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# Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru

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## Abstract

Sexual and reproductive violence (SRV) perpetrated against women during war or under authoritarian regimes is one of the most severe manifestations of gender-based violence. The authors ask how governments in new or reforming democracies hope to repair SRV and how state programs for reparation might be conceptualized and delivered. By examining the cases of Guatemala and Peru, they explore the problematic of repairing damage caused by SRV and comment on prospects for redress to victims in each country.

## Introduction

During the 1990s, activists for the human rights of women made significant progress in articulating an international legal framework better equipped to prosecute the particular forms of gender-based violence that women suffer during periods of authoritarianism or armed conflict. Crimes such as rape during war have been criminalized under international law and important gains have been made through the jurisprudence that has emerged from the International Criminal Tribunals for Rwanda and the former Yugoslavia.

In keeping with these gains, a rich body of research and much scholarly debate has emerged around gender-related advancements in international law, particularly international humanitarian and criminal law. The literature on retributive justice is based on the contention that mechanisms such as criminal tribunals or legal reforms are essential for dismantling impunity and putting in place measures for the non-recurrence of human rights violations. It is not our intention to argue for or against this position. While retributive justice is important, it focuses largely on what to do with individual perpetrators. Much less has been said about victims, what can be done for them and how gender considerations could be integrated into measures for redress. Attention must be shifted to how, during moments of

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political transition, reparative justice policies and programs might assist victims and their communities and lay some of the groundwork required to transform authoritarian structures and practices into functional democratic regimes based on the principles of equity, equality and non-discrimination.

Through the cases of Guatemala and Peru, we explore the problematic of addressing sexual and reproductive violence (SRV) perpetrated against women,<sup>1</sup> which is one of the most severe manifestations of gender-based violence. Our analysis will demonstrate that SRV perpetrated by either state (police and military) or non-state actors (guerrillas and paramilitary groups) not only undermines basic rights, such as the right to life and physical integrity, but also violates a number of other substantive economic, social and cultural human rights. For this reason, those who are responsible for implementing reparations programs in Guatemala and Peru need to understand SRV as a form of structural violence whose far-reaching political, social and economic effects influence the countries' long-term chances for recovery and development, even in the climate of optimism that generally accompanies post-conflict peace-building and democratic transition.

The discussion is based on four premises. First, we emphasize that the question of how to repair the harm done cannot be delinked from the questions of why the harm was done and to whom. As such, the first part of the article provides a brief overview of the role that SRV plays as part of a larger strategy in political conflict. We also briefly examine the ongoing economic and social impact that sexual violence has on victims. Second, in order to determine how governments can remedy SRV, we need first to understand what is possible. The second section of this article examines related advances in the international legal framework, particularly in Latin America.

Third, because national policies for reparations should be grounded in a nuanced empirical analysis of the local realities of the survivors of SRV, the third section of the article delves into some of the particularities of the conflicts that took place in Guatemala and Peru. As two less-developed countries in Latin America undergoing parallel processes of state-sponsored reparations for legacies of human rights violations resulting from armed conflict, Guatemala and Peru are important cases. In both countries, the majority of victims of SRV were poor indigenous women. In Guatemala, the majority of acts of SRV have been attributed to state security forces, while in Peru, responsibility for such violations lay chiefly with insurgent groups. Reparations programs in both countries emerged from specific truth commission recommendations regarding sexual violence, as well as being embedded in wider justice processes that include cases before the Inter-American Court for Human Rights and national courts.

Finally, the principles and jurisprudence of international human rights law have provided women's groups, human rights advocates and victim support groups with important tools to influence norm setting and public policy at the national

<sup>1</sup> We have chosen to focus on the impact that sexual violence has on women because they are disproportionately affected. We note that sexual violence has a differentiated impact on women and girls and on men and boys.

level. Drawing on our analysis of the evolution of international law, we examine some of the challenges that currently face policy makers, victims and victim support groups in each country, and comment on the potential for meeting these challenges through national reparations programs. This article is by no means exhaustive, as it is still too early to offer a comprehensive assessment of how reparations are being delivered in Guatemala and Peru. Actual implementation of national reparations policies and programs in both countries is relatively new. Our intention is to offer some guidance for current and future efforts by highlighting how reparations as short-term measures of redress for victims might contribute to the achievement of the longer-term goal of gender justice.

## **Sexual and Reproductive Violence in Contemporary Political Conflicts**

### **Gendered Effects**

Prior to discussing options for redress, we must briefly review the reasons for women being disproportionately affected by SRV and how SRV affects them.<sup>2</sup> When committed as part of a larger campaign of political violence, SRV is understood to include practices such as sexual slavery, forced marriage, forced pregnancy/abortion/sterilization, rape, sexual torture/mutilation and sexual humiliation. The effects of these violations are different for men and women, with the most obvious example being that rape can result in pregnancy for women.

Various forms of SRV during political conflict, particularly rape, are now recognized as strategic weapons of political violence that serve both military and political ends. The pain and humiliation inflicted by perpetrators not only dominate and degrade the individual victim but also destroy cultural values, families and wider community relationships. This linkage is particularly evident in the context of ethnic or identity-based conflicts, such as those that took place in Guatemala.<sup>3</sup> Recognition of the gravity of SRV, whether perpetrated in the private or the public domain, is limited. SRV is at best overlooked or trivialized and at worst blamed on the victim. As a result, survivors live, in the aftermath of political violence, with the severe physical or mental health consequences of the abuses suffered. This is often compounded by ongoing insecurity unrelated to the conflict, including revictimization by returning husbands, sons and uncles.

Local- and national-level domestic laws for the criminal or civil prosecution and redress of SRV are often weak, discriminatory or non-existent. In addition to general discrimination, victims' advocates commonly find dismissive attitudes among police and prosecutors from the moment a complaint is lodged through

<sup>2</sup> The differentiated impact of armed conflict on women has been well documented in the literature on gender, conflict and peace-building. We will only highlight a number of points that are pertinent for our discussion on reparations.

<sup>3</sup> They arguably also took place in Peru, although political violence in Peru has not traditionally been viewed as an ethnic or identity-based phenomenon. We return to this point below.

to when the court's decision is given.<sup>4</sup> This tendency becomes even more marked in the aftermath of mass violence, when national institutions for law and order, including courts, have been compromised or complicit in the commission of crimes, including SRV. The possibilities for victims to secure justice through the courts in this context are greatly reduced.

