether the focus is individual or collective, the important things are that victims themselves be involved in decisions on the mechanism of the program, that they are able to take advantage of it, and that human rights violations are not repeated.⁷⁰

Although some of those interviewed cautioned against encouraging dependency on the part of recipients, most respondents supported the notion of reparations with an emphasis on material support and economic empowerment.⁷¹ Many spoke of the restoration of dignity to women victims of sexual violence as a key component of reparations. Interestingly in regard to this, several respondents also spoke of the need to involve local communities in a holistic approach to reparations, so that community members would better understand the dynamics of victimization and the concrete situation faced by victims of sexual violence, in order to minimize community discrimination towards victims. One individual interviewed stated: "I feel more attention needs to be given to women victims of sexual violence through . . . group discussion to share information and by accompanying them so they don't feel alone and feel they have the support of others so they can be resocialized into their communities . . . so they are accepted and can return to carrying out normal lives."⁷²

In regard to funding reparations, most respondents agreed that the bulk of support should come from the government of Timor-Leste. As one respondent stated, "Timor-Leste's independence derived from the suffering of its people, so they should be helped by their government."⁷³ Women were considered the most socially and economically vulnerable victims requiring economic compensation and rehabilitation of health. Yet it was also recognized that an important part of reparations was legal retribution for the crimes victims had suffered. Those interviewed were almost unanimous in stressing that reparations for the victims must include judicial proceedings against perpetrators.

Some members of the current government believe that because of all that the East Timorese suffered in their struggle for independence, individual reparations are not needed. National development and independence, they claim, are adequate substitutes for reparations. Most respondents, however,

were quite clear that national development was not a sufficient stand-in for reparations:

If compensation for our sacrifice must be in the form of development, then human rights violations in the future will continue because perpetrators of violations were never brought to justice. A development program is for society in general, but a reparations program is the actual right of victims to obtain.⁷⁴

Certainly all of us are emotional and psychological victims, if not physical victims. I suffered, but I was not a direct victim. Now I have a job, but there are those whose trauma is greater—they lost their husbands, they witnessed the violation of human rights. What about them? Don't level the victims. There are those who need special attention... I reject the argument that we're a poor country and so cannot help them. It isn't enough to rely on general development.⁷⁵

These interviews, although limited in number, were important in initiating discussion on reparations beyond the program implemented by the CAVR; they reaffirmed the need for further advocacy.

WOMEN'S PARTICIPATION IN THE DESIGN OF THE REPARATIONS PROGRAM

As the CAVR began to conduct its inquiry into human rights violations, it became clear that there were victims still severely suffering from the impact of the abuse they experienced. In line with the commissioners' policy decision to keep victims at the heart of the CAVR's activities, the executive body secured funding from donors for its urgent reparations scheme. A Working Group on Victim Support, consisting of seven members, four of whom were women, was formed to design the urgent reparations program and develop guidelines for its implementation.

Statement takers (50% of whom were women) were asked to identify victims who fit beneficiary criteria (see below). District-level victim support staff and regional commissioners (50% and 30% women) conducted follow-up visits to these persons, and subsequently recommended them to the national office to receive urgent reparations. At the same time, it was decided that in some special cases, a supplementary grant could be made or specific intervention for rehabilitation could be supported. In conjunction with the individual urgent reparations, the working group also developed an initiative in which locally based organizations could receive funding from the CAVR to provide services to persons identified through this program. It was also decided that the urgent reparations program would be carried out as a "silent program" of

the commission in order not to create a bias in the truth-seeking process. After an early evaluation of this program, the CAVR introduced healing workshops for beneficiaries of the urgent reparations scheme. As mentioned above, staff members of Fokupers with experience in peer counseling played a key role in facilitation of the healing workshops.

At the end of its field operations, the CAVR's victim support division was restructured into the reparations unit, tasked with formulating the lessons learned from the urgent reparations scheme and other activities, liaising with civil society and victims groups, and assisting the writing and editorial team in formulating a reparations policy for discussion and approval by the national commissioners. Assisted by a female consultant, the reparations unit organized a series of internal workshops with national commissioners to formulate the framework of the reparations policy and to produce a working draft.⁷⁶ Due to technical and language difficulties and lack of time and resources, the Reparations Unit did not complete a quantitative analysis of the hundreds of recommendations received by the commission. Instead, the editorial team asked one of its members with a strong background in gender issues in Timor-Leste to finish drafting the reparations policy, drawing from findings of the women's research team as well as the submission to the CAVR from women activists and other sources. In parallel, the CAVR held six workshops with civil society and government agency stakeholders on six key issues: reconciliation, health, education, security, children and justice. It was decided that women's issues would be raised and discussed in an integrated way in these workshops, and women's groups were invited to participate in them.

ENGENDERING THE CAVR'S URGENT REPARATIONS SCHEME

Within the framework of the urgent reparations program, the victim support division conducted five main activities involving victims identified by district teams. It provided monetary compensation to victims, actively referred victims to existing services (including bringing victims from the districts to services in Dili), conducted healing workshops, provided funds to local organizations to provide services to these persons and, as a pilot study, implemented a collective reparations program delivered in conjunction with three NGOs.

DEFINING THE VIOLATIONS THAT TRIGGER REPARATIONS

In its urgent reparations program, the CAVR identified killing, disappearance, detention, torture, rape, and other forms of sexual violence as harms or crimes

to be addressed by the program because of their severity and the longevity of their impact. Forced displacement and destruction of property were not included because these violations affected such a large percentage of the population. Forced labor and forced use of contraception also were not included, not because they were considered harmless, but because the number of incidents documented by statement takers and research units was negligible. The program's working group, comprising individuals with years of experience working with victims of human rights violations in Timor-Leste, took a practical view of the limited resources available by prioritizing the worst harms. The inclusion of rape—of which the majority of victims were women—and the provision for immediate family members of those killed or disappeared allowed women (widows, mothers who lost their children) to qualify for the reparations program. Another criterion was the severity of continued suffering due to violations. In principle, this allowed those considered most vulnerable in each category of harm, including the most vulnerable women—widows, women with disabilities, women still affected by severe trauma—to qualify for the program. It was assumed in the design of the program that this criterion would help put vulnerable women at the front of the queue. However, as described below, this assumption was proved false.

DEFINING BENEFITS AND BENEFICIARIES

Primary beneficiaries of the program were survivors of gross human rights violations (rape, imprisonment, and torture) as well as those who suffered indirectly from the disappearance or murder of a family member/members. District teams were to identify 10 to 15 persons from each subdistrict who best met the criteria as beneficiaries. This limitation forced CAVR staff to make judgments about relative vulnerability based on assessments conducted during the three months they spent in each subdistrict.

Victim support staff conducted home visits to victims who were identified as potential beneficiaries by the statement-taking team. After the visit, the district team, together with regional commissioners, would review the information and make a decision on whether to recommend particular victims to the national office. The CAVR developed the following guidelines to help district teams and regional commissioners to identify those most in need:

- The degree of need is severe;
- The person is clearly vulnerable;
- Other referral sources do not exist or cannot be accessed easily;
- The need should be related to a particular human rights violation

(extrajudicial killing, forced disappearance, illegal detention, torture, sexual violence);

- The urgency of the need is obvious; and, if possible,
- The assistance sought will assist the person in a sustainable way.⁷⁷

The victim support unit at the CAVR's national office collected all names of potential beneficiaries, conducted a "paper" assessment together with the victim support working group, and supervised the delivery of the monetary compensation and services to these individuals. In most cases, all potential beneficiaries presented by district teams were accepted in the process. Beneficiaries were identified from among those who gave statements to the commission.

As for the benefits, as mentioned, the urgent reparation scheme provided monetary compensation to victims, actively referred victims to existing services, conducted healing workshops, provided funds to local organizations to provide services to these persons and, as a pilot study, implemented a collective reparations program delivered in conjunction with three NGOs. In total, approximately US\$160,000, or about 3% of the CAVR's total three-year operational budget, was earmarked for the urgent reparations program.⁷⁸

Monetary compensation was the same for all victims despite their number of dependants or severity of harm they suffered.⁷⁹ This was a deliberate policy in the administration of the urgent reparations scheme to reflect a spirit of equality, but also caution in implementing a new program. The CAVR viewed the urgent reparations program as a pilot study that would help inform the design and implementation of a national reparations program in the future.

Most beneficiaries, men and women, used this monetary compensation to pay for medical costs, including the purchase of medicine and transportation costs. Many beneficiaries also used the funds to pay their children's school fees or as start-up costs for income-generating activities. Others used the funds to repair their homes or to purchase food and other basic needs.⁸⁰ In a follow-up visit by CAVR staff, one widow talked about how she used the funds and her continued suffering:

As a widow, I have nothing. I lost my house, my animals, all my possessions. Until now I have nothing. When I received the 200 dollars I bought some zinc roofing to make this simple house. The rest I used to pay someone to build the house, because as a widow I have nobody to help me. I also used the money to buy a few chairs and some food Now I feel content because I have my own house. Before this I stayed at people's houses, I used to think of drinking Baygon [insecticide] I hope that the Government will continue to look after me. Because of what I suffered, my child does not want to stay with me in this broken

*house. She stays with some other people who have a nicer house where she eats a bowl of rice with tears in her eyes. I have found no work, my mind is full of [negative] thoughts. I ask my leaders to open their eyes and see my suffering.*⁸¹

Another aspect of the urgent reparations program included referrals and support for victims to access health care, including mental health care. The CAVR provided funds to support local health NGOs that provided direct assistance to more than 400 victims identified by the commission through home visits.⁸² The urgent reparations program also allowed funds to be used for the formation and activities of self-help groups, commemoration of events, and the provision of tombstones. However, in the implementation of the scheme, these activities were rarely identified as priorities by individual beneficiaries. Later, such activities were implemented in conjunction with three NGOs who partnered with the CAVR in delivering collective reparations to a small number of communities.

Indeed, the CAVR became aware that further work needed to be done with the recipients of its urgent reparations program. Through its research on massive violations, particularly research by the women's team, the CAVR grew aware of the suffering of women victims in specific districts and identified a small number of communities where large-scale killings, disappearances, detention, displacement, and sexual violence had taken place in the 1980s. Thus, the CAVR invited three national NGOs—two women's NGOs (Etwave and Fokupers) and one human rights NGO (HAK Association)—to develop a collective reparations program in these communities. Funds were made available to cover operational costs for six months, as well as to support initiatives that emerged from the communities.⁸³ The CAVR designed this intervention as a learning process, purposefully giving the NGOs a wide scope in identifying and developing collective reparation measures.

