

GENDER-JUST REPARATIONS

KEY ELEMENTS AND APPROACHES

Master of Arts in Law and Diplomacy Capstone Project

Submitted by Bretton James McEvoy

August 2, 2013

© 2013 Bretton James McEvoy

<http://fletcher.tufts.edu>



THE FLETCHER SCHOOL

Table of Contents

INTRODUCTION	3
ENSURE THAT FEMALE VICTIM-SURVIVORS AND THEIR ADVOCATES HAVE MEANINGFUL ACCESS AND INVOLVEMENT AT ALL STAGES OF THE PROCESS	9
MAKE MANDATES AND CRITERIA EXPLICIT YET INCLUSIVE	15
EMBRACE THE INTERRELATEDNESS OF HARMS AND THE INDIVISIBILITY OF RIGHTS	23
FOREGROUND CULTURE AND CONTEXT WITHIN PRINCIPLES OF NON-DISCRIMINATION	29
CONSIDER IMPACTS ON, AND POTENTIAL INCLUSION OF, NON-BENEFICIARIES	35
ENSURE, TO THE EXTENT POSSIBLE, INTERNAL AND EXTERNAL COHERENCE	40
THE DELIVERY OF THE ACTUAL REPARATIONS BENEFITS IS ESSENTIAL	54
PROCESS IS PARAMOUNT	72
SPOTLIGHT THE PAST AND CONNECT TO THE FUTURE	84
CONCLUSION	90

Introduction

For far too long, civilian non-combatants have borne the violent consequences of armed conflict and political repression. With the modern propensity for “wars amongst the people,”¹ that trend has only continued, as civilian populations are repeatedly embroiled within – if not the direct targets of – violence and terror. And yet, despite profound experiences of harm, the suffering of victim-survivors² – and of women and girls in particular – is all-too-often forgotten or rendered inconsequential in the period’s aftermath, with priority typically directed at broader reconciliation, development and institutional reform initiatives.

My thesis seeks to contribute to a reformulation of this imbalance, shifting greater emphasis onto the repair of female victim-survivors – as their legal right, their due recognition, and an essential starting point in (re)building a peaceful society that values women and girls as equal citizens and rights holders. To that end, I outline key elements and methodological approaches of a gender-just reparations program – illuminated by recent successes and failures – striving for both conceptual depth as well as practical guidance in the design and implementation of reparations programming.

Historical and legal underpinnings

Despite the traditional inattention given to victim-survivors, the past century has witnessed a global expansion of individual human rights, shifting power away from a more exclusive state centrism. In response to the horrors of World War II and the Holocaust in particular, an evolving framework of individual protections began to take shape in the form of the United Nations Charter, the Universal Declaration of Human Rights and the Geneva Conventions of 1949, followed soon thereafter by the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Additional Protocols to the Geneva Conventions. But it was not until the end of the Cold War, the corresponding transformation within the Security Council, and significantly, the technological and globalization revolutions resulting in rapid and mass information exchange, that these aspirational mechanisms began to carry real meaning for individuals.³

These post-Cold-War developments led to a more interventionist global community, with a sharp rise in peace operations, civil society activity and expectations placed upon states in their management of internal governance. Although power still largely resides within

¹ Gen. Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (New York: Alfred A. Knopf, 2007).

² I borrow the hyphenate “victim-survivor” from Lisa J. LaPlante and Kimberly Theidon in their article, “Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru,” *Human Rights Quarterly* 29, no. 1 (2007), 230. The term reflects the non-dichotomous nature of victim-survivor identities, allowing for a more nuanced and fluid appreciation of the ways that victim-survivors may interact with the otherwise singular meanings of victimhood and survivorship.

³ See for instance Thomas Buergenthal, “The Normative and Institutional Evolution of International Human Rights,” *Human Rights Quarterly* 19 (1997), 703-723.

state structures, leaders must increasingly respond (or at least be seen as responding) to the demands of their people, as well as certain fundamental norms of the international community. By no means universal, international attention does seem to coalesce around situations of armed conflict and mass violence, with greater awareness of bloodshed and brutality leading to calls (albeit, at times, empty words) for intervention, accountability and justice.

In the aftermath of such hostilities, states have increasingly sought (or been compelled to seek) a transitional justice framework to move beyond the legacies of a violent past. The transitional justice mechanisms⁴ employed over the last two decades have largely centered around international criminal tribunals and truth and reconciliation commissions (TC or TRC), and while each may represent a critical component of justice-seeking for victim-survivors, without other accompanying forms of reparation, these mechanisms inherently fail to provide victim-survivors with their full and legal due. Reparations measures may be called for with greater frequency, but their implementing programs are notoriously incomplete.

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 (Basic Principles) emerged after fifteen years of consultations and negotiations, reflecting not “new international or domestic legal obligations but mechanisms, modalities, procedures and methods for the implementation of *existing* legal obligations [italics mine].” Grounded in the law of state responsibility, the drafting of the Basic Principles was initially contested as certain states argued that the Articles on State Responsibility were indicative of inter-state relations, and therefore did not per se apply to relations between states and individuals.⁵ Ultimately, however, it was acknowledged that the evolution of human rights since World War II had crystallized the law around remedy and reparation – represented by the widely ratified nature of many human rights conventions, as well as the customary status of the right to remedy and reparation for violations of human rights and *a fortiori* for gross human rights violations

⁴ I use the term “transitional justice mechanism” to refer to the implementing structures that make up the core of the transitional justice field, those being: criminal tribunals, truth (and reconciliation) commissions, reparations programs and institutional reforms.

⁵ Theo Van Boven, “The United Nations 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,” *United Nations Audiovisual Library of International Law* (2010): 2; 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, A/RES/60/147 (21 Mar. 2006). For more on state responsibility, see The Responsibility of States for Internationally Wrongful Acts, A/Res/56/83 (28 Jan. 2002); Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), *available at* <<http://www.un.org/law/ilc>>; for more on the reparations provisions within the Articles on State Responsibility, see Dinah Shelton, “Righting Wrongs: Reparations in the Articles of State Responsibility,” *The American Journal of International Law* 96 (2002).

– and so consequently, the General Assembly adopted the Basic Principles in 2005.⁶ As such, the Basic Principles reflect the *existing* legal responsibility of states (and governing non-state actors) to afford victim-survivors of gross violations of international human rights law and serious violations of international humanitarian law with full and effective remedy for their relevant harms.

While the legal obligation to provide reparation is thus established, it is a fairly recent phenomenon that the delivery of reparations has occurred outside the traditional confines of a courtroom. Massive non-judicial reparations programs have arisen in part to fill the void left by these more formal legal structures, which are largely incapable of managing a series of violations so massive and systematic that they challenge the underlying legal order itself.⁷ As a consequence, while all victim-survivors deserve reparative justice in principle, not all victim-survivors will qualify as beneficiaries of reparation in practice. Theo van Boven, Former Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities,⁸ explains how “the tension between the large numbers of persons involved and the limited capacity, in many situations, to afford reparations,” argued for an objective test that would devise fair and just criteria for the rendering of reparative benefits.⁹ These criteria revolve around the meaning of the term “victim,” with the Sub-Commission settling on the following:

[V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts of omissions that constitute gross violations of international human rights law or serious violations of international humanitarian law. Where appropriate, and in accordance with

⁶ Van Boven. For relevant conventions, declarations and the crystallization of international law around remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, see the list of international instruments presented in the preamble of the Basic Principles; see also the International Convention for the Protection of All Persons from Enforced Disappearances adopted by the General Assembly in A/RES/61/177 (20 Dec. 2006), art. 24; see also International Committee of the Red Cross, *Customary IHL: Rule 150. Reparation* (accessed October 15, 2012), available from <http://www.icrc.org/customary-ihl/eng/docs/home>.

⁷ Pablo De Greiff, “Justice and Reparations,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 454. However, reparations in the adjudication of individual cases may still offer “normative guidance” towards the design of a reparations program in the transitional justice context, such as occurred with the Inter-American Court of Human Rights’ *Velásquez-Rodríguez* decision and its impact upon subsequent reparatory policies in Chile and Argentina. See Arthur J. Carillo, “Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 527-8.

⁸ This was the sub-commission tasked with undertaking a study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms with the view to potentially developing basic principles and guidelines on the issue. See van Boven, 1.

⁹ *Ibid.*, 3.

domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.¹⁰

The term “victim,” therefore, demarcates those who have suffered *gross* violations of international human rights law and *serious* violations of international humanitarian law. Although such a magnitude requirement may mean that not all victim-survivors are eligible for reparations benefits, the state or non-state governing authority has a legal duty to provide remedy and reparation to those that do qualify. An environment of limited resources in no way releases the state from that responsibility. The law persists regardless, but in massive reparations programs, it may mean that the *distributive form and degree* are different from court-ordered reparation.

The Basic Principles outline the obligations upon duty-bearers – which include the state, non-state perpetrators, or other liable parties – where “victims of gross violations of international human rights law and serious violations of international humanitarian law shall, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation,” including through any or all of the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (discussed in detail in section seven below).¹¹ Accordingly, benefits may be material, symbolic, individual, and collective. Perhaps most importantly, reparations programs should strive for *coherence* between the reparative forms, recognizing the fundamental ways that single benefits can enhance the reparative value of accompanying forms, and likewise how their absence can impede or even suppress effective remedy.

Gender-just reparations

In spite of their legal obligations, prevailing governments in post-conflict environments tend to place minimal value on the importance of reparation. Preoccupied by other transitional projects – such as disarmament, demobilization and reintegration (DDR), reconciliation, and broader development and recovery – states often misunderstand, downplay or misrepresent the relative significance of a reparations program. It is true that, in such circumstances, states must make difficult decisions regarding competing priorities, but it is also true that a focus on DDR and reconciliation (without an accompanying focus on reparations) often ends up privileging combatants over victim-survivors. Furthermore, post-conflict development projects on their own are insufficiently attuned to the particular needs of victim-survivors. While such initiatives are not mutually exclusive, as each program is critical to a state’s transition out of violence, reparations programs demand their due regard and prioritization, to rightly shift attention onto the suffering of victim-survivors and compel states to abide by their legal responsibility as duty-bearers.

Overlooking substantive reparation renders the harms of victim-survivors irrelevant. It represents the ambivalence with which the state views its most violated and often most

¹⁰ Basic Principles, para. 8.

¹¹ *Ibid.*, para. 18.

vulnerable. For female victim-survivors in particular, it renders them all but invisible. In most post-conflict contexts, women and girls exist within a culture of patriarchal domination that carries heavy gender discrimination. Therefore, they begin from a starting point of inequity, and their unrecognized violations may serve to compound their disproportionate lack of access to justice.

A gender-just reparations program, on the other hand, shines a bright light on female victim-survivor suffering (in ways sensitive to their needs and wishes), exposing their unique harms as well as the underlying conditions giving rise to those harms, which may serve to multiply harms in the future. It understands that women and girls may be victimized in the same ways as men and boys, but it also astutely appreciates how particular harms may affect these groups differently. It stems, fundamentally, from an absolute adherence to the principle of non-discrimination, as well as an inclusive process that shapes itself around female victim-survivor voices and their individual and collective determinations.

In other words, it *recognizes* female victim-survivors. It recognizes their current individual and collective harms, their broader suffering and underlying inequality, and the continuities and discontinuities that disparately wrap their gendered experiences and histories. In this way, a gender-just reparations program first looks back, *in order to* then move forward. In doing so, it should seek to uncover concealed truths, repair enduring harms, and ultimately connect victim-survivor pasts to improved and peaceful futures. These futures are premised upon a society that values female victim-survivors – and women and girls in general – as equal citizens and rights holders.

As has been acknowledged, however, reparations programs tend to surface in the aftermath of massive and widespread violations, and yet simultaneously within contexts of constrained resources. Despite our best efforts, then, it should be acknowledged that the individual benefits provided to victim-survivors will be inherently partial. Especially considering the severity and depth of victim-survivor suffering, any one resulting reparative benefit will undoubtedly seem a far cry short of equitable justice. Moreover, as the moving and politically charged pieces of state transition frustrate well-drafted program plans, we should also accept that program implementation will stray from intended design. Yet by recognizing the likely non-linearity of program execution, and conceding that justice will not be served in the truest sense of the word, we may effectively prepare ourselves with the requisite flexibility and process-oriented mindset to nevertheless demand a victim-centered and gender-just program, which seeks to humbly enable and thoughtfully assist in the beginnings of repair.

Appreciating these complexities, this paper does not intend to be prescriptive. Instead, it offers a set of strategic elements and methodological approaches for consideration and contextual amendment. It does so by building upon recent successes and failures in the field, with an eye towards capturing significant conceptual takeaways.¹² The analysis is

¹² As Ruth Rubio-Marín explains in her introduction to *What Happened to the Women?*: “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

unabashedly focused on justice for women and girls, although this in no way implies that men and boys are not themselves victim-survivors with their own gendered experiences that carry significant implications. In the end, however, a gender-just reparations program is merely a gender-specific representation of a larger human rights agenda premised upon non-discrimination and equality under the law. In this way, the lessons learned herein may roughly translate across reparations programs, offering a structural framework that can then welcome other forms of social analysis and contextual grounding.

My thesis proceeds with nine overarching recommendations, illustrated by numerous case examples, which broadly outline key points of intervention in the crafting of an effective and gender-just reparations program. They are as follows: first, ensure that female victim-survivors and their advocates have meaningful access and involvement at all stages of the process; second, make mandates and criteria explicit yet inclusive; third, embrace the interrelatedness of harms and the indivisibility of rights; fourth, foreground culture and context within principles of non-discrimination; fifth, consider impacts on, and potential inclusion of, non-beneficiaries; sixth, ensure, to the extent possible, internal and external coherence; seventh, the delivery of the actual reparations benefits is essential; eighth, process is paramount; and ninth, spotlight the past and connect to the future. It is my hope that practitioners, policymakers and scholars find this synthesis a worthwhile tool in the design, implementation and promotion of gender-just reparations programming.

status quo forward and gather lessons that can be used in ongoing and future cases.” Ruth Rubio-Marín, “The Gender of Reparations: Setting the Agenda,” in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 27.

1. Ensure that female victim-survivors and their advocates have meaningful access and involvement at all stages of the process

A gender-just reparations program begins with inclusion and active participation, where female victim-survivors and their advocates are effectively engaged in, and granted meaningful access to, the reparations process from the outset. The initial stages of that process precede the formal reparations program, as the program's contours are greatly influenced by developments that take place in advance of its opening. In fact, the origins of the broader reparations process can be traced all the way back to the time when affected individual and collective victim-survivors first suffer from serious violations – and accompanying harms – of international human rights and humanitarian law. Unfortunately, however, in a context that subsequently warrants a massive reparations program, these violations and harms will likely increase in magnitude and scale before such a program is given genuine consideration. But as a state or community begins its transition away from a period of conflict or authoritarian rule, a gender-just reparations program necessitates that female victim-survivors and their advocates are engaged at the earliest point possible. Most important in this regard are the institutional mechanisms established to redress, reform and transition from the prior era into the future: namely, the peace process and peace agreement (as applicable); the drafting of the truth commission mandate, its working implementation and final report (as applicable); the formal design of the reparations program; and finally, the implementation, budgeting, and monitoring and evaluation processes that oversee reparations program delivery. At each of these stages, early, sustained and meaningful involvement of female victim-survivors is crucial, and I detail the most important aspects of each below.