Perceptions of what is appropriate to discuss in the public domain versus the private domain throw up a number of barriers for assisting victims of SRV. Given that sexuality in general and sexual violence in particular are private and even taboo subjects in many cultures, SRV is often rendered invisible and not treated as a crime by legal systems. The public-private distinction further complicates matters when SRV during political violence occurs in public or in full view of a victim's family and/or community. Individual or collective efforts at trauma recovery are often undermined by an inability to discuss what is considered a private matter.<sup>5</sup> Similarly, victims are often shunned or stigmatized by their families, communities or society as a whole, as has been reported by survivors in a number of cases, including those under study here. For example, some women interviewed by Peru's Truth and Reconciliation Commission (TRC) and Guatemala's Historical Clarification Commission (CEH) admitted that they kept their experiences hidden from family members, including spouses, and from the wider community.<sup>6</sup>

SRV affects gender-based relations in complex ways. Because women are perceived to be a symbol of family honor in many societies, husbands of SRV victims have reported feeling shame and guilt for having failed in their role as protector and head of the family. Some men interviewed in Peru admitted that they abandoned their wives after learning of their experience rather than face up to the shame that sexual violence brings for the entire community.<sup>7</sup> SRV also affects women's mental and reproductive health and sexuality. As has been the case in other countries, female victims of SRV in Guatemala and Peru have reported a wide variety of secondary effects, including depression, low self-esteem, insomnia, anxiety and shame, vaginal and reproductive-tract problems, sexually transmitted diseases, difficult births and sterility.<sup>8</sup>

In the aftermath of political violence, women are more socially and economically vulnerable and often find themselves faced with increasing responsibilities. Research has shown that political violence shifts the economic burden of caring for

<sup>4</sup> Truth and Reconciliation Commission of Peru (TRC), *Final Report of the Truth and Reconciliation Commission* (Lima: 2003).

<sup>5</sup> Amani El Jack, *Gender and Armed Conflict: Overview Report* (Brighton: Institute of Development Studies, University of Sussex, 2003).

<sup>6</sup> Indicative testimonies can be found in, TRC, supra n 4 at vol. VIII, 91. Comments on the language employed by victims of sexual violence can be found at, TRC, supra n 4 at vol. VI, 370–372. As for Guatemala, indicative testimonies can be read in, Commission on Historical Clarification (CEH), *Guatemala: Memory of Silence* (Guatemala: United Nations Office for Project Services, 1999), vol. II, 21.

<sup>7</sup> TRC, supra n 4 at vol. VIII. The report does not suggest, however, that such cases constitute a generalized phenomenon. What is important is women's subjective belief that rejection will be the inevitable consequence should their husbands learn what happened to them.

<sup>8</sup> TRC, supra n 4 at vol. VIII; CEH, supra n 6 at vol. II.

and supporting families further onto women, and that their plight is exacerbated by a lack of financial resources and the presence of more people to feed, including elderly family members and orphaned children.<sup>9</sup> In addition, forced displacement was widely used as a tactic of warfare in Guatemala and Peru. While displacement and demographic changes have sometimes created new opportunities for women, in Guatemala and Peru, resettlement in the wake of warfare was accompanied by marginalization, unemployment, ethnic and cultural discrimination, loss of identity and extreme poverty.

Because a high percentage of men died, disappeared or migrated as a result of the conflicts in Guatemala and Peru, both countries have seen an increase in female-headed households. The economic conditions of returning female refugees, single woman-headed households and women dependent on public subsidies tend to worsen during and after mass crimes.<sup>10</sup> The precarious nature of women's living conditions, especially for victims of SRV and women who are heads of families, can lead them into prostitution and other dangerous practices that put their health and lives at even greater risk, especially through the transmission of HIV or other sexually transmitted diseases.

For victims of SRV, these vulnerabilities can become more acute if they are ostracized from their communities or family support networks and their access to channels of economic productivity (such as markets and cooperatives) is blocked. Research that documents the psycho-social effects of the Guatemalan war on the widows of Quiché, Huehuetenango, Alta Verapaz and Chimaltenango reflects myriad negative effects, including self-image problems, guilt among widows and feelings that the death of a male relative signified failure as a wife, mother or caregiver.<sup>11</sup> Problems of community mistrust and jealousy of women who are on their own are recorded in Peru's TRC report, which discusses how the rejection of widows for what has happened to them in the past imperils their prospects for rebuilding their lives.<sup>12</sup> Widowhood is not typically accompanied by 'gender solidarity,' as in both Peru and Guatemala women on their own tend to be perceived as a threat to other women in the community.

## Conceptual Considerations Regarding International Law and Reparation

It is important to understand the evolution of the international legal framework in response to violence against women and the conceptualization of redress

<sup>9</sup> Colleen Duggan and Adila Abusharaf, 'Reparation of Sexual Violence and Democratic Transition: In Search of Gender Justice,' in *The Handbook of Reparations*, ed. Pablo de Grieff (New York: Oxford University Press, 2006), citing Sunila Abeysekera, 'Maximizing the Achievement of Women's Rights in Conflict Transformation: The Case of Sri Lanka,' *Colombia Journal of Transnational Law* 41(5) (2003): 523–540.

<sup>10</sup> Krishna Kumar, *Mass Crimes, Women and Gender Relations: A Comparative Perspective* (unpublished manuscript, April 2003).

<sup>11</sup> Judith Zur, 'The Psycho-social Effects of "La Violencia" on the Widows of El Quiche, Guatemala,' in *Women and Conflict*, ed. Helen O'Connell (Oxford: Oxfam, 1993).

<sup>12</sup> Comisión de Derechos Humanos and Movimiento Manuela Ramos, *Abusaruwanku: Violación de Mujeres: Silencio e Impunidad*, reprinted from, TRC, supra n 4.

under international public law for two reasons. First, international human rights law traditionally has been an important lobbying tool for human rights advocates engaged in processes of norm setting and public policy transformation during moments of political transition. Second, advancements can provide critical elements for assessing progress or setbacks in the realization of women's human rights, writ large. However, it must be said that human rights approaches can be limiting if they fail to examine the whole gamut of women's rights – political, civil, economic, social and cultural – violated during campaigns of political violence. Feminists have highlighted some of the problems with liberal theories, such as those outlined in John Rawls' *A Theory of Justice*, which place too much emphasis on formal rights and assume that 'individuals' are gender-neutral citizens.<sup>13</sup> A number of feminists have been critical of what they consider to be an essentialist approach or a disproportionate focus in the literature on women as victims – particularly of SRV – as this tends to bring an 'incomplete gender equality focus.'<sup>14</sup> Human rights theorists also have tended to overlook the gendered effects of armed conflict as basic rights violations, viewing them instead as private, normal or inevitable consequences of armed conflict.<sup>15</sup>

We contend that the problem lies in the continuing conceptualization of the 'gender-neutral' citizen during moments of transition and in an incomplete reading of human rights law. During moments of democratic transition, policy makers tend toward an almost exclusive focus on certain civil and political rights, giving short shrift to the entire catalog of rights and to important basic principles of human rights law, such as non-discrimination, equity and the affirmative duties of states to not only protect but also promote human rights, including women's rights.