HAK Association worked with victims groups, most of whose participants were women, from two communities where systematic violence by Indonesian forces included a high degree of sexual violence against women. After months of assisting the groups to identify their priorities and increase their community organizing skills, funds for collective reparations were used in one community (Kraras, Viqueque) to build a community education center,⁸⁴ and in the other community (Mauchiga, Ainaro) to plant vegetables and develop marketing networks for farmers. In Ainaro, HAK Association and the community leaders also organized a commemoration of the mass violations that took place after a rebellion in August 1982. In it, a male community leader read out the names of the local heroes. Unfortunately, the list of heroes did not include any

female names despite the fact that women were involved in the resistance and hundreds of women from this community suffered violations. Finally, Etwave and Fokupers conducted special follow-up programs of group counseling and livelihood activities for women victims identified by the CAVR in six districts across the territory.⁸⁵

Although there were regular progress reports and meetings related to these community reparations initiatives, the CAVR did not conduct their final evaluation of them before it dismantled its field operations. With competing needs and resources increasingly directed to the writing of the final report, this evaluation was added to the list of “things to do” after the CAVR finished its work. However, gendered lessons emerged from this process. For example, one of the main issues for women victims in one of the communities is related to land rights. Hundreds of women were forcibly displaced to the Lalerek-Mutin area by the Indonesian military, as male members of their families were killed or detained on the prison island of Ataúro in 1983. Now, having cultivated this land for 20 years, these women face uncertainty regarding their entitlement to the land since it was traditionally owned by another clan.⁸⁶ The CAVR learned that, without clear gender guidelines, women’s specific experiences and issues are too often missed.

The healing workshops conducted by the CAVR also reflect gender-sensitive aspects of its urgent reparations program. These workshops, which involved activities such as telling stories, singing, and other theater-type exercises,⁸⁷ provided a safe and supportive environment where victims were helped to view healing as a life-long journey. They looked at the painful past, reflected on the well-being in their current lives, and expressed their hopes for the future, including what they needed to help repair their lives. Participants identified main themes of well-being—health, education, justice, economic well-being/livelihood, peace/security, and reconciliation—along with specific interventions and initiatives that could be undertaken by themselves, their communities, the government, NGOs, and so on. At the end of each workshop, these interventions were written up by CAVR staff and analyzed for inclusion in the commission’s recommendations.

The healing workshops created an environment where women and men could come together respectfully and discuss some of the most significant things about their lives. More than 50% of participants were women, and one workshop was conducted as a women-only activity. One of the main contributions of the healing workshops for women participants was the creation of a safe space where they could speak about their experiences as victims and gain recognition and acceptance.

By the end of its operations, the CAVR had provided urgent reparations in the form of cash grants to 516 men and 196 women. Three hundred and twenty-two of these men and 95 of these women also received home visits and care by local NGOs. One hundred and fifty six victims — 82 women and 74 men — also participated in a total of six healing workshops.

GENDER-SENSITIVE IMPLEMENTATION

The percentage of women identified as beneficiaries of the urgent reparations scheme (23%) was consistent with the rate of women's participation in the statement-taking process (21.4%). However, because potential beneficiaries for urgent reparations were initially identified by statement takers, the obstacles women faced to access the statement-taking process were the same obstacles they faced in terms of accessing the urgent reparations program. These obstacles included cultural barriers, access to information regarding the CAVR's activities, and the common notion that the men already represented families' experiences of the conflict. The CAVR tried to compensate for this problem by ensuring that more women than men were invited to attend the healing workshops where they received a cash grant. The collective reparations initiative was another attempt to tip the gender balance by supporting two women's NGOs to deliver services to groups of women.

In retrospect, a higher percentage of women could have participated had the identification of beneficiaries not relied *only* on the statement-taking process. For example, the CAVR's women's research team would have been a reliable source of information regarding potential beneficiaries for urgent reparations.

ENGENDERING THE REPARATIONS PROGRAM IN THE CAVR'S RECOMMENDATIONS

One woman expressed her situation thus:

I have four children from Indonesian soldiers . . . I ask for help to put my . . . children through school so they can have a good future . . . Because of the war I was used like a horse by the Indonesian soldiers who took me in turns and made me bear many children. But now I no longer have the strength to push my children towards a better future.⁸⁸

As part of its recommendations, the CAVR proposed a reparations program for Timor-Leste. This proposal was presented to the parliament, as part of the CAVR's final report, on 28 November 2005. In summary, recommendations

relevant to reparations consist of three main points:

- The CAVR urged parliament to interpret a state obligation under the constitution, namely “to ensure special protection to the war disabled, orphans, and other dependents of those who dedicated their lives to the struggle for independence and national sovereignty, and protect all those who participated in the resistance against the foreign occupation,”⁸⁹ so as to include victims of past atrocities perpetrated on all sides of the conflict. Thus the obligation to protect victims would not be limited to those who participated on the side of the resistance, but would include all victims of human rights violations, disregarding their past political affiliations. For example, this would include victims of violations committed by the armed resistance forces.
- The CAVR proposed a reparations program with five guiding principles—feasibility, accessibility, empowerment, gender, and prioritization based on need—with the aim “to repair, as far as possible, the damage to their [victims’] lives caused by the violations, through the delivery of social services to vulnerable victims and symbolic and collective measures to acknowledge and honor victims of past violations.”⁹⁰
- The CAVR recommended a gender quota stating that “at least 50% of resources in this program shall be earmarked for female beneficiaries.”⁹¹

The CAVR demanded that the Government of Indonesia acknowledge its receipt of the final report, provide a public apology, and make payment to the reparations funds established for victims. It also urged the Government of Portugal and the Governments of France, the United States, and the United Kingdom, as members of the United Nations Security Council who provided military assistance to Indonesia during the commission of atrocities, to assist the Government of Timor-Leste in providing reparations for victims.

DEFINING VICTIMS AND BENEFICIARIES

In its recommendations for a national reparations policy, the CAVR defined “victim” as “a person who, individually or as part of a collective, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her rights as a result of acts or omissions over which the commission has jurisdiction to consider and includes the relatives or dependents of persons who have individually suffered harm.”⁹² The

CAVR further recommends that the reparations program consider victims who “have come before the commission,” but that it also allow a two-year period to identify other potential beneficiaries outside of the CAVR’s processes. This stipulation was designed to allow more women beneficiaries to be identified, as well as other victims whose vulnerability was an impediment to their participation in the CAVR’s activities during its 18-month operational period.

The reparations program prioritized victims of gross human rights violations thought to have endured the most severe harm, namely: victims of torture, people with mental and physical disabilities, victims of sexual violence, widows and single mothers, children affected by the conflict, and communities that suffered large-scale and gross human rights violations, with a relatively high concentration of victims identified above.⁹³

Although thousands of men and women reported incidences of forced displacement, deprivation, and destruction of property throughout the period of conflict, the CAVR was faced with the challenge of recommending a reparations program that was feasible relative to the national budget. Therefore, the reparations program prioritized victims of gross human rights violations that it thought caused the most severe harm. However, according to the CAVR’s findings, these violations, except for sexual violence, were mainly targeted at men. This is why the inclusion of widows and single mothers created a special window for women.

Some gender-sensitive features of the prioritization of victims deserve to be underlined. Unlike women who were widowed due to the conflict, widowers were not included. This was done not only to allow women greater accessibility to limited benefits, but also to acknowledge the fact that many widowers, who remain the main breadwinners of the family, remarry after a few years. Few widows are able to do the same, leaving them to be “both father and mother” to their children. Another window of access for women victims was the inclusion of single mothers, covering mothers who were not legally married, whose partner was killed or disappeared, and victims of sexual violence who bore children out of rape. In the Timorese Tetum language the term for single mothers is *inan mesak*, and simply means a “mother alone.” This allows some discretion for women who may not want to be open about children who were born as the result of rape.⁹⁴ Interesting also is the broad definition of victims of sexual violence as covering those women and girls (but also boys and men) who were subjected to acts such as rape, sexual slavery, forced marriage or “other forms of sexual violence,” and the inclusion of children affected by the conflict — which clearly has a disparate positive impact on women as their main caretakers. These gender-sensitive features were incorporated into

the CAVR's recommendations partly in view of the regrettable fact that, in its interim reparations program, women represented only one quarter of the total beneficiaries.

In line with this, the CAVR also introduced an important criterion, namely prioritization of "the most vulnerable from those who continue to suffer the consequences of gross human rights violations which took place during the period of conflict." This means that an operational definition and a method for measuring relative vulnerability will need to be developed. The aim of this criterion is to establish an institutional bias towards the most victimized of the victims. This victimization includes secondary harms inflicted by the community, such as discrimination and stigmatization against widows, victims of sexual violence, the disabled, the poor, the sick, those who are illiterate or who live in isolation, and so on. Naturally, gender-based discrimination among those most victimized will be an important consideration in prioritizing beneficiaries.

DEFINING BENEFITS

In its final report, the CAVR proposed that methods for delivery of a reparations program be developed in consultation with victims and victims groups.⁹⁵ Recommendations for the program include:

Support for single mothers and scholarships for their children

The program will provide single mothers, including victims of sexual violence and war widows, with a scholarship for their school-aged children until they turn 18 years old. The package will include funds for school fees and other costs and will be administered by government agencies and/or NGOs at district level. Single mothers will be expected to travel to a service delivery organization once a month to receive the funds, and at the same time have access to other services, such as counselling, peer support, livelihood skills training and access to microcredit for livelihood activities. The monthly activity will also serve as a focal point for accessing other essential services, such as health care.

Support for the disabled, widows, and survivors of sexual violence and torture

The program will provide widows, survivors of sexual violence (without school-aged children), the disabled and torture survivors with social

services, including rehabilitation, skills training and access to micro-credit for livelihood activities. The delivery of these services will be conducted by government agencies, specialized NGOs and community-based NGOs.

Support for severely affected communities

The program will provide support to severely affected communities who make a collective application for reparations. Applications will be required to include an account of how the community was affected by the conflict and, in general terms, the violations experienced, a concrete project to alleviate the harm suffered and a list of beneficiaries who will be involved in the activities. This program can also be used by government agencies and/or NGOs for activities such as healing workshops and other restorative work, including creative therapy and activities such as theatre, graphic arts, music, and prayer. A gender balance of beneficiaries is a criteria for eligibility.