Direct participation

Involvement starts with those most affected, their representative groups and their genuine advocates. Any just reparations program must be victim-centered, and must stem from the voices of victim-survivors themselves. This critical starting point is echoed in the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (Nairobi Declaration).¹³ However, the Nairobi Declaration confines its participatory language around reparations largely to the reparations program itself (design, implementation, evaluation, decision-making), whereas the reparations program is also critically affected by the processes involved in any prior peace agreement or truth commission. Access to reparations, therefore, should also feature full participation of victim-survivors and their representatives in these key preceding mechanisms.

The impact of these mechanisms upon subsequent reparations programming can be seen in Peru, where the *Plan Integral de Reparaciones* (PIR) (Integral Reparations Plan) resulted from two years of investigations by its truth and reconciliation commission (*Comisión de la Verdad y Reconciliación*) (CVR). As part of its endeavor, the CVR conducted more than forty workshops with victim-survivors, seeking to identify their

¹³ International Federation for Human Rights, *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*, 2007, paras. 2(A)(B) (accessed October 15, 2012); available from http://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf.

needs and wishes for reparations measures.¹⁴ Similarly, the *Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste* (CAVR) (Commission for Reception, Truth and Reconciliation of Timor-Leste) used the statement-taking and testimony procedures as avenues to simultaneously encourage victim-survivors to share their suggestions regarding reparations, while also eliciting group reflection after healing workshops and community mapping exercises.¹⁵ These concerted and proactive efforts towards reparations inclusivity stand in stark contrast to the failure of most transitional justice mechanisms historically, including the oft-lauded South African TRC, which neglected to engage meaningfully or consistently with victim-survivors on their reparations' needs.¹⁶

Building a gender-just reparations program requires that female victim-survivors and their advocates engage as meaningful participants in these preceding processes. After an agreement was reached between the National Party and the African National Congress on democratic elections in South Africa, women's groups became actively engaged in broad legal and political reform, but did not initially prioritize the TRC as a place to focus attention. Without concerted efforts from women's organizations and advocates in the creation of the TRC or its governing legislation, and given that the discussion around a reparations mechanism was largely confined to the TRC, the subsequent approach taken by the TRC and the government on reparations measures was largely "ungendered."¹⁷ In Timor-Leste, however, the CAVR sought to ensure female involvement and prioritization by setting quotas for thirty percent of all statements to be taken from women and 50% of all reparations resources to be allocated to female beneficiaries, which gave institutional incentive to capturing women's voices and understanding women's specific needs, and pushed the organization to incorporate gender considerations early in the process.¹⁸

Such a strategy encourages greater female victim-survivor participation, but it is also imperative that transitional justice mechanisms seek gender balance within their own internal makeup, including in their selection of investigators, statement-takers, psychosocial support, and especially, truth commissioners and reparations program leadership. In South Africa, seven of the seventeen truth commissioners were women, which helped to foster an environment that was more responsive to calls from women's groups for women-only hearings.¹⁹ Of course, as was largely the case in South Africa,

¹⁴ Lisa J. LaPlante, "On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development," *Yale Human Rights & Development Law Journal* 10 (2007): 159.

¹⁵ Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims," in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 298.

¹⁶ Christopher J. Colvin, "Overview of the Reparations Program in South Africa," in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 201.

¹⁷ Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa," in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 52-8.

¹⁸ Wandita, Campbell-Nelson, and Pereira, 314.

¹⁹ Vasuki Nesiah, et al., "Truth Commissions and Gender: Principles, Policies, and Procedures," *International Center for Transitional Justice*, July 2006: 10 (accessed November 5, 2012);

more females on staff does not necessarily intimate a more gender-just reparations program. Rather, it may be more appropriate to evaluate how potential staff members approach gender issues, and couple that with a holistic review of their subject-matter expertise, community placement, and human rights background.²⁰ That being said, the optics of more female staff in and of themselves may make the process appear more accessible to female victim-survivors.

Vasuki Nesiah et al., in their report on Truth Commissions and Gender, relate how gender has been incorporated into the organizational structure of TCs through three different approaches: first, through a process of gender mainstreaming; second, through a special unit tasked with an exclusive focus on gender; and third, through a combination of the two techniques.²¹ Gender mainstreaming may include, among other things, a gender-balanced staff composition, an explicit mandate that embraces gender justice, and ongoing gender trainings that target commissioners, leadership and relevant staff.²² However, a transitional justice mechanism may benefit from a special unit with an exclusive focus on gender issues, as mainstreaming has the potential to dilute gender significance within its more general operations. On the other hand, a special unit on its own risks ghettoizing the gender discussion, rendering the topic relatively invisible outside the unit and thereby limiting a more comprehensive analysis. Ultimately, the ideal scenario lies in the third option, a “combination approach” pursued – at least in part – in Peru and Timor-Leste, where a gender unit was created alongside a broader mainstreaming campaign.²³

Within the struggle for gender inclusivity, though, it is important not to devolve into gender exclusivity. A gendered analysis should also consider distinctions in sex, ethnicity, race, age, political affiliation, class, caste, marital status, sexual orientation, nationality, religion and disability – as these are all cross-cutting identities that shape and are shaped by gender.²⁴ The analysis should be viewed through the prism of local standpoints and priorities, not only national interests. Most importantly, it is essential that programmatic decision-making always emphasizes the needs of victim-survivors themselves.²⁵

available from http://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf.

²⁰ *Ibid.*

²¹ *Ibid.*, 3-5.

²² Rubio-Marín, “Setting the Agenda,” 47.

²³ Nesiah, et al., 4-5.

²⁴ Nairobi Declaration, paras. 1(A)(B).

²⁵ See for instance Shaw and Waldorf’s discussion of “reframing ‘the local,’” which highlights that we need, first, to understand how those affected by conflict and political repression experience the mechanisms designed to address their needs, and second, to place particular emphasis on victim-survivors’ priorities; Rosalind Shaw and Lars Waldorf, “Introduction: Localizing Transitional Justice,” in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, eds. Rosalind Shaw and Lars Waldorf, with Pierre Hazan (Stanford, CA: Stanford University Press, 2010), 6-8.

Build coalitions

Recognizing the importance of direct participation of victim-survivors and their advocates throughout the transitional justice process, it should be concurrently noted that individual and group interests have greater potential for realization if they move beyond advocacy in isolation. Within the post-conflict or post-authoritarian period, many groups emerge with competing demands for limited resources. As individual entities facing general opposition to a comprehensive reparations program from government or de facto powers, these actors may not have the singular capacity to effectively influence political decision-making.²⁶ Yet while their particular constituencies may differ, many of these victim-centered actors – including human rights organizations, victims’ groups and women’s groups – seek broadly similar ends. Establishing connections across their like-minded groups gives greater weight to their respective appeals for change.

During the peace negotiations in Guatemala, civil society organizations representing peasants’, unions’ and women’s groups, joined together to form the *Asamblea de la Sociedad Civil* (Civil Society Assembly). Each of these parties recognized the specific discrimination suffered by women and committed to fighting its continued existence through a series of actions premised upon women’s equality. The inclusion of these issues within the Guatemalan peace process was then considered a “starting point” for subsequent actions around gender justice.²⁷ In Sierra Leone, an association of women’s groups (among others) called the Women’s Forum of Sierra Leone mobilized a pressure campaign aimed at ending the conflict and restoring democratic rule. Many of its groups led the call demanding the military government hold elections and transfer power to a democratic government, a goal that was achieved in 1996.²⁸ In El Salvador, however, the *lack* of any coalescing social or political force behind reparations meant little pressure on the government to follow through with its Truth Commission’s recommendations.²⁹

Forming and sustaining linkages is therefore key, but the resulting social coalitions should also strive to act in relative unison so that their articulation of victim-survivors’ needs and demands is coherent and comprehensive. As Ruth Rubio-Marín notes, however, research has shown that in the aftermath of conflict or authoritarian rule, women’s groups have historically concentrated on women’s immediate physical and psychosocial needs, implicitly placing greater emphasis on the present and future than on

²⁶ Alexander Segovia, “Financing Reparations Programs: Reflections from International Experience,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 667.

²⁷ 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), 101-2.

²⁸ Jamesina King, “Gender and Reparations in Sierra Leone: The Wounds of War Remain Open,” in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 252.

²⁹ Alexander Segovia, “The Reparations Proposals of the Truth Commissions in El Salvador and Haiti: A History of Noncompliance,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 157.

reparations for the past.³⁰ Yet it is critical to gender-just reparations that women's groups are involved in addressing not only how to change the present, but also how to adequately acknowledge and repair the effects of the past. Fortunately in some contexts, women's associations have begun to broaden their approach in recent years, including in post-conflict Sierra Leone and quasi-transitional Colombia.³¹ The mammoth tasks required to begin redressing the past, confronting the present, and planning for the future necessitate a broad participatory agenda for women's groups, and further, for reasons of efficacy, comprehensiveness, and limited resources, justify a collaborative approach that harnesses the power of coalition-building, including through partnerships with international actors and media organizations.

Ground reparations advocacy within legal obligations

Mobilizing active and vocal coalitions may put adequate external pressure on the government or de facto powers to take their demands seriously, but actual impact may require the willing ear of decision-makers. Ultimately, the effectiveness of a reparations program depends, at least in part, on its official sanction by the state, and on the state's taking responsibility for the well-being of its citizens.³² Under applicable domestic and international law, states must provide reparation to victim-survivors for acts or omissions attributable to the state, which constitute gross violations of international human rights law or serious violations of international humanitarian law.³³ Accordingly, victim-survivors and their representatives should ground their reparations advocacy within the legal obligations of the governing state or de facto power.³⁴

As Richard Falk contends, the relevance of international law may be “to provide *legal* arguments or *jurisprudential* background useful for representatives and advocates of victims' rights in *domestic* political arenas to the effect that victims are legally entitled to reparations, and that the domestic system is obliged to make this right tangible by providing meaningful reparations.”³⁵ Such a strategy grounds advocacy not only in the

³⁰ Ruth Rubio-Marín, “The Gender of Reparations in Transitional Societies,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 74-5.

³¹ Ruth Rubio-Marín, “Introduction: A Gender and Reparations Taxonomy,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 16. Note, however, that in other contexts, this evolution has not occurred, such as the current situation in Uganda.

³² Sharon F. Lean, “Is Truth Enough? Reparations and Reconciliation in Latin America,” in *Politics and the Past: on repairing historical injustices*, ed. John Torpey (Lanham: Rowman & Littlefield Publishers, 2003), cited in Brandon Hamber and Ingrid Palmay, “Gender, Memorialization, and Symbolic Reparations,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 367.

³³ Basic Principles, para. 15.

³⁴ Note that non-state actors exercising de facto power, or “effective control,” over a certain territory and people in that territory, may also be held responsible for reparations to victim-survivors. See Van Boven, 3.

³⁵ Richard Falk, “Reparations, International Law, and Global Justice: A New Frontier,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 481.

legal rights of victim-survivors as equal citizens, but by drawing upon international law and its jurisprudence, it also brings greater political credibility to advocates' calls for reparative justice. Yet for that advocacy to translate into meaningful change, it should ultimately link international precedent to national law, and strive to domesticate those international instruments which contain the right to remedy and reparation.

Dyan Mazurana and Khristopher Carlson explain how international jurisprudence had a big impact on the mandate and results of the Sierra Leone TRC, with its approach building upon prior developments in gender-based and sexually-based crimes from the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Rome Statute of the International Criminal Court (ICC) and its Elements of Crimes, and specifically in regards to children, the Special Court for Sierra Leone (SCSL).³⁶ In Peru, feminists were able to utilize international law to help influence the CVR towards adopting a more gender-inclusive mandate, with the Commission then establishing its own gender unit.³⁷ In such circumstances, international legal precedents offer victim-survivors and their advocates a framework to press for greater accountability.

But accountability is not inevitable. On the contrary, duty bearers will often try to skirt their responsibilities by claiming insufficient resources, by portraying development initiatives as reparations, or by severely limiting the scope of any concessionary reparations program. Therefore, victim-survivors and their representatives ought to align with experts in international and applicable domestic law to collaboratively channel their advocacy and push the envelope beyond minimum settlements towards a reparations program that is more rights-based, victim-centered and gender-just.

³⁶ Dyan Mazurana and Khristopher Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations against Girls and Boys during Situations of Armed Conflict and under Authoritarian and Dictatorial Regimes," in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 183.

³⁷ Nesiah, et al., 8.

2. Make mandates and criteria explicit yet inclusive

Although meaningful inclusion of victim-survivors – and female victim-survivors in particular – is the starting point of a gender-just reparations program, in reality its realization has proven elusive. Rather than a singular first step, giving voice to female victim-survivors (who wish to be heard) should be seen as a priority throughout the reparations process, one that is constantly readdressed and reemphasized. As the preceding section makes clear, though, involvement of female victim-survivors and their advocates may be enhanced by early engagement in the transitional justice process (prior to the formal reparations program), by coalition-building across like-minded constituent groups, and by grounding advocacy in the legal obligations of the state. When opportunities arise to influence reparations decision-making, particular weight should be placed on shaping the mandates of the applicable transitional justice mechanisms – including truth commissions, reparations design and reparations implementation systems – and their accompanying definitions for victim-survivors, beneficiaries, violations and harms.³⁸

Key to a gender-just reparations program is the explicit inclusion of gender justice as an underlying tenet within each of the mechanism mandates. Although there has been an increasing trend within TCs towards investigating gender biases regardless of mandate, this should not be assumed, as gender neutrality tends to default to a position that privileges certain male experiences.³⁹ Explicit reference to gender-sensitive standards gives greater clarity to subsequent implementation. Further, despite positive developments in the gendered approach of TCs, is it not necessarily the case that the same trend can be seen in reparations program design and implementation. Advocates should press for unambiguous language to help ensure that execution is deliberate in its gender analysis and proactive in its pursuit of gender justice.⁴⁰

In her interviews with three South Africa TRC commissioners, Beth Goldblatt reported that all three “felt that the inclusion of gender justice as a guiding principle would have had an important impact in foregrounding gender issues in the commission’s work.”⁴¹ Instead, the Commission had to acknowledge in its final report that it had been blind “to

³⁸ Note that it is likely within pre-established mechanisms that mandates and language for subsequent bodies are defined. For instance, it may be within the peace agreement or a presidential decree that the mandate for a truth commission is established, or within a truth commission that recommendations for a reparations program are outlined. Therefore, impact upon mandate construction likely requires pressure prior to the creation of the implementing systems.