These lacunae are odd when we consider that international efforts to address gender violence go as far back as the 1970s. The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) delineated the gendered nature of violence, recognizing that violence directly and disproportionately affects women. In the Inter-American context, the 1994 Convention of Belém do Pará recognizes that 'every woman has the right to a life free of violence in both private and in public' (Art 3). State responsibility and protection are thus placed under the larger umbrella of non-discrimination. The 1994 Declaration on the Elimination of Violence Against Women defines gender-based violence as

any act . . . that results in, or is likely to result in physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. (Art 1)

<sup>13</sup> For a full discussion, see, Maxine Moyneux and Shahra Razavi, eds., 'Rethinking Liberal Rights and Universalism: A Theoretical Engagement,' in *Gender Justice, Development and Rights* (Geneva: United Nations Research Institute for Social Development, 2003).

<sup>14</sup> Beth Woroniuk, 'Women's Empowerment in the Context of Human Security' (discussion paper prepared for the United Nations/Organisation for Economic Co-operation and Development workshop on women's empowerment in the context of human security, Bangkok, Thailand, 7–8 December 1999), 11.

<sup>15</sup> El Jack, *supra* n 5.

The visibility of crimes of violence against women, including SRV, during wartime is now an important part of the legacy of international criminal law. International humanitarian law (the Geneva Conventions and their Additional Protocols) prohibits sexual violence. While the 1993 Vienna Conference underscored the illegality of sexual violence during armed conflict, it was the appearance of the International Criminal Tribunals for the former Yugoslavia and for Rwanda that opened the door for the codification of SRV and potential measures for protection. The jurisprudence emerging from these two courts paved the way for defining systematic rape and other sex crimes as constituent acts of crimes against humanity and war crimes, now codified in the statute of the International Criminal Court.<sup>16</sup> The adoption of this statute is a significant milestone in that the international community has acknowledged that the state is often directly or indirectly complicit in SRV during armed conflict and, as such, has an unmistakable international obligation to redress these injustices.<sup>17</sup> Progress is also evident in recent jurisprudence emerging from the Inter-American system, for example, through the Inter-American Court judgment against the state of Peru in the *Castro Castro Prison* case in November 1996.<sup>18</sup>

Growing international concern for women's experiences during war and the need to protect their rights before, during and after conflict is reflected in UN Security Council Resolution 1325 on women, peace and security from 2000. The recommendations of the two most significant reports that follow up or support Resolution 1325,<sup>19</sup> and which are most pertinent to this discussion, include a state's duties to establish international truth and reconciliation commissions on violence against women in armed conflict as a step toward ending impunity; increase long-term financial support, as well as psycho-social and reproductive health services, for the survivors of gender and sexual violence; penalize and remedy all forms of violence against women in conflict and post-conflict situations; disseminate widely information on the procedures for redress of violations at the local and international levels; and take steps to ensure that victims of gender-related violence have the right to reparations for any damages incurred.<sup>20</sup>

In national contexts, the advancements above mean that a state's responsibility for and commitment to redressing SRV have evolved significantly over the last two decades. As transitional governments have been faced with the objectives of ensuring an acceptable level of criminal accountability for past human rights violations,

<sup>16</sup> Crimes against humanity are defined in Art. 7(1)(g), and war crimes are defined in Art. 8(2)(b)(xxii).

<sup>17</sup> Kelly Askin, 'The Quest for Post-Conflict Gender Justice,' *Columbia Journal of Transitional Law* 41(3) (2003): 509–521.

<sup>18</sup> The case dealt with the gender-differentiated conditions that women prisoners faced and concluded that state operations conducted against women in the prison and acts of sexual violence constituted crimes against humanity. Inter-American Court of Human Rights, *Miguel Castro Prison Judgment*, Inter. Am. C.H.R Series C no. 160 (2006).

<sup>19</sup> United Nations, 'United Nations Secretary-General's Report on Women, Peace and Security' (2004); United Nations Development Fund for Women, 'Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building,' vol. 1 (2002).

<sup>20</sup> Askin, *supra* n 17.

consolidating democratic institutions and promoting national reconciliation, the goals of transitional justice have come to focus increasingly on public policies whose goals are both retributive and reparatory, or restorative, in nature. The appearance of truth commissions and national reparations programs, in addition to other tools of transitional justice, has come to occupy a spot of singular importance in debates on truth, justice and reparations.

The underlying objective of reparations measures is to recognize or publicly acknowledge the harm done while also reestablishing the victim's identity and dignity. Reparations can be individual, meaning that their benefits accrue to or are felt by the victim directly (for example, access to mental or physical health services), or collective, meaning that they are targeted at entire communities that have suffered harm (for example, reconstruction of infrastructure). Finding the right mix of monetary and non-monetary reparations is especially important in Guatemala and Peru, where the majority of victims of SRV are in the most marginalized and disempowered sector of society – poor, rural, indigenous women with limited formal education. The practice of awarding non-monetary reparations is increasingly accepted in Latin America as a result of the jurisprudence of the Inter-American Court and the recommendations of truth commissions in a number of countries. This reflects a growing belief that many moral harms stand a better chance of being repaired or compensated through non-monetary or symbolic means. Examples of these types of measures include full and public disclosure of the truth, identification of a deceased or disappeared person's remains and acts that recover historic memory of the victims and are of a public nature, such as building monuments and offering official apologies or days of recognition for victims.

## Experiences in Redressing Sexual Violence in Guatemala and Peru

### Historic Overview of the Truth and Justice Processes in Guatemala and Peru

With the signing of peace agreements in Guatemala, the CEH was mandated to 'clarify' human rights violations and acts of violence that 'caused the Guatemalan people to suffer' during the internal armed conflict that took place between the state and the Guatemalan National Revolutionary Unity (URNG) guerrillas from 1962 and 1995.<sup>21</sup> The CEH documented close to 43,000 conflict-related civilian deaths and 6,159 forcible disappearances. According to its hard-hitting report, released in February 1999, 83 percent of the victims of the conflict were indigenous Maya. Responsibility for the majority of these abuses was attributed to state security forces or state-backed self-defense groups known as *patrullas de autodefensa civil* (PACs). Three percent of the violations were attributed to URNG guerrillas. The CEH also indicated that the state had committed acts of genocide against the Maya.

<sup>21</sup> The CEH report was preceded by, Recovery of Historical Memory Project (REMHI), *Guatemala Nunca Más* (Guatemala: Office of Human Rights of the Archbishop of Guatemala, 1998).



The CEH recommended that the state implement a national reparations program based on principles of equality, social participation and respect for cultural identity, and which would include material reparations and measures for moral or symbolic reparations.<sup>22</sup>

After a number of political setbacks, Guatemala's *Programa Nacional de Resarcimiento* (PNR) was established in April 2003, seven years after the peace agreements were signed. The PNR encompasses a variety of material or monetary measures, including the award of land, housing and scholarships. It foresees compensation payments of approximately US\$3,200 for victims of extrajudicial execution, death in a massacre and forced displacement, and payments of approximately US\$2,667 for survivors of torture, rape and sexual violence.<sup>23</sup> Each beneficiary can receive up to a maximum of approximately US\$5,863 for having lost more than one family member or having suffered multiple human rights violations. The PNR includes individual or collective reparations in the form of psycho-social measures, such as counseling or services for physical and/or mental rehabilitation. Symbolic and cultural measures include the creation of a national day of remembrance for victims, the promotion of a law for exemption from military service, the reconstruction of sacred sites, the construction of museums and monuments, the collection of historic memory and the exhumation and return of the remains of the dead.