Memorialization

The program will promote national memorialization in consultation with victims and other stakeholders including the government. The program of memorialization should be guided by, but not limited to, atrocities described in this report and include commemoration ceremonies, dates, monuments and other initiatives to honor and remember victims of human rights violations in local communities and at the national level. Memorialization will also include the development of educational materials on Timor-Leste's historic struggle to uphold human rights, the development of popular literature, music and art for remembrance and — as recommended elsewhere in this report — an education program to promote a culture of nonviolent resolution of conflict.

Commitment to nonrecurrence of violence

As part of a national commitment to nonrepetition of violence, a special education program to mitigate the impact of 25 years of violence will be conducted together with relevant government agencies and civil society. Acknowledging the cycle of violence which continues to permeate East Timorese society, at the workplace and in our homes, the national

reparations program shall develop an education campaign to increase public awareness of the link between past abuses and current violent behaviour. The aim of this education program is to facilitate a change in the practice of using violence as a means to mediate conflict, at all levels of life. In order to honor victims of mass violence, we must make a clear commitment to transform this legacy from the past.⁹⁶

Besides these measures contemplated under the reparations program, the CAVR also included some recommendations in the general body of the recommendations chapter that have a clear reparative impact. These include assistance for reburials, memorials for massacre victims, memorialization of detention and torture centers, assistance for separated children and families to be reunited, assistance for victims of torture and other forms of inhumane and degrading treatment, a public register for the disappeared, an annual day of remembrance for the famine of 1978–79, and rehabilitation of environmental damage in locations where defoliants were used. The CAVR also recommended justice for past atrocities, and explicitly stated that no amnesty should be granted to perpetrators of sexual crimes that were war crimes or crimes against humanity.

The recommended reparations program was designed to ensure accessibility for women. For example, by delivering the scholarship program funds at the same time as services for the women themselves, women who are reluctant to take time to meet their own needs will be able to do so because they will be compelled to access the scholarships for their children. It is hoped that the organizations working with these single mothers will be able to function as a clearinghouse for needed services, including literacy training, livelihood skills, and reproductive health care. Also, as mentioned, the criterion of single mothers provides an umbrella category that can include victims of sexual violence as well as widows, allowing a layer of protection and confidentiality. On the other hand, in most cases where sexual slavery, forced marriage, and rape resulted in pregnancy, members of the community will know about the circumstances in which the victim became pregnant. This is why the reparations program contains a public education program on violence, which includes sexual violence. The main aim of that program will be to mitigate discrimination against victims, placing the blame squarely on the shoulders of the perpetrators.

One of the challenges the CAVR faced in designing this recommended reparations program was to find a way to empower victims and survivors in a sustainable manner. In one of the poorest countries of the world, where basic

services do not reach the majority of the population, and bank services are only available in the nation's capital, the CAVR opted not to recommend monetary compensation. Although monetary compensation is normative in the delivery of reparations, the CAVR recommended economic rehabilitation services, such as skills training and microcredit for beneficiaries. This was designed with the intent to minimize dependency and provide opportunity for self-development. This also opens the door for those most vulnerable, as it is likely that more able-bodied male victims will be less interested in in-kind delivery of services that do not involve monetary compensation. The implementing body will have to further develop a methodology to implement microcredit schemes, which can have a real impact on beneficiaries' standard of living, something that could be accomplished in partnership with a number of NGOs experienced in this field.

The guiding principles for the reparations program, which include a gender focus, provide an overarching framework for all measures, and should be used as a tool to design and evaluate implementation. The combination of individual, collective, and symbolic reparations, including ongoing public education and memorialization of past atrocities, allows for flexibility and creativity in the delivery of these measures in partnership with victims and victims groups. In order to be consistent with its own guiding principle on gender sensitivity, the implementing body will have to develop specific measures that address the needs of women victims. This will call for vigilant gender programming, continuous monitoring, and a steep learning curve for the implementing body. The CAVR learned that omitting the experiences of women during a community commemoration of mass violations left some victims and their families deeply dissatisfied. On the other hand, commemorating "mass rape" requires genuine consultation with victims, creativity, and sensitivity to ensure that the commemoration is a step towards healing. Public education on the cycle of violence will raise issues not only around public male-to-male violence (such as fights between martial arts groups or gang fights, which are common in Timor-Leste), but also around violence in the home. It will be critical to raise awareness of the links between past gender-based violence and the current high incidence of domestic violence as part of the campaign to stop the recurrence of violence.

FUTURE CHALLENGES FOR GENDER-SENSITIVE IMPLEMENTATION

Before this reparations program can be implemented, the Timor-Leste government and parliament must consider the recommendations, following the

public launch of the final report. Civil society will need to put its weight behind the CAVR recommendations, particularly regarding victim reparations. Legislation will have to be formulated and passed, and an implementing body established and funded as recommended in the CAVR's reparations policy. According to the CAVR's reparation program, the implementing body should run for at least five years with a possible extension and the children's scholarship program will run until 2017, when the last beneficiary will turn 18 years old.

It is foreseen that this implementing body will coordinate the national reparations program in cooperation with service-delivery government agencies and NGOs. The CAVR recommended that the Government of Indonesia, the international community complicit in the occupation of Timor-Leste, and the Government of Timor-Leste provide reparations. Taking a practical view that reparations from Indonesia may take a long time to be realized, the CAVR has recommended that a percentage of the Timor-Leste national budget be allocated to the reparations funds. These substantial milestones remain ahead. Whether or not they are reached will depend on how much victims groups, women's groups, civil society, and former CAVR national commissioners and staff rally behind these recommendations. If and when the reparations program becomes a reality, the implementing body will face a number of challenges. Former staff and commissioners of the CAVR should be available to assist in the implementation of the program.

One of the main challenges will be reaching out to women victims. In the CAVR's experience, setting a quota of 30% of statements from women pushed the organization to try to reach out to women in various ways. In the end, only 21.4% of statements came from women deponents, but even this would not have been achieved had the organization not challenged itself to do better. This quota also pushed the institution to recruit women statement takers and to try to integrate gender considerations early on in the establishment of the organization. Likewise, it is hoped that by setting a quota of 50% of reparations resources for female beneficiaries, the implementing body will have to develop good gender policies from its inception. This quota arose from hard lessons that the CAVR learned in terms of making strong policies about gender equality. In discussions at the commission, the severe impact of the conflict on women was a recurring issue. It was felt that a strong stance on a gender-equal distribution of resources would ensure the best gender-sensitive reparations program. Commissioners were confident that the 50% quota could be reached, as it documented close to 6,000 killings and disappearances. Since these violations predominantly targeted male victims (86.9% and 90.5%, respectively),

this means that there are thousands of “war widows,” assuming that many of the male victims were married.

To operationalize this quota, the implementing body will have to reach out to male and female children equally, and overcome cultural biases that prioritize the education of boys over girls. It will also have to think of ways of identifying women who became widows and single mothers because of the conflict. Communities in Timor-Leste are tightly knit, and generally everyone knows what happened to everyone else. A good outreach program, involving local leaders and the local government structure, will allow the implementing body to find these women who, perhaps, were overlooked during the CAVR’s statement-taking and research process. The implementing body will also need to devise a safe space for women victims of sexual violence to join other women in identifying themselves as beneficiaries of the program. The program will allow women some discretion, as there are multiple criteria for one to qualify as a beneficiary. At the same time, the implementing body will have to be creative in devising and delivering benefits to women victims, but at least the setting of a quota will force the implementing body to periodically evaluate its performance so as to improve its gender-sensitive operation.

Another challenge will be to ensure the quality of services delivered to the victims so that there is an impact in terms of empowerment and improved standards of living. The development of strong partnerships with NGOs and other government agencies, as well as constant reviews and evaluation on performance, will require the use of gendered lenses.

GENDER, REPARATIONS, AND TRANSITIONAL JUSTICE : CONCLUDING REMARKS AND LESSONS LEARNED

As mentioned above, the CAVR ran in parallel with the serious crimes panel, which had exclusive jurisdiction over international crimes, rape, and murder that took place in Timor-Leste in 1999. From a gender perspective, the performance of the panel was very weak. Mismanagement in the early phases of investigations by the United Nations created an insurmountable gap between international investigators and the local communities and organizations. Almost no specific measures existed to ensure that gender crimes were investigated, despite the fact that, in the beginning, local women’s groups presented their data on gender-based crimes to international investigators. Belatedly, a sex crimes team was established to investigate a small number of cases of sexual violence. To date, there is only one conviction for rape as a crime against

humanity.⁹⁷ The (female) deputy prosecutor for serious crimes claimed that no further cases could be brought to court, as women victims declined to come forward.⁹⁸

The CAVR demonstrated that, given the right conditions, Timorese women will speak out about violations they have experienced. The CAVR did not bring prosecutorial justice to perpetrators of crimes. However, against the wishes of the current Timorese government to reconcile with Indonesia without formal justice, the CAVR made recommendations for future prosecutions of past atrocities.

In the larger picture, gender justice has not been delivered in Timor-Leste. Women victims have had some form of social justice through truth telling and formal recognition of the violations they experienced. However, for too many of these victims, perpetrators who committed the crimes remain free and unrepentant (in Indonesia), while the victims continue to live amidst poverty and gender discrimination.

To compound this problem, discussion on reparations has been almost nonexistent. Civil society, including the Church, is raising its voice for justice against the government's policy of appeasement towards Indonesia. But this voice is not raising the issue of reparations. Victims groups are largely silent, many of them reluctant to speak against a government made up some of the most revered leaders of the resistance. However, victims did speak out about reparations when asked by the CAVR. This should be the beginning of a long process of advocacy.

In terms of institutional reform, the Timorese context is unique in that the political transition did not take place within the boundaries of one country, but two. After Indonesia left East Timor in 1999, completely new institutions were established to facilitate the transition to democracy. However, some patterns of behavior reflecting the 25 years of corruption and nonaccountability were replicated, and the need for institutional reform remains strong. As the transitional authority in Timor-Leste, the United Nations helped establish a climate in which opportunities for reform towards better gender practice could be seized through its various agencies committed to gender equality.

The CAVR has made important recommendations on institutional reform, including some based on the lessons learned from women victims of human rights violations. A special section in the CAVR's chapter on recommendations calls for the protection of women's rights, specifically the recognition of women's role in the resistance; rehabilitation and compensation for women victims of 1999; initiatives to eliminate violence against women; policies to promote gender equality in the police force, military, and all state institutions; and calls

for prejudices against women victims of sexual violence to be addressed. Also, the CAVR specifically calls on the Church to address past practices that have excluded women victims of sexual violence.