³⁹ Nesiah, et al., 8.

⁴⁰ See for instance the Sierra Leone Truth and Reconciliation Commission Act, which asked that special attention be given to the needs of women and girls, with a particular focus on their experiences of sexual violence. Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*. (Freetown: Graphic Packaging Limited GCL, 2004), cited in King, 250.

⁴¹ Goldblatt, 77.

the types of abuses predominantly experienced by women.”⁴² The Peruvian CVR ultimately approached aspects of its mandate with a gender lens, but largely at the initiative of the commissioners themselves. The lack of an overarching and explicit mention in the mandate allowed for a limited gender approach in the commission’s final report, which was confined to two chapters and accordingly had no major impact on reparations recommendations.⁴³ The more recent truth commissions in Sierra Leone and Timor-Leste expressly included gender or sexual violence in their mandates, which were found to be critical in their respective investigations.⁴⁴ Similarly, with respect to children in Sierra Leone, the explicit call to address grave rights violations against children within the TRC’s mandate led to greater inclusivity and nuance in the commission’s approach to children.⁴⁵

Explicit reference to gender justice in transitional mandates concretizes the respective mechanisms’ obligations, and therefore puts institutional pressure upon implementers to proactively and consistently approach their work with a gender lens. Perhaps even more significant, it gives activists for women’s rights a foothold to push for greater inclusion. At the same time, though, it is important that such direct language does not exclude in the process. Precision should be used to employ a written framework that steers implementation without closing the door on those not expressly included.⁴⁶ In other words, explicit inclusion should not mean implicit exclusion. Care should be taken in mandate construction to clearly articulate gender-just objectives while simultaneously guarding against potentially restrictive interpretations.

One demarcation to resist in mandate creation is narrow temporal boundaries, in name or effect. In the South African TRC, the emphasis on individual ‘political’ crimes effectively excluded systematic crimes under apartheid, limiting both a fuller expression of the truth and access to reparations for many victim-survivors.⁴⁷ Similarly in Haiti, the mandate of the National Truth and Reconciliation Commission (CNVJ) was confined to investigating the period under the de facto government of General Raoul Cédras

⁴² South African Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, vol. 4, chap. 10, sec. 144, 316, cited in Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenges of Truth Commissions*, 2nd ed. (New York: Routledge, 2011), 89.

⁴³ 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-Marín (New York: Social Science Research Council, 2006), 166-7.

⁴⁴ Nesiha, et al., 8.

⁴⁵ Mazurana and Carlson, 183.

⁴⁶ For instance, when detailing the serious crimes that will fall within the purview of a particular mechanism, after explicitly referencing each of the known crimes of gender-based violence that necessitate redress, it may be useful to include a final category of “other inhumane acts,” or more specifically, “any other form of gender-based violence,” that can capture crimes unknown to have occurred at the time of mandate construction.

⁴⁷ Goldblatt, 61. Note that beyond the temporal limitations, the focus on ‘political’ crimes within the South African TRC also served to depoliticize many women’s experiences and render them within the exclusive purview of ‘private’ life.

(September 27, 1991 to October 14, 1994), leaving out the preceding decades of dictatorship under the Duvaliers.⁴⁸

Timeframe is thus crucial to reparation, but not only in setting the contours for the period under investigative review. It is also critical that access to reparation remains open for a period of time into the future, so as not to foreclose assistance and recognition to those that may not yet be ready, able or aware of the opportunity to approach the commission or reparations mechanism. In this way, the Sierra Leone TRC decided, in its recommendations, to keep the list of victims open for future reparations implementation, so as to facilitate an environment of broad and continuing accessibility.⁴⁹ Key to mandate formulation, then, is preventing limitations that restrict access and comprehensive analysis, while concurrently remaining explicit through non-exhaustive, gender-just objectives.

Victim-Survivors and Beneficiaries

In addition to actively incorporating gender justice into the broader mandate of transitional justice mechanisms, it is vital that the notions of “victim” and “violation” that traditionally give rise to reparations are broadly defined so as to appropriately reflect women’s and girls’ experiences.⁵⁰ Colleen Duggan and Ruth Jacobson pose the question that should be front of mind when defining these critical terms: who has been included and who has been left out?⁵¹

In the aftermath of the Second World War, the German government began a reparations program that was innovative in addressing damages beyond those caused by war exclusively, focusing upon victim-survivors of the Holocaust in addition to those impacted by the broader war. Although progressive in the field of reparations at the time, the 1956 Federal Compensation Law nevertheless excluded many groups that suffered tremendous harm under Nazi occupation, including, among others, forced laborers,

⁴⁸ Segovia, “A History of Noncompliance,” 166.

⁴⁹ King, 275; yet it should be noted that the Sierra Leone Government has fundamentally failed to follow through on the reparations recommendations put forward by the TRC. The Commission’s final report was released in 2004, but the Sierra Leone Reparations Programme was not founded until 2008, and only with financial assistance from international actors such as the UN Peace Building Fund. The UN Peace Building Fund reports that the Programme – through its implementing body, the National Commission for Social Action – was able to reach approximately 20,000 victims by 2009, and the “residual caseload” of 13,526 victims were given “initial” cash assistance at US \$80 each by the end of 2012. It also notes minimal financial contributions from the Sierra Leone government, and a lack of government follow through on recommended services, such as education, health care and pensions. See UN Peace Building Fund, “MPTF Office Final Programme Narrative Report, Reporting Period: From *January 2011 to December 2012*,” 1 April 2013 (accessed July 21, 2013); available from mptf.undp.org/document/download/10815.

⁵⁰ See Nairobi Declaration, p. 2, para. 4.

⁵¹ Colleen Duggan and Ruth Jacobson, “Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 136.

victims of forced sterilization, gypsies, homosexuals and the “antisocial.”⁵² More recent programs may not be so blatantly discriminatory, but their terminology may proscribe reparation all the same.

Definitions of victim-survivors should, therefore, begin from a strict adherence to principles of non-discrimination.⁵³ From there, a gender-just approach ought to reflect a conception of victim-survivor, which embraces more than “the person(s) toward whom the acts are directly intended.”⁵⁴ Rather, drafters should adopt a harms-based notion of victim-survivor, which recognizes that the interests of those in close kinship with the ‘directly intended’ may be no less affected than the immediate recipient of the rights violation. Rubio-Marín refers to this as a conceptual shift from understanding “rights as assets” – which signify the protection of *individual* interests – to “rights as relationships,” which acknowledge that the interests of those in close relational proximity to the target of the harm will also be profoundly impacted by the violation or abuse.⁵⁵

Traditionally, however, limited notions of victim have meant that many of those victimized have not qualified as beneficiaries of reparation, as beneficiary status is inherently linked to a prior finding of victimhood. Yet even if a *victim* designation is narrowly conceived to comprise only those towards whom violations were directly intended, *beneficiaries* may still be understood to include others by virtue of their close kinship with the victim. Using this line of reasoning, however, the harm to particular victim-survivors may be greatly devalued or unrecognized altogether. Instead, by embracing a harms-based approach – that centers not only on the right holder, but equally on those whose intimate connection to the right holder means that they will also suffer immeasurably as a result of the violation to the right holder – the terms ‘victim’ and ‘beneficiary’ cease to have much conceptual distinction, as one directly implicates the other. In so much as there remains a difference, it relates to the operational distribution of reparations benefits, as particular types of harm may warrant different forms of reparation. In other words, every beneficiary is *a priori* a victim-survivor. The only distinguishing feature that remains is that not every victim-survivor receives the same recognition of harms suffered or benefits.

Striving for a more harms-based approach or framework, then, it is important that the identification of beneficiaries – and therefore, victim-survivors – reflects principles of non-discrimination and the lived realities of affected populations. Transitional justice

⁵² Ariel Colonomos and Andrea Armstrong, “German Reparations to the Jews after World War II: A Turning Point in the History of Reparations,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 406 and broadly. “Antisocial” referred to prostitutes, vagabonds and beggars.

⁵³ See for instance Basic Principles, para. 25.

⁵⁴ Fionnuala Ni Aolain, “Sex-Based Violence and the Holocaust – A Re-evaluation of Harms and Rights in International Law,” *Yale Journal of Law and Feminism* 12 (2000): 40.

⁵⁵ Ruth Rubio-Marín, Clara Sandoval, and Catalina Díaz, “Repairing Family Members: Gross Human Rights Violations and Communities of Harm,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 216-7.

mechanisms should appreciate the subtleties of context in setting the definitional contours of terms such as family and dependent, so as not to exclude those that would otherwise qualify for reparative benefits. In many communities, the notion of family may extend beyond nuclear borders or legalistic definitions. Unfortunately, however, many mechanisms have adopted classifications that undervalue nontraditional family units. Chilean reparations legislation initially excluded unmarried partners and mothers of “illegitimate” children from receiving pensions, while common-law relationships were marked as hierarchically inferior in Brazil.⁵⁶ Similarly, the 2001 draft of a Rwandan indemnification fund (*Fonds d’Indemnisation*) refused to recognize de facto unions common to the hills of Rwanda, and found children born out of wedlock and adopted children only to qualify as beneficiaries if officially supported by a court judgment.⁵⁷

The Peruvian CVR, however, sought to recognize practices common to high Andean and jungle villages by allowing for claimants to prove a dependency relation similar to that of a family relation.⁵⁸ The Inter-American Court of Human Rights (IACtHR) has embraced an even more inclusive model that focuses on whether there exists a close kinship with the victim, rather than adhering to strict notions of “next of kin.”⁵⁹

Further, it is important to recognize not only alternative family units, but also to investigate how family structures may have shifted to adapt to conflict or post-conflict circumstances. Women may, for instance, become responsible for additional children orphaned as a result of the war,⁶⁰ or children may themselves be forced to take on head of household roles to accommodate a family unit that no longer has a living, present or capable parent. Therefore, accessible beneficiary status should be premised on current contextual circumstances, non-discrimination and a standard that prioritizes close kinship over exclusionary categorizations.

Violations and Harms

Expand the scope of harms beyond sexual gender-based violence

Due to a series of factors coalescing in the aftermath of the Cold War, the international community – through international criminal tribunals – finally began to take seriously the rampant perpetration of acts of sexual violence – in particular, rape – occurring in times of armed conflict.⁶¹ While such progress should certainly be lauded, approaching gender-

⁵⁶ Elizabeth Lira, “The Reparations Policy for Human Rights Violations in Chile,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 63; Rubio-Marín, Sandoval, and Díaz, “Repairing Family Members,” 278-9.

⁵⁷ Heidy Rombouts, “Women and Reparations in Rwanda: A Long Path to Travel,” in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 217-8.

⁵⁸ Guillerot, 154-5, although reparations in the Peruvian case were limited by the requirement that the ‘direct’ victim be dead or missing.

⁵⁹ *Loayza Tamayo v. Peru* (Reparations and Costs), Judgment of November 27, 1998, Inter-American Court of Human Rights, para. 92.

⁶⁰ Mazurana and Carlson, 191.

⁶¹ See for instance Kelly Askin, “Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles,” *Berkeley Journal of International Law* 21, no. 2 (2003). Unfortunately, however, this has not translated into a similar

based violence solely through the prism of sexual violence fails to appreciate the breadth and depth of gendered harms suffered by women and girls (as well as men and boys) in periods of conflict and violence. This was largely the case within the South African TRC, which, in response to women's tendency to relay their histories in broader strokes than men, instituted mechanisms to help ensure that women told the "whole truth" of their experiences. By providing what it deemed a safe space to testify, the Commission presumed that women would – and should – disclose incidences of sexual violence.⁶² Yet as Fiona C. Ross explains, this model of truth "assumed that women bore a special responsibility for talking about sexual violence."⁶³ Instead of using the opportunity to hear the true and subtle meanings of women's words, the Commission's approach effectively sexualized women's experiences and, in so doing, limited a fuller understanding of the gendered dimensions of recent South African history.

Margaret Urban Walker's work offers a nuanced and comprehensive framework to help us understand violence and harm to women and girls in periods of armed conflict and repression.⁶⁴ While insisting that our response to crimes of sexual violence be unyielding, Walker nevertheless highlights that an exclusive focus on sexual violence may crowd out a broader recognition of the myriad harms that women and girls suffer.⁶⁵ A gender-just reparations program, therefore, requires a careful and thoughtful analysis of both sexual *and* nonsexual forms of harm, incorporating the manifold types of gender-based violence – and their complex, overlapping and multiplying effects – into the language of the relevant mandate.

In practice, however, the assessment of gendered harms necessitating redress – as understood or determined by decision-makers – tends to be largely confined to instances of sexual violence, and in particular, rape. Although sexual violence was not explicitly included as a gross violation of human rights prompting reparation in South Africa, it was interpreted as falling within the clause "other forms of severe ill-treatment." Yet many other forms of gender-based violence were overlooked in the design of reparations,

progression with regards to domestic violence and spousal rape, which is still widely relegated to the 'private' sphere.

⁶² Fiona C. Ross, "An Acknowledged Failure: Women, Voice, Violence, and the South African Truth and Reconciliation Commission," in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, eds. Rosalind Shaw and Lars Waldorf, with Pierre Hazan (Stanford, CA: Stanford University Press, 2010), 73.

⁶³ *Ibid.*

⁶⁴ Walker identifies the following key factors that may be important in recognizing, understanding and assessing such harms, with an eye towards properly conceptualizing subsequent reparations: 1) male exchanges through violence towards women; 2) the symbolism of gender and punishment of women's (and men's) gender transgressions; 3) specifically sexual or reproductive coercion, harm, torture and mutilation; 4) targeting women's mothering; 5) women and property; 6) women as/and social capital; 7) quandaries of shame and exclusion; 8) women's insecure testimonial positions. Margaret Urban Walker, "Gender and Violence in Focus: A Background for Gender Justice in Reparations," in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009).

⁶⁵ *Ibid.*, 60.

including loss of fertility, pregnancy following rape, widowhood, mutilation, and loss of livelihood.⁶⁶ Similarly, while the final report of the Peruvian CVR offered a more holistic review of women's experiences, Peruvian feminists were initially worried that concentration on sexual violence was leading to the de-prioritization of other significant aspects of women's struggles in Peru, including the experience of internally displaced women and refugees, women who became sole breadwinners as a result of abuses committed against their spouses, and women prisoners.⁶⁷

More positively, the Office of the Prosecutor of the SCSL helped to advance beyond traditionally restrictive definitions of gender-based violence by incorporating a charge of forced marriage under the category of "other inhumane acts," leading to the first international conviction for the crime against humanity of forced marriage.⁶⁸ Further, the recommendations of the Sierra Leone TRC prioritized not only victim-survivors of sexual violence, but also recognized the vulnerability of war widows, elderly women, girl mothers, children born of rape, victims of displacement and female ex-combatants.⁶⁹ As occurred at the Sierra Leone TRC, emphasis should be placed on acknowledging the pervasive nature of sexual gender-based violence and strongly promoting repair for victim-survivors, but not at the expense of those suffering from non-sexual gender-based harms. Such an approach risks sexualizing victim-survivors, perpetuating the limited notion of violations as being exclusive to bodily harms, and relegating their nonsexual harms to a status of seeming inconsequence.