In Peru, the TRC was mandated to investigate and make public the facts and responsibilities of the political violence that occurred between 1980 and 2000, including acts committed by both state actors and insurgent organizations. It was also mandated to make recommendations on reparations and institutional reforms. Made public in August 2003, the TRC's report represents substantial progress toward a sharper and more accurate picture of the responsibilities of conflict actors and the socio-demographic profile of victims. The TRC found that more than 69,000 people died at the hands of state security forces, paramilitary local defense groups and the *Sendero Luminoso* and the *Movimiento Revolucionario Tupac Amaru* (MRTA) insurgent groups.<sup>24</sup> Seventy-five percent of the victims spoke Quechua or other indigenous languages, and 79 percent lived in rural areas – a staggering statistic considering that during the years under study, this group accounted for only 16 percent of the population.<sup>25</sup> Responsibility for abuses in Peru was attributed to *Sendero Luminoso* (54 percent), state security forces (30 percent) and paramilitary groups (5 percent). The TRC report includes a gender perspective, most evident in two specific chapters on the gendered effects of

<sup>22</sup> Act 258-2003, Art. 2 (2003).

<sup>23</sup> These amounts are set out in Act 10-2006 of the National Reparations Commission, which is the PNR's executive commission. As of May 2007, 6,994 people had received lump-sum payments.

<sup>24</sup> Until the release of the TRC report in Peru, estimates ranged from 25,000 to 35,000 dead and disappeared. The TRC statistics continue to be a subject of hot debate, and denial, in certain quarters.

<sup>25</sup> TRC, *supra* n 4 at vol. VIII, conclusions 5 and 6.

the war.<sup>26</sup> The investigation process and ensuing report were important in that they brought to light the gender-differentiated human rights violations suffered by men and women, with a particular emphasis on SRV. In addition, the TRC highlighted women's important role as social actors.

In its report, the TRC recommended that the state put in place a Comprehensive Reparations Plan (PIR),<sup>27</sup> whose objective would be to 'repair and compensate victims of human rights violations as well as the social, moral and material losses or damages suffered by victims as a result of the internal armed conflict.'<sup>28</sup> Rape is the only act of sexual violence identified for reparations through the PIR. The plan proposes six programs<sup>29</sup> with a diverse collection of individual and collective reparations, including material measures – economic compensation, community and trauma counseling, preferential access to mental and physical health services, educational benefits such as scholarships, and adult education programs and legal services to restore personal documentation and expunge criminal and police records – and non-material, or symbolic, measures – public apologies to victims, a national holiday in the memory of victims, the construction of monuments and acts of reconciliation, including the closing of prisons and military bases closely associated with the internal armed conflict.<sup>30</sup>

## Women as Targets: Gendered Identity and Roles within Cultural Communities

The racist nature of the Guatemalan conflict is evident in the findings of the CEH. As a result of the security forces' scorched-earth campaigns in the highlands in the early 1980s, Guatemala's war was classified as a genocide. While the Peruvian TRC report falls short of using terms such as genocide and ethnic cleansing, the overwhelming number of indigenous victims in Peru strongly suggest that race was a determining factor in the level and geographic distribution of the violence. The TRC did conclude that the conflict had a differential impact in accordance with gender, cultural grouping and social class. What is clear is that in both countries, women were doubly or even triply targeted for violence because they were women, indigenous and rural poor, or *campesina*.

Incidents of SRV were documented extensively in both truth commission reports, with perhaps a longer, more vivid account in the Peruvian case. The TRC report details how women were direct victims of kidnapping, forced recruitment, arbitrary detention, torture, forced disappearances, massacres and extrajudicial

<sup>26</sup> The TRC report includes a chapter on sexual violence against women (vol. VI, ch. 1, sec. 1.5) and another on the gender-differentiated impact of violence (vol. VIII, ch. 2, sec. 2.1).

<sup>27</sup> Vol. IX and Annex 6 of the TRC report outline in significant detail suggestions for the content and running of this program.

<sup>28</sup> TRC, *supra* n 4 at vol. IX, 154.

<sup>29</sup> Symbolic reparations, reparations for health, reparations in education, restitution of citizenship rights, economic reparations and collective reparations.

<sup>30</sup> For more details, see generally, Julie Guillerot and Lisa Magarrell, *Reparaciones en la Transición Peruana: Memorias de un Proceso Inacabado* (Lima: Association for Human Rights (APRODEH)/International Center for Transitional Justice (ICTJ)/Oxfam, 2006).

executions. The chapter on SRV illustrates how modalities and acts of SRV differed depending on whether the perpetrators were affiliated with the state or with subversive groups.<sup>31</sup> For example, state actors were most often engaged in gang rapes or the rape of pregnant women, while insurgent groups were more frequently responsible for acts such as forced domestic work, mutilations (some sexual), sexual slavery, forced contraception, forced abortion and forced marriage. These violations were perpetrated against women who had been forcibly recruited or who were present in these groups' zones of control.

While testimonies were gathered on a variety of forms of sexual violence in both Peru and Guatemala, the statistics included only incidents of rape. As a result, in the case of Peru, redress of sexual violence under the PIR was circumscribed to rape.<sup>32</sup> This is problematic for a number of reasons. First, while the TRC in its report explicitly recognizes the seriousness of sexual violence, its recognition is truncated by the fact that SRV is only mentioned in the chapter on truth and memory and is left out entirely from the report's recommendations for reparations. Second, cases of rape have been most thoroughly documented as a practice associated with state security forces and their conduct in the country's numerous military installations, even though other forms of SRV, such as the sexual slavery, forced marriage and forced abortion most often perpetrated by insurgent groups, account for the majority of cases of SRV during the period covered by the Commission.

In both countries, geography appeared to be a determining factor in the occurrence of SRV. The majority of violations took place in the most isolated regions, far away from the cities and thus outside of the sphere of the ruling urban elite. In Peru, most women affected by the violence were living in the southern mountainous region, which includes Ayacucho, Huancavelica and Apurímac. Most of the victims of Guatemala's conflict lived in the western highlands and Quiché region, a large part of which is jungle. In examining the socio-demographic profile of affected women in Peru, we see that violence exacerbated patterns of exclusion, discrimination, racism and domination.<sup>33</sup> These patterns were repeated in cases of sexual violence.