LESSONS LEARNED

The CAVR provided space for recognition of women victims of the conflict. Although, in the end, only a small percentage of women participated in the statement-taking process, the CAVR used other innovative methods to engage women in its activities. The urgent reparations program, and other reparative activities conducted by the CAVR, was an important learning opportunity, including hard lessons on reaching out to female victims, which informed the design of the proposed national reparations program. The experiences from the urgent reparations program can assist the implementation of the national program, if and when it is approved by parliament.

Among some of those lessons learned from the implementation of the CAVR's urgent reparations program, and the designing of a reparations policy for the future, are the following:

- The CAVR's urgent reparations scheme was not able to reach a substantial number of women victims because it relied solely on identification from its statement-taking process. Multiple strategies should have been used to identify women victims, such as those used in other CAVR processes. Also, in delivery of collective reparations, special mechanisms to listen to women victims within the "collective" must be developed to ensure a gendered recognition of past violations.
- Learning from the lessons of its urgent reparations program, the CAVR proposed a reparations policy with an institutional bias for the most vulnerable victims. The prioritization of victims based on the primary and secondary harms they experienced, their level of need and vulnerability will urge the reparations program to identify more women beneficiaries.
- The proposed reparations program has a number of features that were designed to ensure gender balance. This includes the provision for immediate family members of those killed and disappeared, who mainly are widows and single mothers; the incorporation of guiding principles of gender, accessibility, and empowerment, which will improve outreach to women victims; the conceptualization of participatory forms of collective reparations, which will ensure that women's groups are included, using gender balance of beneficiaries as a cri-

terion for application of collective reparations; and the establishment of a 50% quota of reparations resources for women. The proposed program also allows a two-year window for further identification of potential beneficiaries who did not come before the CAVR, a mechanism to potentially overcome the shortcomings of the urgent reparations process.

- Additionally, the proposed reparations program linked reparations to children and women as a way to force the latter to think about themselves. It also conceived a public education program, as part of collective reparation, to help with the issue of stigmatization of victims (especially victims of sexual violence), and proposed forms of economic reparation that are more likely to help women (training, micro-credit, services) than economic compensation.
- The proposed reparations program did not include some forms of violence against women, such as violations of reproductive rights. It remains to be seen whether the implementing body, using the guiding principles, will be able to broaden the interpretation of beneficiaries.

Many women victims of the conflict continue to struggle in their daily lives. Peace and independence have yet to provide victims with the foothold they need to begin their journey towards full healing. The CAVR's work with women victims around truth telling and rehabilitation is merely a drop in the ocean. Although it invited civil society and victims to participate in its activities, the CAVR process has yet to foster a political movement on reparations. Victims have spoken individually to the CAVR about reparations, but victims groups remain largely silent on the issue.

Beyond the CAVR's initiatives, discussion on reparations in Timor-Leste has been limited by the polarization of society on the issue of justice. The Timorese government's drive to make peace with the newly elected government in Indonesia has dominated the official agenda on justice. Other voices still calling for an international tribunal, particularly those in civil society and victims groups, are heard as voices of dissent, unwilling to bend to the good of the nation. Those who believe that reparations are part of the "international tribunal" package and who fear the social stigma in Timor-Leste currently associated with calls for justice are, therefore, reluctant to discuss reparations. As noted earlier, caught between the mobilization efforts of the government and opposing civil society, the soft voices of victims are barely audible.

Fatubessi is a village in Hatulia subdistrict, Ermera District. BK, from the hamlet of Lebumeo in Fatubessi, lost her husband when he joined Fretilin

during the civil war in 1975. She spoke at a gathering organized by Fokupers as part of its collective reparations program with the CAVR. The program took government, political party, and NGO leaders to villages to hear directly from victims what expectations they held for social reparations. According to BK,

I lost my husband because of this struggle. Two of my children also died during the Indonesian occupation. When we fought back then we never considered our fate, we just fought and sacrificed everything we owned. Now I am alone and must support myself by gardening although I am no longer strong since I am already old. For years I slept in a hut that leaked every time it rained and I was unable to seal the holes. . . . A year ago CAVR gave me funds so I could buy some zinc to fix my house. I will not . . . hold office like these important men who once fought together with us. All I ask for is my right to a decent life as the family member of a fighter. I got this way because my husband and children disappeared. The important men are not permitted to forget us [just because they] now have a strong chair stuck on the ground. In the past, when their positions were not yet certain, we fought together.⁹⁹

BK voices a frustration that other women also express: now that the struggle is over, they are forgotten and ignored by resistance fighters — many of whom now hold leadership positions in the new government — with whom they or male members of their families once worked closely as colleagues. The reparations sought by women like BK include recognition for their role in the struggle for independence, and recognition of the many people who died or still suffer as a result of that struggle. For women victims, their marginal position in their communities continues to be a reality that they face daily in their struggle for survival.

The reparations program proposed by the CAVR is an opportunity to address this injustice. According to its obligations under international law, the Government of Timor-Leste must implement this proposal. The Government of Indonesia, as the invading country whose security forces committed serious crimes, must pay reparations. Civil society, victims and women's groups, and advocates from the two countries must unite, once again, in the long journey to achieve justice and reparations for victims of human rights violations.

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INTERVIEWS

- 1 Merita Alves, OPMT activist, Dili, 10 June 2005.
- 2 Olandina Caeiro, CAVR commissioner, Dili, 30 May 2005.
- 3 Kieran Dwyer, advisor to the CAVR, 12 November 2005.
- 4 Isabel Guterres, CAVR commissioner, Dili, 2 August 2005.
- 5 Durbalina Belo Magno, Fokupers volunteer, Dili, 26 May 2005.
- 6 José Luis de Oliveira, executive director of HAK Association, Dili, 1 August 2005.
- 7 Maria Paixao, parliamentarian, 10 June 2005.
- 8 Laura Pina, former executive director of Rede, Dili, 1 June 2005.
- 9 Milena Pires, coordinator, UNIFEM in Timor-Leste, Dili, 12 June 2005.
- 10 Elisa dos Santos, Liquiça, 3 June 2005.
- 11 Julmira da Cruz Sarmiento, OPMT activist, Dili, 1 June 2005.
- 12 Maria Afonso, representative of a victims group, Lao Hamutuk, an East Timorese NGO monitoring issues on development and justice, Dili, 26 May 2005.
- 13 Regina Soares Ximenes, OPMT activist, Dili, 1 June 2005.

GLOSSARY AND ACRONYMS

CAVR	<i>Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste</i> (Commission for Reception, Truth and Reconciliation of Timor-Leste)
CEP	Community Empowerment and Local Governance Project
CoE	Commission of Experts
Etwave	East Timor Women Against Violence
Falintil	<i>Forças Armadas de Libertação Nacional de Timor-Leste</i> (Armed Forces for the National Liberation of Timor-Leste)
Fokupers	<i>Forum Komunikasi Untuk Perempuan Loro Sae</i> (East Timorese Women's Communication Forum), established in 1997
Fretilin	<i>Frente Revolucionária de Timor-Leste Independente</i> (Revolutionary Front for an Independent East Timor)
HAK	<i>Hukum, Hak Asasi dan Keadilan</i> (Law, Basic Rights, and Justice Foundation; became HAK Association in 2002)
KPP-HAM	<i>Komisi Penyelidik Pelanggaran Hak Asasi Manusia</i> (The Commission for Investigation of Violations of Human Rights), established by the Indonesian National Commission for Human Rights
Mahidi	<i>Mati Hidup Demi Integrasi</i> (Live and Die for Integration), a militia group based in Ainaro District
OPMT	<i>Organização Popular de Mulher Timor</i> (Popular Organization of Timorese Women)
RDT-L	<i>Republica Democratica Timor-Leste</i> (The Democratic Republic of Timor-Leste)
Rede	<i>Rede Feto Timor-Leste</i> (East Timorese Women's Network)
SCU	Serious Crimes Unit, functioned from 2000 to May 2005
TFC	Truth and Friendship Commission
TFET	Trust Fund for East Timor
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UDT	<i>União Democrática Timorense</i> (Timorese Democratic Union)
UNAMET	United Nations Mission in East Timor
UNTAET	United Nations Transitional Administration in East Timor, established 25 October 1999

NOTES

- 1 The authors wish to express their gratitude to the staff and commissioners of the Commission for Reception, Truth and Reconciliation of Timor-Leste (CAVR) who allowed them to make use of research materials for this paper.
- 2 The Timorese Democratic Union [*União Democrática Timorense*] (UDT) was one of the major East Timorese political parties to emerge following the exodus of Portuguese administrators and military commanders in 1975.
- 3 The Armed Forces for the National Liberation of Timor-Leste [*Forças Armadas de Libertação Nacional de Timor-Leste*] (Falintil), Timor-Leste's national liberation army, was the armed wing of the Revolutionary Front for an Independent Timor-Leste [*Frente Revolucionária de Timor-Leste Independente*] (Fretilin).
- 4 The Mahidi ("Live and Die for Integration" [*Mati Hidup Demi Integrasi*]), one of dozens of militia groups formed by the Indonesia military prior to the referendum, operated in Ainaro District.
- 5 'MF,' Statement Summary, prepared by the CAVR from the interview with "MF," Mau'ulo, Ainaro, 8 March 2003, for the CAVR Public Hearing on Women in Conflict, Dili, 28 April 2003; Human Rights Violations Database (HRVD) Statement 02183.
- 6 East Timor and Timor-Leste, the official name of this country, are used interchangeably in this paper.
- 7 International Committee of the Red Cross (ICRC) reports, cited in CAVR *Final Report*, part 7, ch. 7.2, "Unlawful Killings and Enforced Disappearances." See <<http://www.ictj.org/en/news/features/846.html>> for further information, updates and links to the *Final Report*.
- 8 Beginning in October 1998, the Indonesian military sought to supplement its troops with militia recruits. Intimidation and terror by these forces intensified in many regions through the August 1999 referendum. CAVR, *Chega! The Report of the Commission for Reception, Truth, and Reconciliation in Timor-Leste* (Dili: CAVR, 2005), part 4, "Regime of Occupation." Hereafter, CAVR, *Final Report*.
- 9 In late August and early September 1999, the UN Mission in East Timor (UNAMET) announced that nearly 450,000 East Timorese within and outside the territory — at least 95% of those registered — had participated in the popular consultation and that 78.5% of the vote was for independence. United Nations, *The United Nations and East Timor, A Chronology*, <<http://www.un.org/peace/etimor/Untaetchron.html>> (accessed 9 November 2005).
- 10 Amnesty International, *Indonesia & Timor-Leste: International responsibility for justice*, AI document ASA 03/001/2003 (14 April 2003).
- 11 George Aditjondro gives a good overview of the economic impact of the Indonesian occupation of Timor-Leste, including land and commodity takeovers by military-sup-