Expand the scope of harms within sexual gender-based violence

It is also important to recognize that crimes of sexual violence are not confined to the act of rape. Sexual gender-based violence may also include – per the Rome Statute of the ICC – sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.⁷⁰ Explicit mention of rape as triggering reparation is indeed a positive development, but it should not preclude a more expansive understanding of sexual violence. As with broader mandate construction and characterizations of victims-survivors, it is thus important that violations be defined both explicitly and inclusively, so that "explicit recognition and the visibility that comes with it are not purchased at the expense of either too narrow definitions or other forms of devaluation of sexual violence."⁷¹

Accordingly, Duggan and Jacobson acknowledge that greater detail in defining violations may entail certain trade-offs, and cite the South African case as emblematic of the

⁶⁶ Goldblatt, 60-1.

⁶⁷ Nesiya, et al., 9-10.

⁶⁸ Valerie Oosterveld, "The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front," *Cornell International Law* 44 (2011): 61, 64-8; see also Mazurana and Carlson, 184.

⁶⁹ King, 275-6.

⁷⁰ All listed as crimes against humanity under the Rome Statute, Article 7(1)(g). Other forms of sexual violence may include forced maternity, forced abortion, forced marriage, forced nudity, sexual molestation, sexual mutilation, sexual humiliation and sex trafficking. See Askin, 305.

⁷¹ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 79.

flexibility inherent within broader definitions.⁷² While this consideration has merit, it nonetheless assumes that the specific inclusion of one harm necessarily excludes an unmentioned second harm. This need not be the case, though, as explicit reference to particular harms may be accompanied by broader ‘catch-all’ terms that leave the door open to subsequent appendages. In other words, an explicit list can both draw attention to particular violations *and* remain non-exhaustive to future considerations.

Further, broad categorizations leave interpretation up to those tasked with implementation. Guatemala’s national reparations program included rape and sexual violence as violations prompting reparation, but sexual violence was not understood to include sexual slavery, forced unions, sexual torture or amputation and mutilation of sexual organs.⁷³ Without explicit direction from the mandate, many harms of great consequence were expressly excluded from consideration in Guatemala. The truth commissions in Sierra Leone and Timor-Leste, however, were more explicit in their reference to particular forms of sexual violence, such as – among others – rape, sexual slavery and forced marriage, and importantly, both commissions included men and boys as potential victims.⁷⁴

⁷² Duggan and Jacobson, 132-5, where the category of ‘inhuman and degrading treatment’ arguably allowed for a broader consideration of harms not conceptualized at the time of drafting. See also Beth Goldblatt and Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003).

⁷³ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 78; Paz y Paz Bailey, 106.

⁷⁴ King, 263; Wandita, Campbell-Nelson, and Pereira, 334.

3. Embrace the interrelatedness of harms and the indivisibility of rights

Reparative benefits are awarded to beneficiaries, and beneficiaries are tied to a victim-survivor who has suffered a rights violation. Therefore, the ultimate delivery of reparation is first premised upon a finding of a rights violation. Yet there are two fundamental shortcomings to this methodology, as it is often employed. First, the redress of the right holder is traditionally presumed to take precedence over those in relationships of dependence with the right holder, despite the profound harms and consequences that may befall the dependent; and second, it is only a select group of rights that are likely to trigger victim status. Each of these underlying limitations is markedly gendered.

Communities of harm

As introduced in the previous section, many transitional justice mechanisms have adopted a notion of victim that flows ‘directly’ from a rights violation. The right holder, then, is granted victim status, while dependants may qualify as beneficiaries through their relationship to the right holder. Another common practice is to distinguish between direct and indirect (or primary and secondary) victims, where “the person who suffers, *first in time and physically*, a human rights violation” is given priority [italics mine].⁷⁵ Yet temporal and physical proximity to the violation is not in and of itself determinative.

Returning to Rubio-Marín’s analysis, this approach of prioritizing direct over indirect violations characterizes “rights as assets,” where the protection of individual interests is primary. Incorporating a gender lens, the end result is one that distinctly benefits men. Direct victims tend to be overwhelmingly male, as men and older boys are more likely to engage in physical combat, and therefore are more prone to be victims of civil and political rights violations such as extrajudicial killing, illegal detention, torture, forced recruitment and forced disappearance.⁷⁶

The harm that ensues, however, cannot be viewed in isolation. While the physical violence may be targeted at a particular individual at a particular moment in time, the *effects* of that violence may have a profound and lasting impact that transcends beyond the individual; and indeed, such multifaceted and long-term consequences are often the very intention of the perpetrator(s).⁷⁷ Fionnuala Ni Aolain has introduced the apt concept of “communities of harm,” which recognizes that individuals are “infinitely connected” to their families, codependents and communities.⁷⁸ In the aftermath of violence or repression, as Rubio-Marín further explains, “[p]arents, partners, spouses, children, and siblings are often left both emotionally desolate and economically destitute.”⁷⁹ Accordingly, moving beyond a philosophy of “rights as assets” towards one that appreciates “rights as relationships” (where the interests protected also encompass those

⁷⁵ Rubio-Marín, Sandoval, and Díaz, “Repairing Family Members,” 232.

⁷⁶ See for example *ibid.*, 215-6. Of course, women and girls may also be victims of ‘direct’ CPR violations, and may be targeted and affected in ways both similar and different than men. For more on how such harms may impact women and men differently, see Walker, 47-62.

⁷⁷ See Walker’s discussion of “Gender-Multiplied Violence and Harm,” 52.

⁷⁸ Ni Aolain, 40.

⁷⁹ Rubio-Marín, Sandoval, and Díaz, “Repairing Family Members,” 215.

of the people whose emotional or dependent proximity to the immediate victim means that they too will suffer profoundly as a result of harm to the ‘victim’) is a vital conceptual shift that appropriately grasps the interrelated nature of harm.⁸⁰

This reconceptualization of rights violations as triggering not only victim status for the immediate right holder, but equally for relations and dependants, is a critical step towards achieving gender-just reparations. A harms-based notion of victim helps to combat hierarchies of suffering, which often fail to give adequate recognition to the deeply-felt pain and severed life plans of family members and co-dependants – frequently women and girls.

Moreover, it is important that this approach be consistent, and not confined to family members of non-surviving victims. This ‘inheritance paradigm’ persists within many reparations programs, which perpetuates the notion that dependants have no autonomous right to reparation for their *direct* suffering from a rights violation against a person to whom they are intimately connected. In other words, dependents should be entitled to reparations in their own right.⁸¹

Although the South African TRC accepted that any distinction between immediate victims and their dependants should not presume that dependants suffered less, the Reparation and Rehabilitation Committee nonetheless categorized victims as either “primary” or “secondary,” and secondary victims only became beneficiaries if the primary victim had died.⁸² Similarly in Peru, the CVR determined that beneficiaries were to include more than direct victims, but only if the “main” victim was dead or missing.⁸³ Certainly, a reparations program should not undervalue the immense suffering that accompanies the loss of a family member, caretaker or breadwinner. The normative point here is that harms may also directly affect family members and dependants. As such, it should not be the case that those intimately connected to a right holder only become eligible for reparation upon the death of that right holder. Their harm should be, in and of itself, redressed.⁸⁴

Admittedly, reparations programs are constrained by finite resources, and will undoubtedly be unable to fully repair the harms suffered by all victim-survivors. Yet resisting hierarchies of suffering need not mean a lack of prioritization. Hierarchies of suffering presume that the immediate right holder suffers more, which inherently denies

⁸⁰ On the notions of “rights as assets” and “rights as relationships,” see *ibid.*, 217.

⁸¹ *Ibid.*, 270-1.

⁸² Goldblatt, 62.

⁸³ Guillerot, 154-5.

⁸⁴ This “widening of the notion of victim” has some jurisprudential precedent in the case law of the Inter-American Court. See for instance *Bámaca Velásquez* case, Series C: No. 70., Judgment of November 25, 2000, Inter-American Court of Human Rights, Separate Opinion Judge A.A. Cançado Trindade at paras. 38-40. For a quick overview of the Court’s jurisprudence on the issue, see Mónica Feria Tinta, *Protecting the Most Vulnerable at the Edge: The Landmark Rulings of the Inter-American Court of Human Rights on the Rights of the Child*. (Leiden, The Netherlands: Martinus Nijhoff, 2008), 18-25.

the profound impact of that violation upon family members and co-dependents. Instead, a harms-based approach of *vulnerability* allows mechanisms to more justly target those who find themselves in greatest need due to the conflict or period of civil strife.⁸⁵ This was the approach adopted, at least in part, by the commissions in Sierra Leone and Timor-Leste, with the TRC in Sierra Leon prioritizing amputees, other war wounded, victims of sexual violence, children, and war widows;⁸⁶ and the Timor-Leste CAVR directing attention to 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.⁸⁷

Using a harms-based notion of vulnerability, importance is placed not only on the rights violation itself, but perhaps even more important, on whether the *effects* of that violation are life-altering. In this way, one begins to see more clearly how the consequences of a rights violation may impact family members and co-dependants in profound and far-reaching ways. Notably, children are deeply affected by violations committed against their parents, caregivers and other adults in their communities, as such violations may fundamentally alter children's lived realities, leaving behind single-parent households, child-headed households, orphans, street children, and others forced to navigate roles and relationships that may be significantly changed due to affected family members.⁸⁸ In such instances, it seems vastly inappropriate to suggest that children's suffering is secondary.

Similarly, violations against men may have profound effects on women's lives, especially in patriarchal societies. Men who are killed or forcibly disappeared may expose women to tremendous hardship, including: the extraordinary financial, physical and emotional burden of raising children on their own, often caretaking not only for their children, but also for additional war-affected dependants; finding a livelihood to support themselves and their families, despite – in such patriarchal societies – frequently being poorly skilled, trained and educated; experiencing physical threats to themselves, as well as attempts to grab their land and property; and simultaneously seeking the whereabouts of, remains of, and/or proper commemoration for, their deceased loved ones.⁸⁹ In Rwanda, these challenges were further compounded by both a pervading sense of social distrust, which left many women without the support or assistance of their neighbors, and discriminatory inheritance rules that kept women from accessing the land of their deceased husbands or fathers.⁹⁰ Even when the death of a husband has meant that women by law inherit the land and property, as is the case with some traditional marriages in

⁸⁵ Targeting those in greatest need in a reparations program is NOT the same as development, which is a general obligation of the state. Reparations are premised upon a rights violation, seeking to recognize and repair those made vulnerable *as a result of* a conflict or period of political repression. To read more about the distinction between reparation and development, see section six.

⁸⁶ King, 262.

⁸⁷ Wandita, Campbell-Nelson, and Pereira, 309.

⁸⁸ Mazurana and Carlson, 167.

⁸⁹ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 91.

⁹⁰ Rombouts, 209-10.

Uganda, in-laws and neighbors may still use the opportunity to try and steal the woman's land or drive her and her children from it.⁹¹

As has already been stressed, however, it is not only those connected to the deceased or missing that may endure dire consequences. Women whose husbands, family members or breadwinners *do* return home may find themselves in similar circumstances, as torture, arbitrary detention or other rights violations may leave men effectively incapacitated. Further, as is often the case in periods of transition, men returning home may also translate into a spike in domestic violence rates,⁹² leaving women to bear the brunt of male aggravation. Such experiences only compound the unremedied harms women may carry with them from the period preceding the transition to 'peace.'

The indivisibility of rights

In addition to acknowledging that violations transcend individual rights holders and create communities of harm, it should also be recognized that violations demanding redress are not confined to those of civil and political rights. To the contrary, it is often infringements upon economic, social and cultural rights that pose the most immediate obstruction to beginning the process of repair. As Lisa LaPlante explains in her reflections upon the truth commission and reparation processes in Peru, "widespread poverty and social exclusion complicate recovery in the recuperation of the rule of law more than simply damage from acts of political violence."⁹³ In other words, the two sets or 'generations' of rights cannot be so easily de-linked.

Despite the premise of universal human rights, however, a separation has existed in practice between civil and political rights (CPR) and economic, social and cultural rights (ESCR). This division cemented itself within the human rights treaties of 1968, with the ICCPR forming apart from the ICESCR.⁹⁴ The distinction has been broadly captured by the notions of positive and negative rights, where it is argued that ESCR require progressive action by the state ("positive rights"), while CPR can be implemented immediately and therefore require inaction ("negative rights"). The partition has led to claims of hierarchy, with most TCs and reparations programs prioritizing violations of CPR. Yet as truth commissions such as those in Peru and Guatemala move beyond a mere cataloguing of individual acts of political violence, and seek to weave such events into a broader narrative of underlying historical processes, the indivisibility of rights becomes increasingly clear.

⁹¹ Dyan Mazurana, et al., "Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda," *Feinstein International Center* 2013, 40. Available at <http://fic.tufts.edu/assets/Gender-Just-Remedy-and-Reparation-3-27-13-final.pdf>.

⁹² Colleen Duggan and Adila M. Abusharaf, "Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice," in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 627.

⁹³ LaPlante, "On the Indivisibility of Rights," 166.

⁹⁴ International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights, A/Res/21/2200 (16 Dec. 1966).

A hierarchy of rights, like the hierarchy of suffering, is partial to male experiences. Nesiah et al. caution that research focusing on “acts of human rights abuse alone may not capture important gendered dimensions of the spaces where such acts take place or the political and personal meanings of those spaces in the daily lives of women.”⁹⁵ This was largely the case in South Africa, where an emphasis upon individual events of bodily harm obscured an appreciation for the historical patterns of violence against women.⁹⁶ Investigating the broader structural factors that enable violence against women often reveals that the causes can be traced to the preceding era, and the effects persist into the transitional period.⁹⁷

Given that the war-affected population in Peru mostly belonged to the poor and excluded segments of society, women’s decisions to come forward seeking reparation were often more than simply claims to compensation for CPR violations.⁹⁸ Their needs should be seen as stemming not only from the impact of political violence, but just as importantly, from the exacerbating effects that such violence has upon an individual, family or community that was already in a state of abject poverty and social exclusion. Viewed in this light, it is easy to see why women’s reparative demands often relate to health, education, job opportunities and compensation for both themselves and their children.⁹⁹

The challenge, therefore, becomes how to give sufficient recognition to CPR violations within a broader framework that also embraces the indivisibility of rights.¹⁰⁰ Peru’s CRV initially adopted an expansive model that sought to address far-reaching social needs arising from the violence, but it soon determined that such a program would include an estimated two million people, or seven percent of the Peruvian population. Deemed unworkable, the plan was dropped for a narrower focus on CPR violations. However, subsequent implementation seemed to resort back to a broader approach, targeting communities as a whole rather than specific individuals.¹⁰¹ Yet by not adequately addressing specific harms, victim-survivors were left confused and frustrated, as the initiatives seemed to more closely resemble economic development programs than reparations measures tied distinctively to the war.¹⁰²

The toils of the Peruvian CRV and its subsequent PIR expose the challenges of a more holistic effort that addresses both the causes and the consequences of conflict or repression, but at the same time, the Peruvian experience also highlight the inseparable nature of rights. LaPlante explains further that the CRV’s “own struggle with the indivisibility principle reveals the restorative aspect of attending to the suffering caused by past wrongs, but also the preventive mode of eradicating the roots of these wrongs,

⁹⁵ Nesiah, et al., 24.