Women's gender roles played a central part in their victimization in both contexts. Women who participated or were suspected of active participation or collaboration with insurgent groups (by relation or affinity) and women who searched for and/or defended family members were more vulnerable to SRV. The armed actors used

<sup>31</sup> This does not mean that men did not suffer sexual violence. Rape is perpetrated by men against other men in order to reaffirm power and masculinity and to humiliate the victim who is 'feminized' or forced to 'become a woman.' Male rape victims feel that their masculinity has been compromised, putting in doubt their sexual identity. Statistics on testimonies indicate, however, that women suffered sexual violence more frequently. Of the 538 cases of sexual violence reported to the TRC, 527 corresponded to women while only 11 corresponded to men (bearing in mind that sexual violence is underreported by both women and men). Julie Guillerot, 'Linking Gender and Reparations in Peru: A Failed Opportunity,' in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marin (New York: Social Science Research Council, 2006).

<sup>32</sup> Additional reasons are laid out in Guillerot, *ibid.*

<sup>33</sup> In fact, the majority of victims (73 percent) were native Quechua speakers, 80 percent were living in rural zones, 34 percent were young illiterate women, 48 percent were between 10 and 30 years old and 8 percent were younger than 10 years old. TRC, *supra* n 4 at vol. VIII.

the threat of SRV against women in their roles as mothers, caregivers and wives to achieve various purposes: to humiliate, to pressure others to provide information, to punish for any real or perceived support to the enemy and to instill terror.

Gendered perceptions of women's role adhered to the idea that men go off to war to defend the country while women stay at home and look after the family and house. Risk of SRV was higher for unaccompanied women, women living close to police or military installations and women who found themselves alone during military incursions. A distinction needs to be made for female insurgent combatants in both countries. While in Guatemala, the number of female combatants was not significant compared with that in similar armed conflicts, in Peru, an unusually high number of young women joined the *Sendero Luminoso* and the MRTA.<sup>34</sup> One motivation underlying the recruitment of young women and girls was that they would make good cooks and wives for the male recruits. Since Peru's reparations plan contemplates redress for rape only, this essentially cuts out those women who suffered other forms of SRV, mostly at the hands of the guerrillas.

In both countries, women were most often present, particularly in isolated rural areas and without the protection of male relatives, when government soldiers, paramilitary forces or guerrilla combatants arrived. As the circumstances of political violence forced women to move out of their traditional private space and into the public domain, they opted for displacement to protect their families and developed collective strategies for survival. These women took on productive roles, becoming representatives of their communities and approaching authorities to press for information on the disappeared or detained and to demand truth and justice for their families. In these situations, they were often subjected to discrimination because of their indigenous background and illiteracy and were victims of human rights violations, including rape and other forms of SRV, at the hands of state security forces. Research in Guatemala indicates that women political activists were targeted for transgressing gender norms.<sup>35</sup>

The analysis above suggests that the banal obstacles that typically restrict women's access to formal mechanisms of justice, such as geography, language and illiteracy, continue to be present as they endeavor to claim their rights to reparations. Promotion and dissemination of emerging reparations measures in both countries must be undertaken in local indigenous languages and in a manner that is accessible for rural indigenous women. Of the limited number of collective reparations that have been awarded in Peru, it is difficult to specify to what extent formal or informal barriers have blocked women's access. However, the daily reality faced by victims of sexual violence – fear of reprisal, ostracism, feelings of guilt and lack of understanding of and/or confidence in state institutions – reflects the gender-differentiated conditions that women must overcome in their struggle for

<sup>34</sup> Regarding women in *Sendero Luminoso*, see, TRC, supra n 4 at vol. VIII. The TRC does not offer statistics on the number of women in the MRTA, although it is known that there were far fewer.

<sup>35</sup> Claudia Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations,' in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006).

reparation. In the case of Guatemala, the PNR has set up 16 offices throughout the country. An encouraging fact is that 75 percent of the PNR staff members are indigenous Mayans.<sup>36</sup> Among other challenges yet to be tackled are the staff's lack of sensitivity toward victims of SRV and their limited understanding of the complexity of the issues involved.<sup>37</sup>

## **Challenges and Dilemmas for Implementing Reparations for Victims**

### **Breaking the Silence: How and Why Women Tell Their Stories . . . or Do Not**

As was the case with the South African Truth and Reconciliation Commission, in both Guatemala and Peru, women came forward in large numbers to denounce the atrocities that had taken place during the internal armed conflict. Of the 16,885 testimonies gathered in Peru, 54 percent were provided by women.<sup>38</sup> In only a fraction of these cases, however, did women discuss the forms of violence they personally suffered, focusing instead on the harm inflicted on their husbands, children and other family members. As mentioned earlier, women who have survived sexual violence do not talk about it for a variety of reasons. Some victims are afraid they will never be able to marry, particularly in cultures where virginity and purity are highly valued. For many indigenous women in Guatemala, an important symbiosis exists between an indigenous woman's gender identity and sexuality/sexual reproduction. Once broken, this linkage can be difficult or impossible to reestablish within the community. As some survivors reported to the CEH, many women feared that they would be shunned by their families, communities or society as a whole. In the case of Peru, women's organizations have criticized the TRC report for its lack of analysis of the different visions of justice that exist among the various Andean and tropical-zone ethnic groups.

The women who were left behind and victimized or who witnessed the victimization of others sometimes fear reprisal from community members or revictimization at the hands of returning combatants or individuals associated with the perpetrators. This situation is particularly problematic in Guatemala and Peru, where members of local defense groups have returned to their communities in the aftermath of the political violence. Given the nature of the Guatemalan conflict and the role that these groups played in the violence, the close proximity within which perpetrators and victims continue to live is striking. A different but equally thorny issue presents itself in present-day Guatemala. The Guatemalan peace process is built on the bedrock of the collective struggle for indigenous rights. In some instances, indigenous women may be less likely to speak out about a perpetrator if

<sup>36</sup> Interview with Martin Arevalo, director of the PNR, 18 April 2007, Guatemala City, Guatemala.

<sup>37</sup> Interview with staff members of the Community Studies and Psycho-social Action Team (ECAP), 7 May 2007, Guatemala City, Guatemala.

<sup>38</sup> TRC, supra n 4 at vol. VIII.

he is Mayan, especially if he is still in the immediate vicinity. The reason behind the silence, in addition to fear or shame, is often the tension surrounding the wider political struggle for indigenous rights. Typically, the human rights of Mayan women have lower priority. While this tension might be manifested through either self or community-wide censorship, the outcome is still the same – silence.