- ported companies; George Aditjondro, *Menyongsong Matahari Terbit di Puncak Ramelau* (Welcome the Rising Sun Atop Mt. Ramelau) (Dili: Yayasan HAK dan Jakarta, FORTILOS, 2000), 179–96. John Taylor also has a section on Indonesia's structural transformation of Timor-Leste through its transmigration program, military monopolies and socialization of Indonesian political culture via schools; John Taylor, *Perang Tersembunyi: Sejarah Timor Timur yang Dilupakan* (Indonesia's Forgotten War: The Hidden History of East Timor), translator unknown (Jakarta: Forum Solidaritas untuk Rakyat Timor Timur [FORTILOS]), 1998), 218–31. For Indonesia's interests in off-shore oil and gas reserves see: George Aditjondro, *Tangan-tangan Berlumuran Minyak: Politik Minyak di Balik Tragedi Timor Lorosae* (Is Oil Thicker than Blood?), B. E. Sumarah, trans. (Jakarta: Solidamor, 1999); and Leonard Simanjuntak, et al., *Perempuan dibawa/h Laki-laki yang Kalah: Kekerasan terhadap Perempuan Timor Timur dalam Kamp Pengungsian di Timor Barat* (Women in the Hands of Men Who Lost: Violence Against East Timorese Women in West Timor Refugee Camps) (Kupang: JKPIIT and PIKUL, 2002), 13–21.
- 12 United Nations Development Programme (UNDP), 2005 *Human Development Report*, Country Fact Sheets, <http://hdr.undp.org/statistics/data/country_fact_sheets/cty_fs_TMP.html> (accessed 12 November 2005). Based on 2003 statistics, Timor-Leste is ranked 140 of a total of 177 countries. The report explains that values for the Human Poverty Index-1 (HPI-1) and the Gender-related Development Index (GDI) could not be calculated due to insufficient data.
 - 13 According to the East Timor National Development Plan, in the 2000–01 school year, only 106 of 2,091 secondary school teachers had received formal secondary school training. Although there have been some increases in primary school enrollment, particularly of girls, during the period of the UN Transitional Administration, secondary school attendance declined. Planning Commission, *East Timor National Development Plan* (Dili, 2002), 143.
 - 14 See CAVR, *Final Report*, Part 4, “Regime of Occupation”; part 7, ch. 7.6, “Political Trials.”
 - 15 Up to 70% of all buildings were damaged, including the great majority of government structures (offices, schools, health centers, etc).
 - 16 This Commission of Inquiry was formed in late October 1999 to investigate human rights violations that occurred during 1999. The five members issued a report to the UN Secretary-General on 31 December 1999.
 - 17 The Commission for Investigation of Violations of Human Rights [*Komisi Penyelidik Pelanggaran Hak Asasi Manusia*] (KPP-HAM) also investigated abuses committed in 1999. It submitted its report to the Indonesian National Commission on Human Rights in January 2000.
 - 18 In 2000, the UN Transitional Administration in East Timor (UNTAET) established the Serious Crimes Unit (SCU), under the supervision of the Deputy General Prosecutor in Timor-Leste, to investigate serious crimes such as war crimes, crimes against human-

ity, torture, sexual offences, and murder. Cases ready for trial were then transferred to the Special Panel for Serious Crimes, a hybrid court ruled by one East Timorese and two international judges. By May 2005, when these bodies ceased functioning, the SCU had filed nearly 100 indictments, and the Special Panel had issued close to 300 arrest warrants, including warrants for the arrest of Wiranto, Commander-in-Chief of the Indonesian armed forces in 1999, and six other high-ranking Indonesian military commanders.

- 19 This three-member commission reported that although the SCU and Special Panel had made significant progress, those responsible for crimes had not yet been held fully accountable due to insufficient resources, lack of independence of the Office of the General Prosecutor, and because the SCU and the Special Panel did not have access to evidence and suspects in Indonesia. The CoE further reported that the Indonesian Ad Hoc Court had been ineffective in handling prosecutions due to lack of expertise and training, poor use of evidence, inconsistent verdicts, and lack of political will. Members of the UN Security Council took four months to respond to the CoE's report. They requested yet another report "with a practically feasible approach" that would take into account not only the CoE report, but also "views expressed by Indonesia and Timor-Leste." UN Security Council, *Letter to the Secretary-General regarding Commission of Experts report*, UN Document S/2005/613, <<http://daccessdds.un.org/doc/UNDOC/GEN/No5/528/95/PDF/No552895.pdf?OpenElement>> (accessed 12 November 2005).
- 20 The TFC, with five members from Timor-Leste and five from Indonesia, began its work in early August 2005 and will continue for one year with the possibility of an extension.
- 21 The tribunal heard 12 cases involving 18 defendants. Twelve defendants were acquitted and six found guilty. Five of the convictions were overturned on appeal. The sixth conviction of an East Timorese militia commander was upheld, but his sentence was halved to five years. He remains free pending further appeal.
- 22 East Timor Action Network (ETAN), "Accountability for Rights Crimes Remains an International Responsibility," press release posted to Judicial System Monitoring Programme mailing list, list@jsmp.minihub.org; 9 March 2005.
- 23 UNTAET, Regulation No. 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor (UNTAET/REG/2001/10), 13 July 2001.
- 24 UNICEF, *At a glance: Timor-Leste*, <<http://www.unicef.org/infobycountry/Timorleste.html?q=printme>> (accessed 9 November 2005).
- 25 Asian Development Bank, *Country Strategy and Program Update 2005–2006, Democratic Republic of Timor-Leste*, <<http://www.adb.org/Documents/CSPs/TIM/2004/default.asp>> (accessed 12 November 2005).
- 26 OPMT appeared in Fretilin's political statutes published in January 1975, but did not become truly active until the end of August 1975; Helen M. Hill, *Gerakan Pembebasan*

- Nasional Timor Lorosae* (FRETILIN: The Origins, Ideologies and Strategies of a Nationalist Movement in East Timor), Aderito de J. Soares, Nugroho Katjasungkana, and Nuno Rodriguez, trans. (Dili: Sahe Institute for Liberation and Yayasan HAK, 2000), 190.
- 27 Rosa M. Bonaparte as cited in Hill, *Gerakan*, 190.
- 28 Constancio Pinto and Matthew Jardine, *East Timor's Unfinished Struggle: Inside the Timorese Resistance, A Testimony* (Boston: South End Press, 1997), 47.
- 29 The graphs and statistics in this paper were developed by Romesh Silva and Patrick Ball of Benetech's Human Rights Data Analysis Group, for the CAVR. Some of the original data and statistical results from the CAVR are available at <<http://www.hrdag.org/timor>>.
- 30 According to testimonies presented at the Public Hearing on Women and Conflict, sexual abuse took place during the Portuguese and Japanese periods of occupation. Some families offered young women to Portuguese officials in return for protection or power. During the Japanese occupation of the Second World War, women were raped not only by Japanese soldiers but also by Timorese and Arab recruits known as Cavila Negra. Submission by East Timorese women to the CAVR's National Public Hearing on Women and Conflict (28–29 April 2003); and Mario Carrascalão, testimony given at the CAVR's National Public Hearing on Women and Conflict (28–29 April 2003).
- 31 Two notable cases of the strategic use of sexual violence as part of large-scale operations aimed at civilian populations in certain communities targeted by the Indonesian military for their suspected support of the resistance are the razing of the village of Mauchiga, Ainaro District, in 1982 and the massacre in Kraras, Viqueque District, in 1983.
- 32 Among the specific reasons underlying sexual violations, one can refer to an intention to humiliate the enemy, destroy community morale, and intensify a reign of terror.
- 33 The numbers and percentages in this paragraph are based on statements collected by the CAVR district teams during 18 months of field operations. In parallel with this program, a research unit of 20 individuals also conducted targeted interviews with victims and witnesses on 10 research themes. The research unit included a team of five women who interviewed 200 women on women's experiences during the conflict. These interviews are not counted in the figures above. However, the CAVR's qualitative research findings, in general, are consistent with the patterns found in the statistical analysis of its statements.
- 34 The three violations most reported by men were detention at 24.6% (20,582 out of 70,641), displacement at 23% (9,810 out of 70,641) and torture at 13.7% (9,670 out of 70,641). Similarly, the three violations most reported by women were detention at 24.6% (4,130 out of 16,769), displacement at 23.4% (3,922 out of 16,769), and killings at 21.5% (1,715 out of 16,769).
- 35 Counts of sexual violence were reported by both men (252 out of 853) and women (596 out of 853). However, victims of rape and sexual slavery, who reported their violations

- through the CAVR's statement-taking process, were exclusively women. A small number of men experienced acts of sexual torture.
- 36 Some Indonesian soldiers treated particular women as their sexual property or, according to a common local euphemism, as "kept wives." In fact these relationships had no legal, religious, or cultural basis, and yet the language of marriage was used, in part, to deny the reality of abuse and coercion. The CAVR determined that this violation amounted to sexual slavery.
- 37 This category includes the Indonesian military and police and their auxiliary forces, which they established and controlled, such as the civilian defense force and militia groups. Of the 791 counts of sexual violence in which Indonesian security forces were identified as perpetrators, 518 were committed by Indonesian military and police, 184 by members of Timorese auxiliary groups, and the remaining 89 counts of sexual violence jointly by members of these two groups.
- 38 Data gathered by the CAVR indicate incidents of sexual violence occurred throughout the period of Indonesian occupation, but also that sexual violence peaked with military offensives against the population, particularly at the time of the invasion in the early 1980s when the armed forces moved to eliminate resistance throughout the territory, and again in 1999, both prior to and following the popular referendum at the end of August.
- 39 The CAVR conducted a multiple-systems estimation, using data from a retrospective mortality survey of more than 1,300 households, a graveyard census that covered all public cemeteries in Timor-Leste, and statements gathered and coded in its database. CAVR *Final Report*, ch. 6, "Profile of Human Rights Violations."
- 40 Many poor Indonesian and East Timorese women, under Indonesia's national family planning program, were forced to accept birth control methods such as the IUD, injections and implants, in an aggressive drive to control national population growth. In some rural areas, including in East Timor, the Indonesian military were used to "recruit" acceptors. Members of the Indonesian civil service and armed forces would not be eligible for promotion unless their wives became acceptors of birth control.
- 41 Indonesia's family planning program was conducted throughout all provinces of Indonesia, often coercively. Sita Aripurnami, *Hak Reproduksi antara Kontrol dan Perlawanan: Wacana tentang Kebijakan Kependudukan Indonesia* (Reproductive Rights between Control and Resistance: Discourse on Indonesian Population Policy), n.p., 1998. The cases in Timor-Leste documented by the CAVR included five cases in which women were coerced to participate in the state's family planning program, which was conducted throughout Indonesia, often coercively: in two of these cases women were forced at gun-point to accept contraception and in three other cases wives of members of Indonesian security forces were coerced through negative incentives (their husbands were refused promotion until their wives accepted birth control). One other case reports a