⁹⁶ Ross, 86.

⁹⁷ Nesiah, et al., 25.

⁹⁸ Guillerot, 147.

⁹⁹ *Ibid.*

¹⁰⁰ LaPlante, “On the Indivisibility of Rights,” 145.

¹⁰¹ Hayner, 174.

¹⁰² LaPlante, “On the Indivisibility of Rights,” 159.

thus providing more forward-looking modes of conflict prevention and peacekeeping.”¹⁰³ As such, embracing the indivisibility of rights means adopting a nuanced approach that seeks to both repair particular harms borne out of the war, while also attending to the underlying structural inequities that may have precipitated the war in the first place. The ideal methodology, then, is likely one that intertwines reparation with broader development and institutional change, *but all the while ensuring that victims-survivors are sufficiently recognized for their particular harms*. In other words, development may be required to augment reparative value, but it should not be used in place of satisfactory reparation.¹⁰⁴ Development is not reparation.

¹⁰³ *Ibid.*, 176.

¹⁰⁴ This interplay between reparation and development can be situated within the “external coherence” regime introduced by Pablo de Greiff, whereby the enactment of one measure (e.g. development) in the absence of another critical measure (e.g. reparation) will lead to an ‘incoherent’ response that fails to effectively and holistically redress victim-survivors. The notion of coherence will be further addressed in section six.

4. Foreground culture and context within principles of non-discrimination

M. Brinton Lykes and Marcie Mersky, in their important work, “Reparations and Mental Health: Psychosocial Interventions Towards Healing, Human Agency, and Rethreading Social Realities,” contend that reparative engagement should work at the intersections of local custom and Euro-American practice in ongoing and post-conflict settings.¹⁰⁵

Although their research is focused specifically on the psychosocial, their insights are applicable to broader reparations programming. Reviewing the body of anthropological and cross-cultural scholarship on mental health and illness, the authors highlight the importance of a methodology that moves beyond medical or narrowly defined psychosocial interventions in responding to survivors of war and politically-generated trauma. Instead, they recognize the value of an approach that seeks to “stand within the cultural specificity,” affording greater significance to sociopolitical context and how trauma and healing fit within local practices and traditional beliefs, while at the same time remaining critical of customs that diverge too sharply from international norms and Euro-American tenets.¹⁰⁶

Foreground culture and context

All too often, however, transitional justice mechanisms have been conceived at global or national levels, lacking sufficient appreciation for local traditions, contextual realities, and most importantly, victim-survivor priorities. To illustrate, as Laura J. Arriaza and Naomi Roht-Arriaza explain, an emphasis on criminal justice in Guatemala has overlooked the discrimination inherent within the formal legal system towards the poor, rural, Mayan communities within Guatemala. Deep distrust persists and, despite reform, the system remains inaccessible to many victim-survivors. Further, the international focus upon those individuals bearing greatest responsibility, while important, remains largely irrelevant at the local level, as people in such communities are often more interested in seeing justice done to “those they saw and heard giving orders and committing atrocities.”¹⁰⁷ Accordingly, if justice is to be adequately ‘felt’ beyond the capital city, its pursuit should also reflect local circumstances and the voices of their particular victim-survivors.

Paralleling the work of Lykes and Mersky, Rosalind Shaw and Lars Waldorf assert that transitional justice mechanisms should stem from a “place-based” approach that shifts the “local” to the center from which the rest of the world is viewed. This contrasts with conceptions of local as a level, which tend to presume a separation from the broader

¹⁰⁵ M. Brinton Lykes and Marcie Mersky, “Reparations and Mental Health: Psychological Interventions Towards Healing, Human Agency, and Rethreading Social Realities,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 602-5. I also borrow the term “foregrounding culture” from Lykes and Mersky.

¹⁰⁶ *Ibid.*, 603-4.

¹⁰⁷ Laura J. Arriaza and Naomi Roht-Arriaza, “Weaving a Braid of Histories: Local Post-Armed Conflict Initiatives in Guatemala,” in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, eds. Rosalind Shaw and Lars Waldorf, with Pierre Hazan (Stanford, CA: Stanford University Press, 2010), 214-5.

national and global communities, as well as a remoteness from modernity and modern practices. A place-based standpoint, on the other hand, exists within a locality but is not bound by it. Therefore, it can offer “a nuanced understanding of what justice, redress and social reconstruction look like” in specific places and times, without detaching itself from national and global processes.¹⁰⁸ In such a way, culture and context are foregrounded so as to breathe localized meanings into the transitional justice process, but not overly valorized so as to displace national efforts and international standards.

As is often the case, however, decision-making around transitional justice programming does not sufficiently consider or understand the contextualized realities of victim-survivors. In Chile, cultural notions of reparation and mourning were effectively disregarded when economic reparations were distributed to families of Mapuche victim-survivors in the Araucanía region. Within very poor Mapuche communities in particular, economic reparations had a negative impact on family relations, with many community members stating that non-monetary compensation in the form of land or livestock would have been more appropriate.¹⁰⁹ Standing within the locality can bring such contextual insight, and highlights the importance of a nuanced approach to reparation distribution.

Perhaps most stark in its lack of attention to the importance of locality, the El Salvador Commission on the Truth included no Salvadoran commissioners or staff.¹¹⁰ Although this decision was made on the basis of objectivity concerns – and the chosen commissioners were respected international figures agreed to by both parties – it nevertheless carries symbolic value and fails to sufficiently imbed local understanding, representation and priority. Similarly, the financial strategy for funding the commission was drawn largely from foreign sources, showcasing minimal political will on behalf of the Government of El Salvador to take ownership and responsibility for the situation, which in turn meant limited reparative value for the Salvadoran people.¹¹¹ Tellingly, despite the far-reaching and controversial conclusions of the Commission, the seventeen years following their report saw little in the way of justice, reparations, or official acknowledgement by the State.¹¹²

By undervaluing the importance of local representation and embedded contextual insight, transitional bodies like the El Salvador Commission are not only rendered largely ineffective, but they also miss the opportunity to bring greater symbolic reparation to victim-survivors by asserting local ownership over the process. In contrast, the commissioners of the Sierra Leone TRC represented both Sierra Leone and the international community. A public nomination and panel selection process decided upon four commissioners from Sierra Leone, while the UN High Commissioner for Human Rights chose the remaining three international members.¹¹³ This composition sought a balance between local context and international norms. Even still, despite its diverse

¹⁰⁸ Shaw and Waldorf, 6.

¹⁰⁹ Lira, 63.

¹¹⁰ Hayner, 50.

¹¹¹ Segovia, “A History of Noncompliance,” 162.

¹¹² Hayner, 51.

¹¹³ *Ibid.*, 58.

makeup and its active hosting of public hearings across the country, the TRC received criticism for failing to sufficiently align itself with local custom. As Shaw argues, the Commission “set itself in opposition to widespread local practices of social reconstruction as forgetting by valorizing verbally discursive remembering as the only road to reconciliation and peace.” If such is the case, it suggests – correctly – that ‘local’ is relative, and that while the four commissioners from Sierra Leone may represent local vis-à-vis the international community, they may concurrently reflect ‘national’ to other communities that are *more local*. Foregrounding culture and context, then, is a multi-layered process, and one that should situate its beginnings in place-based standpoints and victim-survivor voices. From such a vantage point, Shaw asserts that truth commissions should not be universally taken for granted, despite their potential to bring accountability as well as a sense of empowerment for victim-survivors.¹¹⁴ Grassroots practices such as social forgetting may conflict with global or national truth-telling mechanisms, and in such cases, it is critical to work at the interstices, weaving place-based standpoints into broader processes of transitional justice.

But adhere to principles of non-discrimination

Policies that are not grounded within local context may fail to have real impact upon – or, worse, may do further harm to – those in greatest need of repair. This is often true for women and girls, as shifts in national policy may have little effect upon pervasive discrimination rooted in “traditional” culture. This was by and large the case in Sierra Leone, where national-level initiatives failed to overcome discrimination within local customary systems. Although Sierra Leone’s 1991 Constitution included non-discrimination provisions, it retained exceptions related to customary law, leaving women few rights in critical areas such as marriage, divorce and inheritance.¹¹⁵ In Sri Lanka, despite programs intending to provide redress and property restitution for internally displaced persons, women have often been unable to claim reparation due to the customary practice of holding property in men’s names.¹¹⁶

Recognizing the importance of place-based standpoints that situate reparation within local realities, it is critical that traditional practices are not idealized so as to enable discrimination. Local justice mechanisms have the potential to resonate with particular communities, but they may also be “arbitrary, patriarchal and/or coercive.”¹¹⁷ As a result, a system of gender-just reparations should guard against discriminatory processes inconsistent with norms of international human rights, and “[i]n particular, international standards for women’s, girls’, and boys’ rights to inheritance and property ownership, to decide if and when to marry, to freedom from violence, to freedom of expression and association, and to health care and education, among others, should serve as the benchmark for reparations frameworks and programs and should be adhered to and upheld.”¹¹⁸ Principal guidance in this regard can be found in the Convention on the

¹¹⁴ Rosalind Shaw, “Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone,” *United States Institute of Peace*, Special Report 130, February 2005, 12.

¹¹⁵ King, 248.

¹¹⁶ Nesiiah, et al., 35.

¹¹⁷ Arriaza and Roht-Arriaza, 217.

¹¹⁸ Mazurana and Carlson, 174-5.

Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹⁹ and the Nairobi Declaration.

Culture and context can be foregrounded into reparations programs in a way that respects and builds upon local realities, without sacrificing fundamental standards of non-discrimination in international – and in particular women’s and girls’ – human rights. Arriaza and Roht-Arriaza describe several community-owned initiatives in Guatemala that illustrate this integration of cultural practices, including: community museums that are locally designed, and which celebrate the community’s resources and resilience, and commemorate its losses; a historical memory recovery initiative that uses low-cost, widely available material to weave a rope-braid, which represents both individual narratives and the community’s cumulative historical timeline; and exhumation practices that function not just as technical exercises, but are participatory and deeply connected to community mental health, local justice processes and commemoration efforts. Many of these projects are locally-funded and community-driven, and therefore nurture greater sustainability, offer longer-term (or less time-bound) accessibility and avoid discriminatory procedures that might otherwise exclude Mayan or other traditionally-maltreated communities.¹²⁰

Upholding principles of non-discrimination, therefore, means that reparations measures should also reflect the complexity of multifaceted identities. Women and girls are not defined solely by their female status, but instead embody a diversity of backgrounds and experiences that converge and diverge around ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability. Approaches to reparation should accordingly be context-dependent and strive to move beyond ‘one size fits all’ methodologies. While all women and girls must be seen as individuals, they should also be recognized as members of groups with particular resources and vulnerabilities.¹²¹

For example, while all war-widows in Guatemala should be recognized for their suffering, it is important to contextualize the extreme vulnerability of surviving Mayan women, who inhabit an environment where “[m]en control commercial exchange, ownership of property or land, and inheritance, and are more likely than women to master the Spanish language.”¹²² Appreciating the role of gender not only within Guatemalan society broadly, but more specifically within particular Mayan communities, reveals the multiplying effects of harms committed against this community of women. Employing a harms-based notion of vulnerability that appropriately places women’s lived realities within their proper contextual settings therefore becomes central to a gender-just reparations program.

¹¹⁹ United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13.

¹²⁰ Arriaza and Roht-Arriaza.

¹²¹ Walker, 55.

¹²² See Walda Barrios Klée and Edda Gaviola Artigas, *Mujeres Mayas y cambio social* (Guatemala: Facultad Latinoamericana de Ciencias Sociales, 2001), cited in Paz y Paz Bailey, 99-100.

Transformative potential

Within communities where gender inequities predate the armed conflict or period of political repression, traditional reparation in the form of restitution is likely to be inadequate or wholly inappropriate for many victim-survivors. Especially for women and girls, a return to the status quo ante may only serve to entrench the underlying practices of control and discrimination inherent within the preceding era. The ‘violence continuum thesis’ points to the normative nature of everyday violence against women and girls, and exposes the inherent links between the pre-conflict, conflict and post-conflict periods, in the way that women experience personal and structural subjugation and inequality. The ‘ordinariness’ of this violence means that for women and girls, ‘peace’ may require a great deal more than the cessation of armed combat.

Walker explains, however, that the identification of patterns and similarities across a violence continuum may not fully encompass the enormity of violence or the depth of suffering women may endure in times of conflict.¹²³ A normative presence of violence in everyday life does not imply that all types and levels of violence are thereby experienced as ordinary. To the contrary, “a woman who is bound to accept uncomplainingly her husband’s beatings and marital rape is not thereby prepared for being beaten by strangers, raped repeatedly in public, being raped by a male child (perhaps her own, under threat of death), or being kidnapped, terrorized by physical abuse, and held captive as a sexual and domestic servant of an enemy military.”¹²⁴ Events such as these may break profoundly from the more common violence of the past.

If we are to begin to understand and respond to the entirety of women’s and girls experiences in periods of conflict or political repression, we should acknowledge the potential for such devastating violence to arise both as a sharp discontinuity from, as well as a simultaneous outgrowth of, the ordinariness of everyday violence against women and girls. Extraordinary violence can evolve from a pre-conflict system that has already legitimized particular expressions of gender-based violence, while at the same time, it can rupture that same social order which, although sanctioning female subordination, “also contains its forms and modalities of expression defining what is ‘normal’ for women to expect but also what is *not*.”¹²⁵ The shattering of these recognizable boundaries, albeit discriminatory ones, has the potential to create an environment of unbounded violence, further dehumanizing women and stretching the limits of what may be done to them.¹²⁶

As a corollary in the transitional phase, we should pay attention to the boundaries within which victim-survivors continue to exist, so as not to expose them to risk unnecessarily. Ross describes how when women consider whether to speak about sexual violence there may be great risk not only for re-traumatization but also for undoing that which is

¹²³ Walker, 28-9.

¹²⁴ *Ibid.*, 30.