This dilemma – tell the truth or leave the past in the past – essentially turns one of the traditionally held beliefs about truth telling on its head. Advocates of transitional justice hold that when perpetrators are named, the ‘shame and ostracism that [accompany] this identification [are] an important (but insufficient form) of accountability.’<sup>39</sup> In cases of SRV, particularly in cultures where such acts are highly stigmatized, it is unclear whether the perpetrator or the victim is more shamed. Female victims run the risk of being alienated from the very collectivity from which they draw their sense of identity and worth. In light of these considerations, it is important at this point both to recognize the urgent need to break the silence around SRV, with a view to avoiding impunity and putting in place preventive policies for non-recurrence, and to be cognizant of the difficulties that victims may face in trading silence for public acknowledgment.<sup>40</sup>

Efforts by non-governmental organizations (NGOs) to provide psycho-social support and achieve justice for women victims through the courts in Guatemala and Peru have been encouraging. The approach of one international NGO, Project Counseling Services, as well as its local partners in both countries, is particularly noteworthy. These organizations create the space for victims to set the agenda for their own course of recovery as well as pursuit of justice. The victims decide who is to know the truth and when, and how justice should be pursued. In some cases, the victims have opted not to pursue justice through the courts.<sup>41</sup>

## National Policies and Programs for Reparation

Most observers of transitional justice agree that reparation allows victims to play an essential role in the process of political transition and that this approach is important because it recognizes the victims as equals, with their own human and civic dignity.<sup>42</sup> Reparations has the potential to renew or strengthen citizenship in that it recognizes victims as individual rights holders, and its immaterial dimension and its ‘material, financial dimension’ are important for restoring psychological health and dignity and for enhancing self-confidence.<sup>43</sup> These considerations seem

<sup>39</sup> Paul Van Zyl, ‘Unfinished Business: The Truth and Reconciliation Commission’s Contribution to Justice in Post-Apartheid South Africa,’ in *Post-Conflict Justice*, ed. M. Cherif Bassiouni (Ardslay: Transnational Publishers, 2002), 20.

<sup>40</sup> Duggan and Abusharaf, *supra* n 9.

<sup>41</sup> ‘Sharing Collective Memory: Meeting on Psycho-social Support and Integral Justice for Women Victims of Sexual Violence During Armed Conflict,’ Workshop Report (Project Counseling Services Guatemala, August 2007).

<sup>42</sup> Stef Vandeginste, ‘Reparation,’ in *Reconciliation After Violent Conflict: A Handbook*, ed. David Bloomfield and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003).

<sup>43</sup> *Ibid.*, 48.

to be of particular importance in societies such as Guatemala and Peru, where long-standing oppression of indigenous women has rendered them second-class citizens whose self-worth and value in the eyes of their communities have in many cases decreased significantly because of the stigma of SRV.

Guatemala's PNR and Peru's PIR are ambitious programs that reflect an unmistakable evolution in the conceptualization of reparations, moving them out of the realm of the strictly juridical and into the realm of the political. Both programs make a conscious effort to recognize the differentiated suffering and inequality among victims, particularly along ethnic lines. This alternative approach aims to overcome 'institutional prejudices that have historically denied justice to indigenous, ethnic and racial minorities.'<sup>44</sup> While this approach stops short of recognizing the barriers that women have historically faced in accessing the mechanisms of justice, Peru's TRC does recommend that the PIR be implemented with five cross-cutting foci in mind, including the promotion of gender equality.<sup>45</sup> Unfortunately, the follow-up body to the TRC that was responsible for drafting the reparations program did not take up this recommendation. This calls into question whether a gender focus has truly been integrated into the PIR and suggests that the government's commitment to gender remains rhetorical and has yet to manifest in implementation.<sup>46</sup>

The design of both national reparations programs reflects a certain balance between individualized measures for accessing medical services, housing, education and other basic services and collective or communal measures that offer some material and economic benefits. They focus chiefly on offsetting the collective psycho-social impact of the violence. This is in keeping with an emerging consensus that no conflict exists between the material and the symbolic or between individual and collective measures. In Peru, however, emerging practice suggests that the state is putting more emphasis on applying resources to collective reparations.

The success or failure of reparations in both countries will depend in large part on the state's ability to resource and deliver the proposed programs. In Peru, four years on, the record of progress on reparations for victims in general and survivors of SRV in particular is mixed. The national legal framework necessary to the codification of reparations policy and the institutions necessary for its implementation have been established, but the actual awarding of reparations has been slow. The multi-year budget set up under the Toledo Administration encountered multiple financial, technical and administrative difficulties, rendering it all but inoperative. The administration of President Alan García, who came to power at the beginning of 2007, appears to have revived the multi-year program, although it is far from full implementation. The new government has announced that it will collectively com-

<sup>44</sup> International Center for Transitional Justice and Asociación Pro-Derechos Humanos, *Design Parameters for a Reparations Program in Peru* (New York: September 2002).

<sup>45</sup> The five foci are psycho-social, participative, intercultural, symbolic and gender equity. TRC, *supra* n 4 at vol. IX.

<sup>46</sup> Guillerot, *supra* n 31.

pensate 440 communities through social investment projects previously identified by the communities.<sup>47</sup> Whether the García Administration decides to reactivate the multi-year program or to craft a new policy, Peru continues to fall short of its obligations to provide redress to individual victims, including victims of SRV.

Prospects for reparations to victims in Guatemala may recently have taken a turn for the better. In July 2004, then President Óscar Berger announced the first disbursement of funds to the PNR. He pledged to ensure sufficient resources to the National Reparations Commission, whose annual budget is expected to be US\$37.5 million for a period of 13 years. Congress also proclaimed 25th February the National Day for Victim's Dignity. Unfortunately, the program suffered setbacks during its first year for a number of reasons, including conflicting opinions among commissioners regarding reparations measures and implementation modalities. At the time of writing, some of these difficulties seem to have been overcome, with the Commission announcing at the end of June 2005 that an agreement had been reached on the system of quotas for the release of economic compensation to individual victims and other symbolic measures for communities. The PNR has started individual compensation payments (including to victims of SRV) and has made progress on measures for restoring dignity through its facilitation of exhumations and accompanying psycho-social support for families of victims.

### **Public Recognition and Discourse around Reparations for SRV**

Two main challenges for adequately redressing SRV in Guatemala and Peru are public recognition and discourse. Elazar Barkan reminds us that 'the discourse of restitution encourages governments to admit that their policies were unjust and discriminatory and to negotiate with their victims over morally right and politically feasible options.'<sup>48</sup> In Guatemala, the crime of genocide is now a part of the national psyche, and international arrest warrants have been issued for select perpetrators. The same cannot be said for SRV. In Peru, the inclusion of gender violence in the TRC report helped in raising consciousness and precipitated calls for more concrete action from both state institutions and civil society. Public recognition and discourse are important in countries attempting to change their political culture because they play a key role in the acknowledgment of structural deficiencies or 'wrongs' like socio-economic inequality and systemic discrimination based on race, gender or class.

Because a number of the collective measures foreseen in the reparations programs of Peru and Guatemala are being brokered between the governments and the affected communities, the public discourse accompanying these processes must address the structural causes of gender- and race-based violence. Reparations measures can appear as empty gestures if they are not accompanied by genuine contrition. Actual implementation of reparations by executing agencies should

<sup>47</sup> 'Inician reparaciones colectivas en comunidades ayacuchanas,' Presidencia del Consejo de Ministros, 20 April 2007, Press communiqué, High Level Multi-sectoral Commission for State Policy and Action for Peace, Collective Reparation, and National Reconciliation, Lima, Peru.