- woman who was forced to use contraception during the period of her sexual slavery.
- 42 CAVR, *Final Report*, part 7, ch. 7.9, “Economic and Social Rights.”
- 43 Several Timorese women’s groups were involved in early rehabilitation efforts. Fokupers (East Timorese Women’s Communication Forum [*Forum Komunikasi Untuk Perempuan Loro Sae*]), founded two years prior to the referendum, focuses on advocacy and education about women’s rights, documentation of violations of those rights, and support for survivors of violence. Other women’s organizations established in the late 1990s that helped in the wake of the 1999 violence include Gertak (later renamed Etwave), the Secular Institute of Older and Younger Siblings in Christ [*Institutu Sekular Maun Alin iha Kristu*] (ISMAIK), a religious community dedicated to the advancement of women, and the East Timorese Young Women’s Group [*Grupua Feto Foin Sae Timor-Leste*] (GFFTL), a women’s student group.
- 44 UNTAET was the interim administration for Timor-Leste from the handover of power by Indonesia in October 1999 until Timor-Leste’s independence in May 2002.
- 45 Etwave, re-established in 2000, provides support for women and children who are victims of violence. The Alola Foundation, founded in 2001, works in the areas of women’s health, education, and empowerment. Women were also active in groups such as PAS [*Pronto Atu Serbi*] and other church-based organizations in the districts that provided health and education services.
- 46 Rede Feto, commonly known as just Rede, is a combination of the Portuguese word *rede* meaning net and *feto*, the Timorese (Tetun) word for woman.
- 47 A Second Women’s Congress held in July 2004 again raised issues related to women and justice, including women’s access to formal justice mechanisms. This congress repeated demands for the elimination of gender-based violence through implementation of domestic laws and programs to educate the public about gender-based violence as well as guarantees of justice for women victims involved in the national liberation struggle. Calls for guarantees of justice were linked to the creation of a special international tribunal to address the sexual violence committed in Timor-Leste. This congress also called for the recognition of women heroes of the war. Fokupers, “Notes on Women’s Congress I and II,” unpublished internal document.
- 48 Of the 88 members elected to the Constituent Assembly, 23 were women. The Constituent Assembly was transformed into the first parliament of Timor-Leste, after its independence on 20 May 2002.
- 49 This working group met with women’s groups throughout the country to hear issues affecting women. A Women’s Charter of Rights developed from this process, and was presented to the head of UNTAET and members of the Constituent Assembly in 2001. Most of the issues for which this group campaigned were included in the draft constitution. Timor-Leste’s new constitution came into force with the country’s formal independence on 20 May 2002.

- 50 Advances for women introduced during transition have been hard won. Reporting in 2003 on an investigation into the gender responsiveness of key players in Timor-Leste's transitional process, the head of the UN's Gender Affairs Unit (GAU) stated, "Virtually ... [no institutions] have done any gender analysis, nor even sex disaggregation. Major reports done on education, on health, on development, or on poverty have not undertaken gender analysis. This means ... that much of this information is not [available] for policies or programmes or for development." She stresses: "The need for gender analysis cannot be overemphasized. Gender mainstreaming in post-conflict reconstruction has to be backed by commitment and resources by all parties concerned, not by a gender unit alone." Sherrill Whittington, "Experiences and Lessons Learned in United Nations Transitional Administration for East Timor," in *Economic and Social Commission for Asia and the Pacific. Putting Gender Mainstreaming into Practice* (New York: United Nations, 2003).
- 51 One source estimates that nearly 30% of the female population can be counted as victims of domestic violence. UNIFEM, *Gender Profile of the Conflict in Timor-Leste: UNIFEM Country Profile*, <http://www.womenwarpeace.org/timor_leste/timor_leste.htm> (accessed 9 November 2005).
- 52 The steering committee was made up of representatives from political organizations, a victims group, women's groups, a youth group, a human rights NGO, the Resistance Army, the Catholic Church, and representatives of UNTAET and the United Nations High Commissioner for Refugees (UNHCR). Five out the 12 members were women.
- 53 The selection panel was made up of representatives of political parties, victims groups, NGOs, women's groups, youth groups, and UNTAET. Three out of the 12 members were women.
- 54 Thirty percent of national and regional commissioners were to be women. The regulation stated the need to develop gender-sensitive policies for the performance of its functions. Also, the CAVR was required to have "appropriate gender representation" in the community-based panels which mediated the reconciliation hearings. UNTAET, Regulation 2001/10.
- 55 Exceptions included Manufahi, Lautem, and Ermera Districts, where the regional commissioners were all male, and Liquiça District, where the commissioners were all female. The larger districts of Dili, Baucau, Bobonaro, and Oecussi each had three to four regional commissioners. In all, 10 of 28 regional commissioners were women.
- 56 This unit was designed to meet the demanding start-up needs of the CAVR by helping to orient new staff about the commission's mandate, principles, and program. A learning-by-doing approach helped regional commissioners and staff to learn from their experiences, so that the CAVR could better respond to the needs and reality of communities and victims. A regular part of these training sessions was to identify obstacles to women's participation in CAVR activities and to share ideas for overcoming them.

- 57 The CAVR conducted 52 subdistrict victims hearings. In total, 214 victims testified, 65 of them women (30%).
- 58 The team was led by a male coordinator, and was made up of four staff (two men and two women). A female international advisor supported its work. The division supervised the work of 26 staff (one man and one women in each district team.)
- 59 The eight national hearings included thematic hearings on: political imprisonment; women and conflict; forced displacement and famine; massacres; the internal conflict (1975–76); international actors and self-determination; children; and a national victims hearing. In total, 124 victims and witnesses testified, 49 of whom were women (39.5%).
- 60 Balance was sought in terms of different groups of perpetrators (Timorese political parties, Indonesian security forces and Timorese auxiliary groups), different geographical regions (western, central, and eastern parts of the country), different periods of the conflict (period of civil war, initial invasion, and pacification by Indonesia, and the referendum-related violence of 1999), and to some degree different violations suffered. The women talked about violations they had suffered directly, except for one who talked about the sexual slavery and disappearance of her daughter. Experiences of sexual violence were dominant in this hearing as women's experience of forced displacement, famine, political imprisonment, and massacres were covered in public hearings on those themes.
- 61 In 2000, members of the West Timor Humanitarian Team [*Tim Kemanusiaan Timor Barat*] (TKTB) documented violence against East Timorese women in refugee camps in West Timor.
- 62 This comment, made by a victim of sexual slavery before her testimony in a subdistrict hearing, was directed at a group of men who began laughing when she took the stage. The men fell silent and were clearly embarrassed. This incident was related to one of the authors by a national commissioner who witnessed it.
- 63 For example, after an internal evaluation in 2002, the CAVR found that only 10% of the deponents were women. A target of 30% was set, and efforts to increase outreach to women were conducted through district teams. At the end, 21.4% of statements were given by female deponents.
- 64 Support for Recovery, Employment and Stability Programme for Ex-combatants and Communities in Timor-Leste (RESPECT) comes from the Japanese Government and UNDP.
- 65 Two independent commissions established by the president were mandated to identify ex-combatants and veterans, and to elaborate policies that would recognize and assist them. More than 10,000 men registered, but women combatants, who carried arms and fought alongside men, have not been included because they were classified as political cases. UNIFEM, *Gender Profile*.

- 66 These groups include Nove-nove (widows of the massacre in the Maliana police station), Mate-restu (widows of the massacre in the Suai church), and Rate-laek (widows of the massacre in the Liquiça church), all massacres that occurred in 1999.
- 67 Victims of this abuse who are still alive are now in their 70s and 80s, yet they seek redress for the abuse they once experienced. Some of them have traveled to Japan to give testimony in a people's tribunal.
- 68 The authors of the submission were Maria Domingas Fernandes, Manuela Leong Pereira, Isabel de Lima, Olandina Caeiro, Terezinha Cardoso, Teresa Carvalho, Maria Maia dos Reis, Maria do Carmo Quintão, Fatima Maia, Milena Pires, Maria Paixao, Cipriana Pereira, and Ivete de Oliveira.
- 69 This review was conducted by the authors of this paper based on recommendations documented by the CAVR from healing workshops and victim and women's hearings in 2003 and 2004.
- 70 Interview with Milena Pires, program coordinator, UNIFEM in Timor-Leste, Dili, 12 June 2005.
- 71 Interview with José Luis de Oliveira, executive director of HAK Association, an East Timorese human rights NGO, Dili, 1 August 2005.
- 72 Interview with Regina Soares Ximenes, OPMT activist, Dili, 1 June 2005.
- 73 Interview with Isabel Guterres, CAVR commissioner, Dili, 2 August 2005.
- 74 Interview with Julmira da Cruz Sarmiento, OPMT activist, Dili, 1 June 2005.
- 75 Interview with Isabel Guterres.
- 76 The consultant was formerly a staff member in the reparations unit of the Peruvian Truth and Reconciliation Commission.
- 77 Guidelines developed by the CAVR.
- 78 The main source of these funds was the Trust Fund for East Timor (TFET), administered by the World Bank through its Community Empowerment and Local Governance Project (CEP), supervised by the Minister of the Interior. The CAVR's urgent reparations program was funded under CEP's Vulnerable Groups funding window. Hivos, a Dutch funding agency, also contributed to the costs of healing workshops and other activities.
- 79 Each beneficiary received US\$200. To put this amount in perspective, the entry-level salary for civil servants and members of the police force in Timor-Leste is approximately US\$80 per month.
- 80 CAVR staff report on follow-up visits to recipients of urgent reparations in Bobonaro District, March 2004.
- 81 Ibid.
- 82 Ten NGOs, including the East Timor Health Foundation [*Fundação Saude Timor-Leste*] (Satilos) in Dili; the Canossian Sisters in Ainaro, Manatuto, and Lautém; the Catholic Peace and Justice Commission in Maliana; the Oecusse Enclave Women's Centre [*Centro Feto Enclave Oecusse*]; the Congregation of the Infant Jesus Sisters in Manufahi and