¹²⁵ Ruth Rubio-Marín, “Gender and Collective Reparations in the Aftermath of Conflict and Political Repression,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009), 392.

¹²⁶ *Ibid.*

familiar. She continues, “[i]t is not just specific relationships – between oneself and a rapist – that are implicated. To speak about rape is to speak about larger systems of power that are at the base of the world one inhabits.”¹²⁷ She highlights, therefore, that there is great courage in both speaking out *and* in remaining silent. Shaw and Waldorf similarly point to the risks that may accompany both silence *and* testimony, especially in chronically insecure environments.¹²⁸ Consequently, we should refrain from presuming universal anecdotes for victim-survivors, and instead begin from their priorities, standing within their place-based locations.

The design of a gender-just reparations program should accordingly acknowledge the overlapping yet potentially divergent notions of violence continuity across time, as well as the possible life-changing discontinuity from one event or period to the next. Properly responding to victim-survivors’ needs, then, may lead to a conflict between what Rubio-Marín refers to as the corrective dimension of reparations (giving adequate redress to victim-survivors) and the transformative dimension of reparations (dismantling patriarchy and furthering a more inclusive democratic system).¹²⁹ A gender-just reparations scheme may seize upon the “transformative potential” to challenge preexisting structural inequalities, but it should also recognize that reparative value may exist, at least in part, in contextually-defined social meanings.¹³⁰ As such, a balance should be struck whereby reparation helps victim-survivors connect past and future,¹³¹ rooting reparative measures within place-based standpoints, while also making use of the transitional opportunity and international attention to press for due recognition of women and girls as equal citizens within a more inclusive democratic system.

¹²⁷ Ross, 81.

¹²⁸ Shaw and Waldorf, 14.

¹²⁹ Rubio-Marín, “Gender and Collective Reparations,” 384.

¹³⁰ See Rubio-Marín, “A Gender and Reparations Taxonomy,” 17; Rubio-Marín, “Gender and Collective Reparations,” 398.

¹³¹ Rubio-Marín, “Gender and Collective Reparations,” 398.

5. Consider impacts on – and potential inclusion of – non-beneficiaries

Women and girls may experience violence and suffering in ways very different than men and boys, but as the previous section makes clear, it is important to acknowledge that their experiences may also diverge sharply from each other. Women and girls may also belong to particular racial, ethnic or indigenous groups; may be of different generations or have reached varying levels of education; may live urban or rural lives, and belong to distinct classes, castes, or religions; and may have performed dynamic and divergent roles within the conflict, including potentially as perpetrators themselves. A gender-just reparations program should remain receptive to diverse affiliations, appreciating the ways that women's and girls' experiences may be colored or outright determined by their gendered environments, while also recognizing the influence of coexistent and potentially competing linkages and identity markers. Accordingly, a gender-just reparations program should refrain from 'one size fits all' methodologies, and approach the needs of victim-survivors with flexibility.

In order to design an effective reparations plan, we should understand the complexities of the context within which such a program is to be implemented. Lykes and Mersky put forth an effective framework that starts with three questions to situate the programming into its particular cultural and sociopolitical environment: 1) what types of violence occurred; 2) with whom are we working; and 3) who is providing the services?¹³² I would then add a fourth question, which is perhaps an addendum to the second category, and that is: 4) who is left out?

Lykes and Mersky propose that we begin by analyzing the types of violence that took place, seeking to understand how and why the violence occurred, who was responsible and affected, and importantly, that we actively guard against the tendency to liken acts of violence that may have involved differing rationales or circumstances.¹³³ Second, the authors advise a nuanced identification of victims-survivors, perpetrators and observers, and rightly suggest that these formal categorizations may not be clear-cut or static. While reparation ought to be targeted at those considered victims-survivors, it may be necessary or even desirable to also engage other actors, including arguably perpetrators, to enhance the potential reparative effect for victim-survivors and their broader communities. Finally, Lykes and Mersky underscore the importance of paying attention to those persons selected to carry out the design and implementation of a reparation program. Reparation teams should rely heavily on local and indigenous expertise – including, especially, victim-survivors themselves – and build an interdisciplinary group that also includes human rights workers and skilled professionals trained in the particular type of reparation program. On a more macro level, it is also critical to consider whether it is the government or NGOs that will be supplying – and paying for – the reparation benefits,

¹³² Lykes and Mersky, 607-10.

¹³³ In some contexts, a truth commission may undertake this analysis, but care should still be taken within reparation design and implementation to ensure that this 'truth' has not overlooked alternative histories.

and how that chosen design will be received by victim-survivors and their larger society.¹³⁴

When analyzing the question, “With whom are we working?,” Lykes and Mersky acknowledge that reparation implementation will often involve more than the ‘directly’ affected, and that reparation may to a great extent depend upon the restoration of interpersonal relationships between victim-survivors and others in the community. Going one step further, though, we should not only consider these actors for their potential reparative effect upon victim-survivors. Instead, we should also highlight the importance of other actors in their own right. As community members that may harbor resentment, envy or despair at their own circumstances, they have the potential to impede reparation or even refuel lingering tensions. As such, we should also ask the question, ‘Who is left out of the reparations program?’ both for the potential that those actors may hold vis-à-vis victim-survivors, as well as for their individual and collective capacities to affect the community’s broader transition.

Although still a relatively new field, there exists a growing scholarship on the topic of reparations, but the literature remains wanting on the effects of reparations programming upon non-beneficiaries. Reparations are intended for those who have suffered gross violations of international human rights law and serious violations of international humanitarian law, and of course, such victim-survivors ought to receive utmost priority. But when designing an appropriate reparations program, it is also critical to consider how such programming may impact those that are not deemed victim-survivors.

Lykes and Mersky emphasize that reparative value for victim-survivors hinges, at least in part, on the rebuilding of relationships within their communities. Therefore, while the direct benefits of a reparation program may only be afforded to particular victim-survivors, the way that a beneficiary’s family members and broader community deal with the violence may have a great impact on that individual’s recovery. For instance, victim-survivors of sexual violence in Sierra Leone were prioritized for reparation by the TRC, but male spouses of female victim-survivors of sexual violence were not sufficiently afforded accompanying psychological support.¹³⁵ In cases of sexual violence, however, the ability of particular family and community members to process what has occurred in a way that does not result in attributing blame or stigma to the victim-survivor may depend greatly on professional or community assistance. That assistance, then, may be an essential element not only in the surrounding actors’ capacity to empathetically work through what transpired, but most importantly, it may be vital to the reparative effect realized by victim-survivors.

When designing a gender-just reparations program that seeks to give due recognition to the suffering of women and girls, one critical group of potential non-beneficiaries to consider is men and boys. Importantly, a gender-just reparations program should seek to understand how men and boys have suffered in gendered ways *because they are male*, and not confine itself to a gendered review of the effects upon women and girls only. Yet

¹³⁴ Lykes and Mersky, 607-10.

¹³⁵ King, 276.

as this piece of scholarship is focused upon gender-just reparations for women and girls, such a review is beyond the scope of this paper.¹³⁶ However, although men are traditionally more likely to be beneficiaries of reparations, I raise the point about men and boys here because the manner in which they respond to the design and implementation of reparations for female victim-survivors may have great effects upon women and girls. Women, for instance, may be more prone to form victims' support groups, and likewise "may be socialized in ways that make them psychologically more fit to articulate and share feelings around emotional loss."¹³⁷ Men, on the other hand, may be much less likely to develop such networks, and accordingly may be less equipped to process the effects of violence on their lives.¹³⁸ If particular men are deemed not to qualify as beneficiaries of reparations, it may nevertheless be important in a gender-just program to consider facilitating, or at least encouraging the establishment of, informal networks for men to gather and share their experiences, so that they may more effectively manage their own transitions, and thereby be better prepared to support the wives, daughters and other affected women in their lives.

A second critical group of non-beneficiaries to consider are the perpetrators. While there may on occasion exist an armed conflict with a clear dividing line between aggressor and victim, most wars today involve a variety of actors operating in a dynamic fashion across a spectrum of culpability and innocence. Such a blurring dichotomy makes categorization increasingly difficult, as in the case of a child that has been kidnapped and forced to kill, only to later grow accustomed to the indiscriminate act of killing. That child's mother may understandably still see him or her as a victim years later, whereas others in the community may just as understandably see him or her as a perpetrator.

This is not to say that there are not clear perpetrators, as particular *individuals*, especially those in leadership positions, can undoubtedly be identified as such. Rather, the normative point here is to exercise great caution before labeling particular *groups* as the perpetrators (or victims). There are many recent examples of such artificial partitions, where the side in power claims innocence and effectively brands the opposition as the unambiguous perpetrator. This is the case in Rwanda today, where despite the clear acts of genocide committed by members of the Rwandan Army and Hutu militias, there remains a blanket impunity for those members of the Tutsi-led Rwandan Patriotic Front that were responsible for their own atrocious crimes committed in the aftermath of the genocide.¹³⁹

A similar line was drawn in Peru, where members of *Sendero Luminoso* were denied the opportunity to testify before the CVR, thereby silencing an alternative history that would have helped to expose a broader truth regarding the roots of structural violence in the

¹³⁶ For more information on how men and boys may also suffer in gendered ways, see Walker, 57; see also R. Charli Carpenter, "Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations," *Security Dialogue* 37 (Mar. 2006), 83-103.

¹³⁷ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 111.

¹³⁸ Goldblatt, 76.

¹³⁹ Rombouts, 210.

country.¹⁴⁰ Although the CVR ultimately decided that victims of serious abuses ought to receive reparation regardless of their affiliation with an armed group, the government's subsequent reparations program explicitly stated that "[m]embers of subversive organizations are not considered victims and thus are not to be beneficiaries of the program."¹⁴¹ Not only does such an absolute prohibition potentially exclude legitimate victim-survivors from receiving due reparation, but it also creates what Kimberly Theidon – when reflecting on the rigidly binary nature of victim and perpetrator categorizations within the Peruvian CVR – calls “resentful silences,” which impede the prospects for national reconciliation.¹⁴²

The Sierra Leone TRC, however, made no distinction between civilians and ex-combatants in terms of their eligibility for reparations.¹⁴³ Women ex-combatants, for instance, were eligible to receive reparation so long as they had not benefitted from the DDR programs. Yet even if they had received assistance through DDR, they might still have been able to qualify for a different form of reparative support, with the commission recommending that “each individual should be assessed on the merits of his or her case.”¹⁴⁴

Such an approach is ideal because it acknowledges that groups are not homogenous, and that individuals have divergent affiliations, circumstances and levels of responsibility. For women and girls, this can also mean an opportunity to debunk the myth that women and girls exist solely as disconnected victims acting outside the contours of conflict. With a more informed and comprehensive truth, transitional mechanisms and reparation design can better reflect women's and girls' agency in these complex environments, acknowledging their diversity of roles that may also include complicit participation in, or defiant resistance to, widespread violence.¹⁴⁵

Whether the line between perpetrator and victim is clear or not, it is imperative that we endeavor to collect and piece together any competing histories into a comprehensive

¹⁴⁰ Kimberly Theidon, “Histories of Innocence: Postwar Stories in Peru,” in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, eds. Rosalind Shaw and Lars Waldorf, with Pierre Hazan (Stanford, CA: Stanford University Press, 2010), cited in Shaw and Waldorf's introduction, 9.

¹⁴¹ See Ley Que Crea El Programa Integral de Reparaciones [Law Which Creates the Program on Integral Reparations], Law No. 28592, art. 4, July 29, 2005, *available at* <http://www.idl.org.pe/educa/PIR/28592.pdf>, cited in Hayner, 174.

¹⁴² Theidon, also referenced in Shaw and Waldorf, 10.

¹⁴³ King, 261.

¹⁴⁴ Sierra Leone Truth and Reconciliation Commission, vol. 2, 245, para. 70, cited in King, 261-2.

¹⁴⁵ Hamber and Palmay describe the potential for symbolic reparations to obscure clear delineations and instead to offer abstract and complex representations of conflict, while Nesiha et al. point to the potential for thematic hearings – such as women's hearings – within truth commission processes “to allow a more complex understanding of women's roles, including that of militants and soldiers, policymakers, and human rights activists.” Hamber and Palmay, 339-40; Nesiha, et al., 27.

narrative, so as not to exclude victim-survivors from due recognition and reparation, nor to encourage festering (and potentially legitimate) animosities that may prevent broader recovery and reconciliation. Then, with such an understanding, we can more effectively design a reparations program that is nuanced and contextually-grounded, appreciating the complexity of participation in the violence.

Admittedly, however, we should also pay attention to two limitations here: first, that some individuals may be wholly unwilling or even unable to accept such fine distinctions, and second, that program resources are not unlimited. The magnitude or severity of violence, loss and suffering may render objectivity impossible for some, the consequence being that all associated with a particular group may be painted with the same broad brushstrokes. This is not a criticism, but rather an acknowledgement of a potential reality needing to be faced. It may be too much to ask of particular victim-survivors, that they accept that reparative benefits are being provided to those that they deem as perpetrators, however inaccurate that may be from an external perspective. As Mazurana and Carlson explain, this also relates to a primary criticism of collective reparations, as those considered to be perpetrators may have the same access to reparation as victim-survivors, which can minimize recognition and reparative value.¹⁴⁶ In such instances, the best that we can do may be to ensure before the fact that our reparative distribution decisions are thoroughly vetted, thoughtful and anticipating of such tensions, and that our outreach regarding those decisions is engaged in advance, active and transparent.¹⁴⁷

The second limitation of such a comprehensive and individualized approach is that reparation programs cannot be everything to everyone. Resources will undoubtedly be inadequate, only victim-survivors have a right to reparation, and reparation is not the same as development. However, my key point here is that such may not be the perception amongst non-beneficiaries or even beneficiaries. It is critical, therefore, that these misunderstandings be expected and, again, lessened through substantive and meaningful outreach. As practitioners, we will not be able to reach everyone (although we should be relentless in our attempts), but if we are making sure to consistently reflect upon those that have been left out, we may be able to bring greater reparative value to victim-survivors, as well as to proactively confront and diminish potential hostilities that would otherwise inhibit reparation and broader reconciliation.

¹⁴⁶ Mazurana and Carlson, 206.

¹⁴⁷ The way that we engage in the actual delivery of reparations, including through outreach, is covered in the all-important chapter on *process*, section eight.

6. Ensure, to the extent possible, internal and external coherence

One of the most fundamental aspects of any reparations program is the extent to which it is coherent. Pablo de Greiff, the first Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, coined the term “coherence” to reflect the relationships between individual reparation and transitional justice measures, and how well they collectively support one another.¹⁴⁸ No reparations benefit or transitional justice mechanism can exist in a vacuum, and success over time will largely depend on how each particular measure fits within a more holistic package. For example, compensation may be necessary for an affected family to survive, but such assistance may carry little reparative value if unaccompanied by government acknowledgement, apology and public recognition due to that family for their suffering. Conversely, an apology by the President may ring hollow, or even be deemed outright insulting, if offered without any serious attempt to assist victim-survivors in their financial, physical and mental recoveries.