<sup>48</sup> Cited in, Vandeginste, *supra* n 42 at 149.



leave no doubt in beneficiary communities that these measures have been put in place to redress specifically the violation of human rights. Only then will the state have fulfilled its legal and moral obligations to victims.<sup>49</sup> Public recognition and apology do, however, need to be managed in a gender-sensitive manner. In Guatemala, victims of rape have been singled out in state-sponsored community ceremonies and given compensation checks that say ‘victim of rape,’ which has created problems for them.<sup>50</sup>

In our view, public apology and the delivery of reparations to survivors of SRV are of limited use if they ignore the structural dimension. Gendered violence is a part of a socio-political economy based on the patriarchal motivation to control women’s sexuality and their productive and reproductive capacity. During moments of political breakdown, this status quo leaves women especially vulnerable to SRV, transforming their bodies into indirect tools of political warfare. Collective understanding and acknowledgement of this type of violence as a socially constructed phenomenon is key to transforming gender relations and instilling safeguards for the future.<sup>51</sup> State-sponsored reparations programs illustrate a certain descriptive and normative vision of violence, underscoring its impact on the everyday lives of people who now wish to live under ‘normal’ conditions. For this reason, reparations programs can play an important symbolic role in transitional societies. A gender-sensitive reparations program can both send a clear message about the seriousness of the violations suffered and pass moral and political judgment on the need to modify behavior that facilitates such violations. Symbolic measures for ‘dignifying victims’ should obligate Peruvians and Guatemalans to examine the historic role they personally played in perpetuating racism and sexism. As both countries move out of transition, these measures should be complemented by longer-term social and political development policies, such as affirmative action plans, parliamentary quota mechanisms and the transformation of school curricula.

### **Determining What Types of Reparations Are Appropriate**

Forced displacement accompanied by SRV in Guatemala and Peru stripped women not only of their economic assets, including arable land, food and shelter, but also of their ‘political assets,’ mainly their virtue and reputations.<sup>52</sup> Putting a monetary value on tangible, not to mention intangible, assets is a complicated business. Is it appropriate for women to receive monetary compensation for the loss of gender-specific assets, such as virginity and purity, valued in some patriarchal societies?

Victims of SRV are often forced into silence concerning their experiences without necessarily having minimal guarantees for survival. This is one reason why the

<sup>49</sup> Guillerot and Magarrell, *supra* n 30.

<sup>50</sup> Interview with staff members of ECAP, Guatemala City, Guatemala, 6 May 2007.

<sup>51</sup> Duggan and Abusharaf, *supra* n 9.

<sup>52</sup> Sheila Meintjes, Anu Pillay and Meredith Turshen, ‘There Is No Aftermath for Women,’ in *The Aftermath: Women in Post-Conflict Transformation*, ed. Sheila Meintjes, Meredith Turshen and Anu Pillay (London: Zed Books, 2002), 12.

land reform measures included in Guatemala's peace agreements – although not interpreted at the time as a measure for reparation (in the legal sense) – have particular significance for women, especially Mayan women, who continue to face challenges in gaining rights to and using land. An independent study of Guatemala's Land Fund indicates that although widows and single mothers have the right to participate and vote in local land assemblies, the men present do not listen to and may even laugh at their comments, undermining their sense of belonging and worth. What is worse, civil servants working for the Land Fund have admitted that, in order to avoid delays, they have requested that local land negotiation committees consist only of men because women may be forced to drop out of the committee or return home to fulfill gender-assigned duties, which slows the whole process.<sup>53</sup> The PNR specifically lists the awarding of land and the regularization of land titles as a measure of reparation. It should take special steps to target economically and socially vulnerable women, namely returnees, widows, single mothers and victims of SRV.

In contexts of extreme poverty, such as in Guatemala and Peru, a weak economy coupled with the social and communal fallout of SRV can be so acute that it extinguishes traditional avenues of social and economic survival. As mentioned earlier, emerging research indicates that although sexual violence intensifies during periods of political violence and social breakdown, it continues unabated, most often in the home, in the aftermath.<sup>54</sup> Caroline Moser and Cathy McIlwaine maintain that there is 'a continuum of violence whereby political violence interrelates with economic and social violence in gendered ways.'<sup>55</sup> This suggests that SRV reflects a deep-seated structural violence that, if not addressed, can persist during the transitional period and cut into women's socio-economic role.

The report of the CEH analyzes the economic costs of Guatemala's conflict, 'concluding that the costs of war, including the loss of production due to death, equaled 121 percent of the 1990 Gross Domestic Product.'<sup>56</sup> If we follow through on Moser and McIlwaine's argument that political violence erodes the human capital of communities and that women are key actors in the reconstruction of social capital in the aftermath of political violence,<sup>57</sup> reparations programs must determine the extent to which the lasting impact of widespread SRV may undermine women's abilities to become productive agents for development and thus negatively affect chances for social and economic recovery in Guatemala and

<sup>53</sup> Byron Garoz and Susana Gauster, *Fontierras: El Modelo de Mercado y el Acceso a la Tierra en Guatemala: Balance y Perspectivas* (Guatemala: Coordinación de ONG y Cooperativas, 2003).

<sup>54</sup> Richard Strickland and Nata Duvurry, 'Gender Equity and Peacebuilding: From Rhetoric to Reality: Finding the Way' (Washington: International Center for the Rights of Women, 2003).

<sup>55</sup> Caroline Moser and Cathy McIlwaine, 'Gender and Rebuilding Social Capital in the Context of Political Violence: A Case Study of Colombia and Guatemala' (background paper presented at the World Bank conference, 'Gender, Armed Conflict and Political Violence,' Washington, DC, 10–11 June 1999), 21.

<sup>56</sup> Mark Freeman and Priscilla Hayner, 'Case Study: The Truth Commissions of South Africa and Guatemala,' in *Reconciliation After Violent Conflict: A Handbook*, ed. David Bloomfield and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003), 142.

<sup>57</sup> Moser and McIlwaine, *supra* n 55.

Peru. Admittedly, this sort of impact assessment would be a difficult task. Statistics available on the number of women affected by SRV do not provide a full picture of the situation. The TRC and CEH reports and subsequent research undertaken in both countries have noted consistent underreporting. In addition, the majority of the victims were, and continue to be, engaged in informal-sector activities, which, more often than not, are left out of traditional econometric models for calculating the Gross Domestic Product.

The strategic use of efficiency arguments in research on the political economy of sexual violence might assist in strengthening the economic rationale for ensuring that national reparations policies and programs address SRV more systematically. In both cases, one could argue that financial compensation (potentially in the form of an ongoing pension) for both material and moral damages might dramatically change the lives of some women, especially if the size and duration of the programs are substantial.<sup>58</sup> What is clear is that compensation payments of US\$2,667 to women living far below the poverty line in Guatemala could effect a significant positive change in their lives.