- Baucau; the Franciscan Sisters in Viqueque; and the Daughters of the Virgin Mary [*Putri Renha Rosario*] Sisters in Liquiça received funding from the CAVR to implement six-month district programs to provide home visits and care to victims identified by the commission. Approximately 4% of the available funds for victim support work (or about US\$7,000) was used to fund these local service organizations.
- 83 About 25% of the available funds for victim support work was allocated to this initiative (approximately US\$43,000).
- 84 The education center is used as a classroom for children during the day, and in the evenings for other community activities, such as adult literacy programs. This information provided by HAK Association in an oral progress report to the CAVR, December 2004.
- 85 Lautém, Dili, Liquiça, Bobonaro, Ermera and Covalima.
- 86 Under Regulation 2001/10, Article 38.2, the commission was barred from “attempting to deal with land disputes, but shall record and refer any land-related matters to the appropriate . . . authority.” In its recommendations, the CAVR has called for a parliamentary inquiry into the impact of large-scale resettlement during the Indonesian occupation to be followed by mediation.
- 87 At the end of the workshop, victims received the US\$200 grants and did some planning exercises as to how they would use the money.
- 88 Interview with “AG,” Afaloicai (Watu-Lari, Viqueque), 18 September 2003.
- 89 CAVR, *Final Report*, sec. 11, “Recommendations,” <<http://www.ictj.org/en/news/features/846.html>>.
- 90 The reparations policy provides a brief explanation of the five guiding principles. The principles require the reparations program to be feasible, i.e., “selective and focus on the most urgent needs of the most vulnerable and, where possible, provide collective responses that are cost-effective and inventive”; accessible “to victims who are disadvantaged not only as a consequence of their experience but also by their isolation;” empowering, i.e., encouraging “victims to take control over their own lives . . . through a victim-centered and community-based empowerment approach”; and to prioritize victims most in need. In terms of gender as a guiding principle, the CAVR acknowledged that men and women experienced different types of human rights violations and different barriers to mitigating their impacts. Women also bore responsibility for the survival of their family, when male members of the family experienced violations. This is why 50% of program resources were to be earmarked for female beneficiaries.
- 91 CAVR, *Final Report*, part 11: “Recommendations.”
- 92 UNTAET Regulation 2001/10, Article 1.
- 93 The CAVR provided working definitions for beneficiaries of the reparations program:
- Victims of torture* are those who were detained, tortured and continue to gravely suffer the consequences of the torture they experienced.

People with disabilities due to gross human rights violations are those who have become permanently physically or mentally disabled, either totally or partially, as a consequence of the conflict. Examples are victims who suffered amputations, lacerations, loss of body parts, or gunshot wounds; victims with bullets or shell fragments in their bodies, or who have permanent problems due to severe beatings and torture which have left them totally or partially disabled; or victims with disabling mental health problems due to past violations.

Victims of sexual violence are those women and girls who were subjected to acts such as rape, sexual slavery, forced marriage or other forms of sexual violence; and boys and men who suffered sexual violence.

Widows and single mothers are women whose husbands were killed or disappeared and who, as a result, are the primary breadwinners for their families. Also included here are women whose children were born out of rape or sexual slavery and consequently became single mothers.

Children affected by the conflict are defined as children who suffer from disabilities due to gross human rights violations; children whose parents were killed or disappeared; and children born out of an act of sexual violence whose mother is single and children who suffer psychological damage. Children will be eligible for reparations if they were 18 years of age or younger on 25 October 1999.

CAVR, *Final Report*, part 11: "Recommendations."

- 94 However, in the CAVR's experience, many women with children as a result of rape tend to volunteer this information, probably because it is already public knowledge in their small communities.
- 95 The CAVR omitted to mention specifically the consultation with women's victims groups, but since the proposed programs specifically address women victims, their involvement in the further design of the program is logical.
- 96 CAVR, *Final Report*, part 11: "Recommendations."
- 97 Judicial Systems Monitoring Programme, *The Lolotoe Case: A Small Step Forward*, July 2004, <<http://www.jsmp.minihub.org>> (accessed 8 November 2005).
- 98 Megan Hirst and Howard Varney, *Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor* (New York: International Center for Transitional Justice, 2005).
- 99 "Meeting of victims' families, Fatubessi, Ermera," 13 November 2004. Unpublished notes taken by Fokupers staff.

APPENDIX

**Questionnaire for the Preparation
of Country Studies**

**WOMEN'S AGENCY IN THE ARTICULATION OF REPARATIONS MECHANISMS
AND IN THE DESIGN OF REPARATIONS PROGRAMS**

- A) How active have women been in the movement/discussions on reparations in your country? Have there been significant differences concerning different groups of women, e.g., urban versus rural?
- B) What were the main causes around which different groups of women mobilized when reparations were discussed? What were their perspectives in terms of the kinds of harms that should be the object of reparation? What did they perceive the main goal of reparations to be?
- C) What were women's main motivation in participating in the reparations debate (search for truth, material compensation, access to services, search for family members or remains thereof, proper burial of family members, search for recognition of experience of harm, etc.)?
- D) How did different groups of women mobilize and what were the main obstacles/facilitators in their mobilization for reparations?
- E) How involved were different women's organizations in discussions on reparations? How involved were women in victims organizations? Was there a dialogue between both types of organization? What were the main civil society organizations on which women relied to claim reparations?
- F) What was the role of children's and youth organizations in the discussion on reparations and to what extent did they focus on girls' concerns?
- G) What were women's main strategies of mobilization for reparations (national/international legal actions, lobbying for governmental support, etc.)?
- H) Were different groups of women's organizations consulted by the government or UN agencies concerning the design of reparations programs or

other reparations mechanisms? Were victims organizations consulted and have victims organizations given adequate voice to women and women's concerns?

- I) Were women more prone to mobilize in relation to crimes committed against their family members (husbands, children) than against themselves?
- J) Were different groups of women included in the agencies and commissions leading the transitional/post-conflict process (e.g., peace negotiation tables, truth commissions, reparations agencies, prosecutions, etc.)?
- K) Have there been official attempts to encourage and assess women's participation in such processes, including rural women?

GENDER-SENSITIVE DEFINITION OF THE HARMS AND CRIMES THAT DESERVE REPARATION

- A) What were the main claims expressed by women's organizations and victims organizations with regards to the crimes that had to be repaired?
- B) Were women and girls subject to specific forms of abuse and crimes during the time of conflict or political repression? Which forms? What were the specific contexts that rendered women and girls more vulnerable to human rights abuses (e.g., prison, displacement, war, etc.)?
- C) What is the definition of victims in the (discussed/adopted and/or implemented) reparations program and how well does it reflect the experience of women and girls? Were the conditions to prove the model of victimhood too onerous/restrictive/tightly constructed so that women could not place themselves within the category of those deserving reparations?
- D) What were the criteria used to decide which crimes to repair? Were they explicitly stated? Did they take into account the experience and the reality of women and girls?
- E) Has the list of crimes covered by the (discussed, adopted, and/or implemented) reparations programs incorporated those crimes committed separately against women? Were the definitions given for those crimes adequate to reflect the reality of the harm experienced by women and girls?
- F) Were women and girls affected distinctively by some crimes committed against both men and women, especially taking into account demographic,

cultural, or religious contextual elements? How? How have other factors, including race, ethnicity, or class, shaped their concrete experience of harms and oppression? Has their distinctive experience of oppression been taken into account in the design of the reparations programs?

In answering the previous questions, consider the following harms as a nonexhaustive list:

- rape
 - sexual slavery
 - forced labor, including gender-specific forms of forced labor
 - forced impregnation
 - forced abortion
 - forced sterilization
 - forced incest
 - forced marriage
 - internal displacement
 - abduction or loss of descendants
 - torture, including gendered forms of torture (e.g., sexualized forms of torture or torture through harms done targeting motherhood feelings)
 - illegal detention and imprisonment, including gendered forms of harms linked to the experience (e.g., abuses committed against female political activists in prison for breaking gender roles)
 - disappearance, including disappearance of children and husbands and/or partners
 - amputation, mutilation, including sexualized forms of mutilation
 - dispossession of property
 - serious violations of socioeconomic rights
- G) Were these harms conceptualized as independent categories of crimes or rather subsumed in larger, less differentiated legal categories often shaped according to male experiences (such as torture, forced labor, etc.)?
- H) What are the main “secondary” harms which have derived for women and girls from the crimes committed against men and women during the time of conflict or political repression? Have these been taken into account in the (discussed, designed, and/or implemented) reparations program? Have these harms been considered as primary and not just secondary harms in the design of reparations?

Consider the following as a nonexhaustive list:

- pregnancy as un/intended result of rape
 - contraction of sexually transmitted disease as un/intended result of rape
 - bearing and raising of children as un/intended result of sexual crimes
 - loss of reproductive capacity as a result of sexual crimes
 - undergoing abortion as a result of rape
 - being targeted for mutilation or abuse as a result of pregnancy or loss of reproductive capacity
 - different forms of communal ostracism and stigmatization as a result of having been detained, tortured, raped, impregnated, mutilated, or forced into a marital-type relationship with member of the opposition group
 - repudiation or divorce by one's husband/partner as a result of having been incarcerated, tortured, raped, impregnated, mutilated, and so on, or immediately after the husband/partner is released from prison
 - taking in of abandoned children or children who have lost their parents
 - widowhood
 - orphaning
 - legal precariousness as a result of disappearance of spouse/partner
 - loss of means of livelihood
 - inability to marry/remarry as a result of having been subject to different forms of oppression during the conflict/oppression
 - harassment by official authorities for being or having been a victim's family member
 - loss of educational opportunities
 - loss of opportunity to have or raise one's own children (e.g., because of time in prison, displacement, etc.)
 - loss of possibility of political agency
 - loss of other opportunities linked to the amount of time/energy/resources spent taking care of family member in prison
- 1) Did the reparations program include reparations of these harms when committed by non-state actors? If so, in which ways was this especially relevant for women and girls?
 - 2) Have the experiences of female ex-combatants been taken into account in the (discussed, adopted, and/or implemented) reparations program/policy?

- K) Has the fact that women and girls were also subject to similar crimes in times of normalcy (sexual violence, domestic violence, forced marriages, etc.) had an impact on women's (self-) identification and their identification as victims by the state or by the official body designing the reparations policy?
- L) Have there been official attempts to keep records of these crimes and their concrete impact on women?
- M) Have crimes committed against children been included in reparations programs? Which ones? How? Have children or the foetus been conceptualized as separate victims?