In the case of Morocco, after decades of repressive rule by his father and grandfather, recently-crowned King Mohammed VI established a reparations-granting Arbitration Panel in 1999, which awarded the equivalent of US \$100 million to 7,000 victims over four years of work. Yet despite the significant payout, the government issued no apology, held no public sessions, and released no information about the cases prompting the awards.¹⁴⁹ Not only was this insufficient for victim-survivors that *were* compensated, but the panel also excluded many victim-survivors from any form of reparation due to its limited timeframe and mandate.¹⁵⁰ Sierra Leone has been plagued by a different kind of problem: no political will to implement. After a comprehensive approach to investigation and truth-telling,¹⁵¹ including numerous measures incorporated to help ensure a more gender-just process, the TRC identified those priority groups made most vulnerable by the conflict and outlined a series of progressive recommendations intending to bring modest reparation to victim-survivors and to lay the foundation for institutional change. Since that time, however, the government has largely failed to follow through with reparations delivery and to enact the proposed reforms.¹⁵² With minimal tangible benefit

¹⁴⁸ Coherence is one of the seven categories comprising de Greiff’s taxonomy of reparations efforts, along with scope, completeness, comprehensiveness, complexity, finality and munificence. See Pablo De Greiff’s introduction, “Repairing the Past: Compensation for Victims of Human Rights Violations,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 6-13.

¹⁴⁹ Hayner, 42-43, 172.

¹⁵⁰ Pressure from civil society and victims’ organizations later prompted the creation of a truth commission, which was much more comprehensive and transparent in its approach, with the King authorizing public release of its findings. However, despite the commission’s recommendation of a public apology from the prime minister, as of late 2009, no apology had yet been given. Hayner, 42-4, 172.

¹⁵¹ See, however, Rosalind Shaw’s critique of the use of truth-telling in Sierra Leone. Shaw, “Rethinking Truth and Reconciliation Commissions.”

¹⁵² See for example UN Peace Building Fund.

or demonstrated change emerging in the aftermath of the TRC, the ‘truth’ loses much of its reparative value.

Sierra Leone is one of the poorest countries in the world, and undoubtedly faces dramatic resource constraints and competing demands from all sectors and corners of society. But such limitations are no excuse for lack of implementation, because the relative success of a reparations program does not depend solely upon the magnitude of material benefit supplied. Perhaps more essential is how victim-survivors perceive the genuineness of effort by the governmental authorities to duly acknowledge their suffering and to do as much as they can within the realms of what is possible in an overly resource-constrained environment.

In this manner, de Greiff refers to reparations as “a manifestation of the seriousness of the state and of their fellow citizens in their efforts to reestablish relations of equality and respect.”¹⁵³ This is why coherence becomes such an essential element in reparations and broader transitional justice programs, because, in the aftermath of mass violence, where the number of victim-survivors is unbearably large, and where the types of violence incurred have often moved beyond the realm of the ‘ordinary’ and into the ‘extraordinary,’ justice can be nothing more than fundamentally incomplete. Any individual benefit – whether it be compensation, psychosocial counseling, a memorial to loved ones, or an apology from the authorities – will never be enough. But if a victim-survivor receives a monthly check in the mail, *and* can avail herself of weekly counseling services, *and* can visit a nearby memorial to mourn her husband or child, *and* is governed by a leader and institution that seem sincerely empathetic, repentant and resolved to do all they can to repair victim-survivors and their larger collectives, then perhaps victim-survivors will recognize that although their reparation is not full or just in the legal sense, it is coherent and genuine enough to serve as a foundation for a new beginning.

As introduced at the beginning of this paper, reparations programs differ from the individual litigant pursuing reparation, because that individual is seeking redress within a legal system that sees “norm-breaking behavior [as] more or less exceptional,” whereas a reparations program is responding to violations that, “far from being infrequent and exceptional, are massive and systematic.”¹⁵⁴ As we approach the design and implementation of a reparations program, therefore, we would be wise to remember Kristen Campbell’s words: “Justice requires a fundamental change to the social order which made possible the ordinary trauma of crimes against humanity. In this sense, justice remains the event yet to come.”¹⁵⁵ But, if a program can be constructed with

¹⁵³ De Greiff, “Justice and Reparations,” 463.

¹⁵⁴ *Ibid.*, 454.

¹⁵⁵ Kirsten Campbell, “The Trauma of Justice,” Paper presented at *Human Frailty: Rights, Ethics and the Search for Global Justice*, University of West England, 2001, cited in Harvey M. Weinstein, Laurel E. Fletcher, Patrick Vinck, and Phuong N. Pham, “Stay the Hand of Justice: Whose Priorities Take Priority?,” in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, eds. Rosalind Shaw and Lars Waldorf, with Pierre Hazan (Stanford, CA: Stanford University Press, 2010), 37.

proper consideration and forethought – understanding the complexity and politically-contested nature of such an endeavor, and recognizing that implementation will, despite our best intentions, undoubtedly unfold in a fashion that strays far from linear – it may be able to offer a modest contribution towards remedial change. To do so, it is critical that efforts strive for coherence.

External coherence

De Greiff differentiates between two forms of coherence – internal and external – where internal coherence refers to the relationship between types of benefits within a reparations program, whereas external coherence relates to the connectivity between the reparation program and other transitional justice measures, such as criminal justice, truth-telling and institutional reform.¹⁵⁶ The success of a reparations program depends to a great extent upon the inclusivity, expansiveness and ultimate settlement or set of recommendations put forth by mechanisms created in advance of the reparations effort, such as a peace agreement or TRC. Accordingly, in a system that develops and maintains external coherence, reparations programs are complemented by, and can build upon and supplement the work of, their accompanying transitional justice initiatives.

Unfortunately, far from externally coherent, thus far “the transitional justice debate has been overwhelmingly more about what to do against perpetrators than what to do for victims.”¹⁵⁷ Criminal justice has dominated the attention and significantly the resources of transitional justice efforts to date, driving an externally *incoherent* agenda that places a disproportionate focus on perpetrators. One stark example of this phenomenon is the case of Sierra Leone, where the SCSL is estimated to have cost the international community US \$250 million – including US \$50 million for the Charles Taylor trial alone (pre-appeal) – whereas the Sierra Leone Reparations Programme has been allocated, as of 2012, a dismal US \$4.55 million to provide reparative compensation to 33,715 victim-survivors across Sierra Leone (at approximately US \$70-200 per victim-survivor).¹⁵⁸ This imbalance between the retributive and the restorative forms of justice needs to be corrected, with greater weight and resource afforded to the needs of victim-survivors. As LaPlante and Theidon demonstrate in Peru, reparations can be considered just as critical as criminal trials (if not more so) in providing redress, and in the eyes of many victim-survivors, reparations may actually better reflect their notions of justice.¹⁵⁹

¹⁵⁶ De Greiff, “Repairing the Past,” 10-11.

¹⁵⁷ Rubio-Marín, “Setting the Agenda,” 22.

¹⁵⁸ On the cost of the SCSL, see Afua Hirsch, “Charles Taylor is guilty – but what’s the verdict on international justice?,” *The Guardian*, 26 April 2012 (accessed July 21, 2013); available from <http://www.theguardian.com/commentisfree/libertycentral/2012/apr/26/charles-taylor-guilty-abetting-war-crimes>. See also the amendment on May 3, 2012, where the US \$250 million price tag was clarified as the overall SCSL cost, not the cost of the Taylor trial alone. On allocations to the Sierra Leone Reparations Programme, see UN Peace Building Fund; as well as Edward Conteh, “Sierra Leone: Amputees still waiting for reparations almost 10 years on,” *IRIN*, 24 October 2011 (accessed July 21, 2013); available from <http://www.irinnews.org/report/94037/sierra-leone-amputees-still-waiting-for-reparations-almost-10-years-on>.

¹⁵⁹ LaPlante and Theidon, “Truth with Consequences,” 248.

This is not to suggest that criminal trials are of less consequence to transitional justice. To the contrary, victim-survivors may remain greatly unsatisfied if perpetrators are not brought to justice, regardless of reparation received. What we should strive for is coherence between the prosecutorial and the reparative, and especially, to build our strategy around victim-survivor priorities. The emphasis should shift away from a struggle focused predominately *against perpetrators*, and move towards an effort *on behalf of victims*,¹⁶⁰ an effort which may well include a significant emphasis upon criminal justice, but that emphasis should stem to a large extent from the demands of victim-survivors.

If, as Rubio-Marín notes, victim-survivors have for the most part “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.”¹⁶¹ Therefore, in a gender-just reparations program, coherence should have its own gender lens. There may be balance between criminal and reparative justice generally, but do they cohere for women and girls? Are criminal justice efforts sufficiently directed towards those perpetrators that targeted and affected the lives of women and girls, and does that investigative and prosecutorial endeavor cohere with a reparations program that amply focuses its design and implementation upon the priorities and needs of female victim-survivors?¹⁶² In such a way, external coherence should be consistently viewed from alternating vantage points, embedding itself within principles of non-discrimination.

External coherence, however, is more than just the harmony sought between criminal trials and reparations programs. It also includes other elements within the transitional justice package, such as truth telling and institutional reform, and their respective impacts upon coherence may enhance or aggravate the prospects for a successful reparations program. In addition to their potential to supplement reparation programming, each of these mechanisms also has the capacity to afford reparative effects in and of themselves, such as through the public acknowledgement of victim-survivor suffering or the adoption of a new law prohibiting discrimination. Ideally, each of these transitional justice components should operate in a complementary fashion, building upon the successes of their accompanying initiatives.

¹⁶⁰ I borrow the language here from De Greiff’s description of criminal justice as being *against perpetrators*, instead of *on behalf of victims*. However, the directive suggesting a shift in mindset is my own. See De Greiff, “Repairing the Past,” 2.

¹⁶¹ Rubio-Marín, “Setting the Agenda,” 23.

¹⁶² See for instance in Sierra Leone where, despite the disproportionate allocation of resources to international criminal justice efforts, the substantive focus of both the TRC (in its recommendations around reparations) and the SCSL were – for the most part – gender-sensitive, with the TRC prioritizing victim-survivors of sexual violence, war widows, elderly women, girl mothers, victims of displacement and female ex-combatants; and the SCSL bringing the first ever convictions in an international or internationalized tribunal for the crimes against humanity of sexual slavery and forced marriage (as an inhumane act). For more on the gender jurisprudence of the SCSL, see Oosterveld.

Reparations and Development

Yet even beyond the traditional transitional justice repertoire, there are other transitional considerations that may intersect with reparations programming in significant ways, with the potential for effects both harmful and complementary. As Jamesina King points out, in Sierra Leone, the reparations conversation had to be placed within 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 [were] playing an important role in the country’s transition.”¹⁶³ To this could be added macroeconomic growth, democracy-building and the ever-present landscape of local, national and international politics.

In some cases, there is a great deal of overlap between reparations and development programs in post-conflict settings, with the distinction between the two often lost within poor implementing measures or the intentional machinations of political agendas. In his discussion on what has been called “community reparations” in South Africa, Brandon Hamber identifies some of the insufficiencies of seeking to “repair whole communities” – a concept very closely aligned with development programs – despite the theoretical potential for such initiatives to contribute to reparative effects for individuals. In addition to the incoherence concerns of implementing a development-like program without other forms of accompanying reparation, Hamber highlights that such a program will likely not offer the “personal symbolic capital” necessary for psychosocial restoration at an individual level.¹⁶⁴ Although development will undoubtedly be necessary, he continues, such broad programming will likely lack sufficient personalization for individual victim-survivors, affording minimal reparative value without due recognition for their individual suffering.¹⁶⁵

Development programs often seek “to satisfy basic and urgent needs, which make their beneficiaries perceive such programs, correctly, as ones that distribute goods to which they have rights as citizens, and not necessarily as victims.”¹⁶⁶ The State already has an obligation to provide services to its citizens, to help realize their rights to, for example, an adequate standard of living, the enjoyment of the highest attainable standard of physical and mental health, and to an education.¹⁶⁷ Therefore, initiatives offering such services or reconstruction projects cannot constitute reparations on their own, as they are

¹⁶³ King, 273-4.

¹⁶⁴ Brandon Hamber, “Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies of Transition,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 574-5.

¹⁶⁵ *Ibid.*

¹⁶⁶ De Greiff, “Justice and Reparations,” 470.

¹⁶⁷ International Covenant on Economic, Social and Cultural Rights, see for example, articles 11-14. Although there may be disagreement regarding the customary nature of particular provisions within the ICESCR, the Convention is legally binding for those states that have become parties through ratification or accession. As of July 2013, there were 160 states parties, evidencing widespread consensus within the international community. See the status of ratification by treaty and by country at the Office of the High Commissioner for Human Rights, “Committee on Economic, Social and Cultural Rights,” (accessed July 25, 2013); available from www.ohchr.org/en/hrbodies/cescr.

insufficiently connected to victim-survivors and their harms specifically. However, as Mazurana and Carlson acknowledge, “if the government makes the reparative aspect of such work *explicit and publicized* [italics mine],” it may be possible for these efforts to play a contributive role within collective reparations programs.¹⁶⁸

It is important to acknowledge here that it is often such development-like initiatives, which become the highest priorities for victim-survivors – especially female victim-survivors – in the post-conflict environment. As LaPlante describes, it may not just be the harms caused by political acts of violence that need to be made right, but “[d]ire needs produced by poverty and exclusion shape what many victim-survivors perceive as preventing them from improving their well being.”¹⁶⁹ It is not to say that development-like programming ought to be excluded, or that it does not have reparative value. What is important to remember is, first, that the rationale behind any such initiative be, as Mazurana and Carlson explain, public and explicit in its inherent connectivity to particular victim-survivors and their specific harms; and second, that such projects not be used to take the place of other forms of reparation including, importantly, those offering “personal symbolic capital” and individualized benefit. This latter point can be seen through the prism of external coherence, whereby development programming on its own is wholly inadequate for victim-survivor repair, but when combined with explicit recognition and other essential modes of reparation, it may effectively contribute to reparative value.

Due in part to its obscure distinctions between reparation and development, the PIR in Peru has elicited a great deal of confusion and resentment. In response to the CVR recommendations, the government devised a *Plan de Desarrollo y Paz* (Plan for Development and Peace) as the mechanism through which to implement the PIR, and the National Congress later approved a law creating the PIR, which included most of the CVR recommendations except for those concerning economic reparations. Tight budgets meant that many of the so-called reparations measures were incorporated into pre-existing development programs designed to address poverty generally, losing their causal link to the needs of victim-survivors specifically.¹⁷⁰ Without retaining any *direct* relation between the violations incurred by victim-survivors and their due reparation, the supposed reparative nature of such measures ceases to exist, thereby perpetuating the invisibility of those rendered the most vulnerable.¹⁷¹

Moreover, these invisible victim-survivors, especially women and girls, “face particular obstacles in seizing the opportunities provided by development.”¹⁷² Whereas reparation seeks to recognize and remedy a harm that has occurred in the past (and may continue to

¹⁶⁸ It is important, though, to ensure that in such a case, explicit acknowledgement is not carried out in a fashion that serves to further stigmatize victim-survivors. See Mazurana and Carlson, 202-4.