### Money and Its Meaning

Yet there are some good reasons why monetary reparations for victims of SRV might have significant drawbacks. Monetary compensation for material or moral damages seems to make sense in most societies because it is seen as symbolic. In both Peru and Guatemala, however, victims have admitted that they measure their individual suffering in accordance with the suffering of their family members and wider community. In such cases, individual financial grants can be seen as ‘blood money’ (or worse) by others and might even generate conflict at the community level. In Peru, reparations are generating much controversy and can have a divisive effect on communities. It is not uncommon to hear accusations of political manipulation and the belief that reparations have been extended only to certain influential or urban families. In Guatemala, female victims have reported being offered money by perpetrators in exchange for dropping legal proceedings.<sup>59</sup> Some victims of SRV in Guatemala are being accused by members in their community of willingly giving sex to the enemy for money.<sup>60</sup> For these reasons, monetary compensation may not be viewed by female survivors, their family members or their communities through a symbolic lens.<sup>61</sup>

The architects of Peru’s PIR seem to have understood the sensitivities around this issue, as the TRC report recommends

<sup>58</sup> Evidently, this correlation is more easily proven in situations where sexual violence has been systematic and massive. For example, according to the report of the Organization of African Unity’s International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, *Rwanda: The Preventable Genocide* (2000), virtually every female over the age of 12 who survived the genocide was a victim of rape. Similarly, a study on victims of sexual violence in Rwanda indicated that 66.7 percent of the women surveyed had AIDS. Codou Bop, ‘Women in Conflicts, Their Gains and Their Losses,’ in Meintjes et al., *supra* n 52.

<sup>59</sup> Interview with Project Counseling Services, Guatemala City, Guatemala, 25 November 2004.

<sup>60</sup> Interview with staff members of ECAP, Guatemala City, Guatemala, 6 May 2007.

<sup>61</sup> Duggan and Abusharaf, *supra* n 9.

that if the beneficiaries of monetary reparations from native or highland communities choose not to accept individual or family reparation, the amounts in question will be added to the reparations being channelled to the community through the program for collective reparations.<sup>62</sup>

This may be a double-edged sword. On the one hand, such an approach allows for anonymity for victims, should they desire it. On the other hand, victims may feel coerced to opt for collective community measures as opposed to individual economic compensation. As the examples of the Guatemalan Land Fund and compensation payments highlight, reparations in any form may be negatively affected by structural discrimination within communities or may be subject to manipulation or vulnerable to interference by paternalistic attitudes.

### **The Rights of the Individual versus the Needs of the Collective**

Reparations programs must maintain the link between public acknowledgment of wrongdoing, responsibility by the transitional government and material reparations to victims. As noted in Peru's TRC report, acknowledgment plays a key role in strengthening individual citizenship, building civic trust among citizens and promoting social solidarity (empathy).<sup>63</sup> All of these elements are essential for the longer-term goal of enhancing gender justice for female victims of SRV, given that their victimization and inability to secure justice most often stems from their unequal treatment before national institutions, both legal and administrative.

Governments in resource-poor countries may be tempted to replace reparations programs with development programs in the aftermath of conflict. While this is a realistic concern, victim support groups are quick to point out that governments have the obligation to both redress victims of human rights violations and provide for development. While development programs may be a priority for government and a number of interest groups, the aggregate benefits accruing from development do not automatically offset individual costs. The immeasurable costs associated with the harm inflicted by SRV are both physical and psychological. The contiguous costs severely curtail a victim's capacity for accessing future opportunities for income generation and livelihood, especially when victims have already experienced the loss of other material interests, such as property and access to social services.

### **Final Remarks**

Reparations offer direct benefits for individual suffering and try to make good, no matter how imperfectly, for past harms. While reparations programs can contribute to improving the quality of life of victims and their families, their principal goal should be reparations for and recognition of victims as human beings whose fundamental rights and human dignity were violated. It would be impractical and

<sup>62</sup> TRC, *supra* n 4 at vol. XI, 193.

<sup>63</sup> TRC, *supra* n 4 at vol. IX.

ill-advised to expect reparations to remedy the diverse gendered imbalances of power and socio-economic inequalities that characterize Guatemala and Peru, two countries in the middle of complex processes of democratic transition. This is, after all, the task of development.

In light of the analysis offered in the previous sections, the particularities of SRV require the adoption of at least three goals that would complement or supplement those underpinning the national reparations programs proposed in Guatemala and Peru.

1. *Promoting social transformation:* As reparations programs endeavor to redress past wrongs, they should be forward looking and designed with an eye to laying the groundwork for longer processes of social transformation. Measures should strive to redefine the social norms and attitudes that have fostered SRV or made it socially acceptable to deny SRV's existence. As such, reparations programs should contribute to the creation of an enabling environment in which social reconciliation might eventually take place.<sup>64</sup> They need to underscore the importance of structural and systemic change and demonstrate the interaction between the enforcement of the right to reparations and the elaboration of corrective public policies. If not, they may perpetuate the harmful ideologies and discriminatory structures that ensure the low status of women in many societies.
2. *Breaking the silence:* Reparations for SRV should contribute to the establishment of societal convictions that victims must not be blamed or silenced and that accountability for SRV must not be obscured.
3. *Rethinking history:* Reparations should redress historic tendencies to trivialize, excuse, marginalize or otherwise obfuscate SRV against women.<sup>65</sup>

Our contention has been that women victims of SRV during political conflict suffer twice. In addition to the immediate physical and psycho-social impact of SRV, the cultural and social significance often assigned by society to acts of SRV causes women to suffer disproportionately and over a longer period of time. While society as a whole might pity women who have been traumatized by SRV, the ostracism and discrimination that it causes can cut women off from channels of productivity, thus undermining their social and economic recovery.

A number of feminist scholars have voiced the opinion that women's conflict experiences have largely been documented and portrayed in terms of victimization. Our intent is not to reinforce this limited perspective. As Rita Manchanda suggests, political violence and the transitional period that follows can open up 'intended or unintended spaces for empowering women, effecting structural social transformations and producing new social, economic and political realities that redefine gender and caste hierarchies.'<sup>66</sup> While discussions of a potential 'gender dividend'

<sup>64</sup> Erin Daly, 'Transformative Justice: Charting a Path to Reconciliation,' *International Legal Perspectives* 12(1/2) (2002): 73–183.

<sup>65</sup> Kelly Askin, 'Comfort Women: Shifting Shame and Stigma from Victims to Victimiziers,' *International Criminal Law Review* 1(1/2) (2001): 5–32.

<sup>66</sup> Rita Manchanda, cited in, Meintjes et al., *supra* n 52.

have surfaced in the literature dealing with gender mainstreaming in post-conflict peace-building and reconstruction experiences, their absence in the literature on transitional justice is conspicuous. The purpose of this article is to flag some of the complexities involved in addressing the gender dividend in transitional justice and to encourage the conceptualization of policies and programs for reparation through a gender lens.