GENDER-SENSITIVE DEFINITION OF REPARATIONS BENEFITS AND BENEFICIARIES

- A) What are the reparations measures and benefits that women and women's groups have mostly strived for? Have women claimed specific forms of reparations for specific kinds of crimes/harms?
- B) Have women mobilized specifically in favor of certain types of reparations measures (symbolic reparations such as official apologies; individual reparations; collective reparations; monetary compensation; medical or psychological assistance; homes or schools rebuilt, etc.)? On what grounds and in what contexts?
- C) Have women shown special resistance to/skepticism about certain forms of reparations (e.g., monetary compensation)? In what circumstances and on which grounds?
- D) Have the debates on the (discussed, adopted, and/or implemented) reparations programs or measures (formally or informally) distinguished between direct and indirect victims? Has this distinction had a foreseeable differential impact on women and how the harms they suffered are conceptualized?
- E) Do the material reparations measures in the (discussed, adopted, and/or implemented) reparations program emphasize social service packages or rather individual reparations payments, and has this choice had (will it have) a foreseeable differential impact on women and girls?
- F) Do the material reparations measures in the (discussed, adopted, and/or implemented) reparations program emphasize individual reparations payments consisting of one or several lump sums or, rather, (monthly)

pensions and has this choice had (will it have) a foreseeable differential impact on women?

- G) What are the different reparations measures that the (discussed, adopted, and/or implemented) reparations programs contemplate to compensate women and girls for the crimes and secondary harms they were subject to? Please consider the list of crimes and harms in the previous section.
- H) What are the underlying (explicit or implicit) criteria that have been used to evaluate the harm and calculate monetary compensation in reparations programs (e.g., loss of potential income, moral harms, loss of different kinds of opportunities, irreplaceable goods, etc.)? Do these criteria have a foreseeable differential positive/negative impact on women?
- I) Do reparations measures explicitly take into account the stigmatizing effect that crimes committed against women and girls have on them and how they affect their status within the community? How? If not, how do you think they could be devised to do so?
- J) When pension schemes or compensation schemes are defined in such a way that women who were wives or partners of the victim receive a percentage of the total payment together with other family members, such as the children or the parents of the victim who are also defined as beneficiaries, how are the percentages decided? What is the conception of the family that underlies such a distribution? How does it impact women?
- K) When reparations benefits are dependent on the existence of certain family ties among the victims and the beneficiaries, has the program truly and sufficiently reflected the existing network of support units in society?
- L) Have the reparations programs distinguished between marriage, common-law marriage, civil unions, polygamous marriages, or other forms of marital unions? What is the gender impact of doing so?
- M) What has been the emphasis placed on individual versus collective forms of reparations? What are the gender implications of doing so, especially taking into account the fact that women often hold a vulnerable position within the larger communities that they are a part of (e.g., the family, the tribe, the religious community)?
- N) Have there been reparations measures granted exclusively to women or groups of women (e.g., pensions for widows but not widowers, reparations

- for raped or sexually abused women but not for raped or sexually abused men)? On what grounds? What is the foreseeable impact of doing so?
- O) Have the reparations programs made distinctions on the grounds of people's role and involvement in the conflict (e.g., between civilians and ex-combatants) and does this choice have a foreseeable positive/negative differential impact on women?
 - P) What types of reparations measures have been designed for children? In case of possible tension between the child's interest and the mother's interest, how have those tensions been resolved?
 - Q) Has the fact that women continue to be the main caretakers of children, the sick, the wounded, the amputees, the disabled, and the elderly been taken into account in the definition of reparations beneficiaries and the design of reparations measures?
 - R) In the case of children born out of sexual violence, given that women will be their main caretakers, and that this reality will have long-term impact on a woman's life, how is this reality taken into account in the definition of reparations beneficiaries and the design of adequate reparations measures?
 - S) Have women claimed or been granted specific forms of symbolic recognition and reparation? Which forms? Have they been fairly and adequately represented in commemorative endeavors? What aspect of women's unique experience has been captured in such symbolic forms of reparations?
 - T) Have women been granted individualized forms of symbolic recognition and reparation? Given the difficulty of recognizing women as individuals and not only as members of (and in functional relationship to) other collectivities such as the married pair/group, the family, the ethnic community, the tribe, the village, and so on, would an individualized form of symbolic recognition make particular sense? If so, in what forms?
 - U) How have women and girls been repaired for the different forms of sexual crimes committed against them? Were the conditions created for women to freely talk about those sexual crimes? Was abortion an option for women who became pregnant as a result of rape crimes? Has the stigmatizing effect of these harms been taken into account in the definition of the adequate reparation measure? Were these issues discussed?
 - V) In theory, one of the purposes of reparations is to return the person to how they were. What has been done in the case that the pre-conflict order

of reference did not afford an advantageous position for women to start with?

- W) More generally, what was the transformative impact of reparations measures on women? In other words, did they enable women to enjoy opportunities that were previously closed to them or at least set the preconditions for them to do so (think of remedies aimed at ensuring women's economic self-sufficiency such as microcredit or skills training or human rights education programs with an emphasis on gender justice)? Were there legal obstacles that made this kind of transformative remedy impossible (e.g., restriction of the legal capacity of women to hold title, other forms of ownership, or to be fully autonomous legally speaking)? In view of your country experience, what concrete forms of reparations could have had the largest transformative potential?
- X) What kind of reparations benefits have women been granted in the most important cases brought to national or international courts regarding the crimes that they were subject to under the authoritarian regime or violent conflict?
- Y) Have women or groups of women expressed a clear view as to who should be responsible for reparations (e.g., where the money to pay compensations should come from or who should apologize)? What does this say about the broader societal and structural factors that determine the context within which harms are perpetrated against women?

GENDER-SENSITIVE IMPLEMENTATION OF REPARATIONS PROGRAMS

- A) Have women been included in the implementation bodies of reparations programs? At what level and stage and in what numbers (e.g., as decision makers or secretaries; how many at high, mid, low levels)?
- B) Has there been any monitoring or follow-up mechanism to ensure the implementation of reparations for women?
- C) Have the existing implementation/monitoring bodies actually prioritized women's reparations?
- D) Have women availed themselves of reparations programs? Have there been official attempts to assess this (for instance, by disaggregating the data on the number of victims that have participated in reparations programs along gender lines)?

- E) What are the reasons for satisfaction/dissatisfaction that women and women's organizations have expressed regarding the implementation of reparations programs or other reparatory mechanisms?
- F) Have women encountered formal or informal constraints in accessing reparations benefits?

Consider the following nonexhaustive list of possible obstacles:

- lack of information
 - illiteracy
 - lack of full legal autonomy of women under the state law or under other legal regimes to which women may also be subject, such as customary or religious law
 - informal pressure exercised by the tribe, the family, the racial group, or the religious or ethnic community the women belong to
 - lack of necessary documents, such as identification cards
 - lack of formally recognized status (for instance, as wife or partner of a disappeared person)
 - fear of stigmatization and other forms of communal ostracism
 - fear of reprisal
 - lack of trust in the process
 - constraints deriving from customary law or practice
 - complexity of the administrative procedure
 - fear of secondary victimization during the procedure
 - lack of confidentiality of the procedure
 - difficulty in accessing the administrative agency because of geographical distance or the inability to take time off from work or leave families
 - lack of sex-segregated data collection
 - inaccuracy of official census
 - standards of proof
 - difficulty of distinguishing between different forms of violence against women (private versus political, ordinary versus extraordinary, etc.)
- G) Have the reparations procedures been designed in such a way as to avoid secondary victimization of women or indeed to actually empower women? Consider some of the options of how this can be done:
- ensuring the adequate representation of women in the agencies that have to adjudicate and implement reparations claims

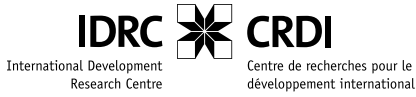
- preserving the confidentiality of the names of victims in registration procedures
- allowing different ways of providing testimony, including in camera testifying for certain crimes
- training personnel in charge of taking testimony of female victims
- ensuring that such personnel be mostly women
- designing adequate standards of proof
- establishing adequate statute of limitations norms
- incorporating support services, such as counseling

GENDER, REPARATIONS, AND OTHER TRANSITIONAL JUSTICE MECHANISMS

- A) Has there been a connection between women's participation in peace negotiations, in prosecutorial mechanisms, in truth commissions/reconciliation commissions (especially when this participation was aimed at ensuring notions of gender justice), and the attempts to incorporate a gender dimension into existing reparation programs?
- B) In those cases where victims could choose between criminal prosecutions and/or accessing reparations programs, have women shown a tendency to focus their energies more around one or the other? What are the factors that explain women's choices in this regard?
- C) Judging from your country's experience, is there evidence to believe that including the goal of gender justice in the mandate of the relevant commissions/administrative agencies makes a difference in its output in terms of gender?
- D) Judging from your country's experience, what types of reparations measures can have a greater impact in triggering or facilitating broader institutional reforms aimed at ensuring long-term gender justice?
- E) Has there been a link between women's participation in reparations programs and their participation in truth-telling mechanisms? How do women assess the reparatory potential of truth-telling mechanisms?



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WHAT HAPPENS TO WOMEN whose lives are transformed and curtailed by human rights violations? What happens to the voices of victimized women once they have their day in court or in front of a truth commission? Women face a double marginalization under authoritarian regimes and during and after violent conflicts. Nonetheless, reparations programs are rarely designed to address the needs of women victims. *What Happened to the Women? Gender and Reparations for Human Rights Violations*, edited by Ruth Rubio-Marín, argues for the necessity of introducing a gender dimension into reparations programs in order to improve their response to female victims and their families. A joint project of the International Center for Transitional Justice and Canada's International Development Research Centre, *What Happened to the Women?* includes six country studies of gender and reparations policies: Guatemala, Peru, Rwanda, Sierra Leone, South Africa, and Timor-Leste. The contributors represent a wide spectrum of fields related to transitional justice, and include international human rights lawyers, members of truth and reconciliation commissions, and NGO representatives.

"*What Happened to the Women?* is of immense assistance to gender practitioners and scholars working in the fields of human rights, transitional justice, and peace building. Through their analysis and interpretation of the voices of women, the authors of these case studies begin to make concrete suggestions on how gender advocates can play a more positive role in ensuring that reparation becomes a reality for women affected by conflict. The book is an absolutely essential tool for gender advocates and transitional justice practitioners."

—YASMIN LOUISE SOOKA, Director of the Foundation for Human Rights in South Africa; former commissioner on the truth and reconciliation commissions in Sierra Leone and South Africa

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