¹⁶⁹ LaPlante, “On the Indivisibility of Rights,” 166. This also relates back to the discussion on the indivisibility of CPR and ESCR rights, section three.

¹⁷⁰ *Ibid.*, 161-2.

¹⁷¹ Guillerot, 163.

¹⁷² Nairobi Declaration, para. 3(B).

occur), development tends to be more oriented towards the future. It is true that the theory of change behind a development program may also be rooted in improving the conditions of an inequitable past, but development programs tend not to be tied to a *particular* victim-survivor or community of victim-survivors for *specific* violations or harms suffered. Instead, they offer a *general* benefit to a population not necessarily connected to a particular harm. As we begin to consider collective reparations, the line between reparation and development grows all the more imprecise. Nevertheless, the distinction remains, with collective reparation targeting particular communities *because of* violations that they endured as communities (or targeting those individual victim-survivors rendered invisible within individual reparations efforts), while the justification behind a development initiative lacks that inherent link to a prior violation, even though it may seek to improve the life conditions of that same community. In the former case, it is imperative that the delivery of collective reparation occurs alongside a public acknowledgement of its rationale (i.e. to give remedy to a particular community for a harm suffered by that community specifically), whereas the development program need not be grounded in a prior event.

Although women and girls may benefit from the opportunities provided by development, without an intrinsic connection to particular harms of the past, development projects may proceed to improve the life conditions for some while perpetuating the underlying structures of discrimination leftover from the preceding era for others, particularly women and girls. Unless remedies are sought for victim-survivors specifically, especially those rendered the most vulnerable, the benefits of development may remain inaccessible. As such, in a development or reconstruction program, just like in a gender-just reparations program, “affirmative action measures are necessary to respond to the needs and experiences of women and girl victims.”¹⁷³

Internal coherence

External coherence effectively connects the various elements of transitional justice and can be employed to situate other initiatives into a broader rebuilding plan. Equally important, however, is an internally coherent structure *within* the reparations program. The Basic Principles lay out the five forms of reparation – including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹⁷⁴ – which together set the initial contours for a program of internal coherence. For example, financial compensation requires accompanying satisfaction in the form of public acknowledgement and apology by responsible bodies, or victim-survivors may interpret it as blood money. Property restitution often demands institutional change (guarantees of non-repetition), or it may only return victim-survivors to vulnerable and potentially re-traumatizing circumstances. A government apology without a sincere effort to provide compensation, to afford services for physical and mental rehabilitation, and to replace that which was lost (or to bring truth and recognition to that which cannot be replaced), will likely have little to no reparative value over time. As with the attempt to design a transitional structure that is externally coherent, the relative weights to be afforded the

¹⁷³ *Ibid.*

¹⁷⁴ Basic Principles, paras. 18-23.

several forms of reparation that together can wield internal coherence should be based largely on the needs and priorities of victim-survivors.

Direct reparations benefits vs. those with reparative effects

When approaching the various forms reparation can take, in an effort to construct a design that moves towards internal coherence, it may be useful to differentiate between those modalities that provide direct reparations benefits and those that may offer reparative effects. Direct benefits are typically housed within the categories of restitution, compensation and rehabilitation, whereas reparative effects may, if crafted with care, be felt from other initiatives including rehabilitation, satisfaction and guarantees of non-recurrence.¹⁷⁵ These latter categories may also encompass reparative effects emerging from other transitional justice measures – such as the satisfaction gained from the public disclosure of the truth, or the guarantees of non-recurrence emanating from institutional reform – and in so doing, internal coherence overlaps with external coherence. In this way, external coherence becomes critical not only for the broader sense of transitional justice, but also for reparative effects impacting upon victim-survivors.

Just as criminal justice efforts ought to externally cohere with reparations programming, measures exhibiting reparative effects ought to internally cohere with direct reparations benefits. Significantly in this regard, symbolic reparations can never substitute for material reparations.¹⁷⁶ A public apology, disclosure of the truth, or a commemoration of victim-survivors can be meaningful elements of a broader reparations package, but they quickly adopt an air of disingenuousness without accompanying material benefits. Hamber and Ingrid Palmary advocate for a balance between material and symbolic processes. In line with a gender-just program, they argue that the symbolic value of reparative measures “can be fully realized only if gender discrimination, gender justice, the prevention of violence against women, and material change in women’s lives are being effected simultaneously.”¹⁷⁷ Gender justice begins not at symbolic reparation, but rather at the point where symbolic reparation coheres internally with substantive measures of material reparation and acts of broader institutional change that address underlying and gendered structural injustices. Accordingly, as Hamber and Palmary further describe when reflecting upon the Peruvian CVR, the implementation of any gestures meant to offer symbolic reparation ought to be complemented by a public explanation that makes clear what occurred that demanded reparation and how it affected women and girls specifically.¹⁷⁸

A gender-just reparations program should seek to balance not only material benefit and symbolic effects, but it should also incorporate measures for both individual and collective reparation. A program that concentrates exclusively on individual reparation may leave many women and girl victim-survivors unrecognized and without remedy, as individual measures tend to focus upon ‘direct’ rights violations – CPR violations in

¹⁷⁵ Mazurana and Carlson, 174; see also Nairobi Declaration, para. 3(A).

¹⁷⁶ *Ibid.*, 209.

¹⁷⁷ Hamber and Palmary, 378.

¹⁷⁸ *Ibid.*, 378-9.

particular – and privilege the more public experiences of men and older boys. Rather than an exclusive emphasis upon harms emanating from direct rights violations, a harms-based notion of vulnerability acknowledges that the profound effects of violence may severely impact more than the recipients and dependents of the direct physical manifestation of that violence.¹⁷⁹ Collective reparation can help to address these vulnerabilities, which are themselves a product of the violence, but may not be captured within a narrowly-constructed definition of victim-survivors. Rubio-Marín further posits that, “[g]iven that women both are and depend on social capital to such a large extent, whether or not reparations efforts target these diffuse harms done to collectivities and to the resources that enable communal life may affect them particularly.”¹⁸⁰ King offers a reference point in Sierra Leone, where the TRC’s recommendation that the government establish a program for reconstruction and rehabilitation of the most war-affected regions had greatest relevance for women because their livelihoods would improve with the rebuilding of schools, hospitals and other basic infrastructure.¹⁸¹ A gender-just reparations program, therefore, should reflect upon the coherence necessary between individual and collective reparations, especially when the adopted definition qualifying victim-survivors for individual benefits is exceedingly limited.

Yet collective reparations are not only employed to reach those less-visible *individual* victim-survivors. They are also warranted when violations target particular *groups or communities*. In such cases, violence still necessarily pursues individuals, but its cumulative effects filter outward, as the underlying rationale for this use of violence is because of the individuals’ group-based identity. The violence experienced by those affected thereby sends a message to them and other members of the group about the lack of worthiness of that identity.¹⁸² Therefore, collective reparations may be needed to redress the impact of such violence beyond the individualized harm, in a way that confronts the underlying persecution at its core. However, just as symbolic reparations can never substitute for material reparations, neither can collective reparation take the place of individual reparation, as the right to reparation is first and foremost an individual right.¹⁸³

Individualized trauma and its contextualized structures

Collective reparations may benefit communities, and they may also reach those victim-survivors excluded from individually-targeted benefits.¹⁸⁴ Correspondingly, they can also shed light on the fact that the experience of harm is not an exclusively individual process. Instead, we should recognize that incidences of violence occur within

¹⁷⁹ See earlier section three on CPR and ESCR.

¹⁸⁰ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 96.

¹⁸¹ King, 269.

¹⁸² Rubio-Marín, “Gender and Collective Reparations,” 387.

¹⁸³ Office of the United Nations High Commissioner for Human Rights, “‘The Dust Has Not Yet Settled,’ Victims’ Views on the Right to Remedy and Reparation: A Report from the Greater North of Uganda,” (2011), 17-9.

¹⁸⁴ Note here, however, that the downside of such programs may be that former perpetrators and other ‘non-victims’ also benefit from collective reparation benefits, and therefore symbolic reparative value may be lost.

contextualized socio-political environments. As Lykes and Mersky so eloquently observe, “the trauma of war – whether an individual’s or a community’s – must be read and responded to within its social, cultural, political meanings over time, rather than located and addressed exclusively or even primarily within affected individuals.”¹⁸⁵ That is to say, then, that reparation for psychological harms cannot be directed at individualized (or collectivized) trauma in isolation, but instead should be situated within these broader realities.

Hamber suggests that symbolic reparation may be used to “narrow the gap” between the two worlds, with reparations objects such as memorials affording the potential for representational value that is both internally evocative, and at the same time, externally reflective of the real socio-political world.¹⁸⁶ As an example, he describes the development of the AIDS Quilt, a project which has allowed for individual panels to be created and controlled by family members and loved ones – yet all the while remaining part of a larger memorialization process.¹⁸⁷ In such a fashion, the response to trauma is not presumed to be a universal one, and instead, space is created for both personalized *and* social meanings.

Similarly, in a gender-just reparations program, we should move beyond measures that contain only individual significance, and instead seek to simultaneously bring awareness to gendered meanings across histories of discrimination towards women and girls. Ross sheds light on the failure of the South African TRC to effectively locate individual harms, such as sexual violence, within their broader chronicle of patriarchal subjugation. As such, harms to women and girls were understood through a prism that identified masculine experiences as the norm, thereby misidentifying “oppression as individual injury,” rather than as an experience embedded within a systemic pattern of violence that had differential gender implications.¹⁸⁸ Ideally, then, a gender-just reparations design should strive to cohere three layers of meaning for female victim-survivors: that which connects the individual, that which contextualizes the experience within the local and socio-political world, *and* that which challenges dominant gendered hierarchies.¹⁸⁹

On this last point, gender justice may require more than a response that properly situates individualized harms within socio-political contexts. It may also demand that we address how the larger reparations program fits within an agenda for change. Do the reparations measures afford women and girls greater agency and autonomy? Importantly in this regard, we should consider how to best cohere Rubio-Marín’s corrective and transformative dimensions of reparations into a program that offers both meaningful remedy *and* sets the foundation for a more inclusive democratic society where women and girls are valued as equal rights holders.¹⁹⁰ Finding the right balance between corrective and transformative reparation is context-dependent, and should stem from

¹⁸⁵ Lykes and Mersky, 598.

¹⁸⁶ Hamber, 570-1.

¹⁸⁷ *Ibid.*, 571-2.

¹⁸⁸ Ross, 74-5.

¹⁸⁹ See Hamber and Palmary’s policy conclusions and principles, 378-80.

¹⁹⁰ For more on the corrective and transformative dimensions of reparations, see section nine.

victim-survivor priorities. But their role in the process should be of their own choosing. Rubio-Marín concludes that, in some respects, “the most that can be asked from victims is that they take an active role, if they so wish, to act as facilitators of change for the benefit of future generations.”¹⁹¹

Financing

Striving for both internal and external coherence, reparations and broader transitional justice efforts will certainly come up against other priorities that intersect and conflict with reparations implementation. Especially in post-conflict environments, states often face a severely-constrained set of resources with which to manage recovery. As such, difficult decisions have to be made regarding prioritization, and serious tensions undoubtedly arise between macroeconomic goals and those related to strengthening peace and democracy.¹⁹² With competing demands for reconciliation, development, economic growth *and* transitional justice efforts, to name a few, it may be a daunting task to build consensus around the necessity of reparations programs, not least because critics may contend that the nation should focus on the future rather than digging into the past, painting a false dichotomy between reparations and rebuilding, and implicitly suggesting that the wrongs of the past have no bearing upon the stability of the future. Therefore, in order to effectively advocate, design and ultimately implement a reparations program, it is critical that practitioners understand the financial and political mechanisms that resource reparation, both to enhance the program’s institutional efficacy and longevity, as well as to recognize the overlapping, competing and potentially legitimate other needs (think: coherence) of a fragile, recovering economy.

There have been two primary models used for the financing of reparations programs: 1) the creation of a special fund and 2) incorporating a line item into an annual budget.¹⁹³ In some states, the latter form of directly financing reparation through a public budget has been much more successful in practice, as in the cases of Argentina, Brazil and Chile.¹⁹⁴ Less effective have been those financed through special funds, such as in El Salvador, Guatemala, Haiti, Malawi and South Africa, where funding was sought through (but not formalized into) the public budget, but also through other avenues such as foreign donations, loans, public bonds, new taxes, private resources from individuals or corporations, recovery of illegal assets, and debt swaps for reparations.¹⁹⁵ Despite the relative potential of each of these sources of funding, the dedicated budget line item seems to offer more assurance that the funding will be available for implementation – although it also leaves it very vulnerable to budget cuts. An ideal scenario would be to secure both a dedicated line item *and* a special fund, assuming that prospective contributions to the special fund were not used as an excuse to deplete the budget allocation.

¹⁹¹ Rubio-Marín, “Gender and Collective Reparations,” 399.

¹⁹² See Segovia, “Financing Reparations Programs,” 654.

¹⁹³ Office of the United Nations High Commissioner for Human Rights, “Rule of Law Tools for Post-Conflict States: Reparations Programmes,” HR/PUB/08/1 (2008), 32.

¹⁹⁴ Segovia, “Financing Reparations Programs,” 660.

¹⁹⁵ *Ibid.*; “Rule of Law Tools,” 33.

With either model, the best way to secure reparation financing is through the building of social coalitions.¹⁹⁶ As with the effort to shape the outcomes of peace agreements, TRC recommendations and reparations design,¹⁹⁷ coalition-building brings greater leverage to advocates' calls for financial dedication to reparations implementation. In many instances, the failure of countries to implement their reparations programs may have had just as much to do with *political* constraints as with economic ones, as in El Salvador, Haiti and Guatemala.¹⁹⁸ Victim-survivor advocates and groups should seek to sustain pressure upon political decision-makers throughout the transitional process, both pre- and present-reparation implementation. If the transitional authority decides to create a special fund to finance reparations, it should take the lead in contributing to said fund, and not rely solely on foreign sources. A reparations program that is funded largely through foreign resources offers little reparative value for victim-survivors, as they may see their government as skirting on its own responsibilities, not to mention the fact that a program premised upon international funding may be no program at all, as "foreign actors believe that this is fundamentally a duty owed by the governments of transitional societies."¹⁹⁹ Political decision-makers should understand that foreign financing, expertise and input can effectively complement, but not replace, host government contributions.

Finally, the design of a reparations program ought to push a robust agenda, but it should nevertheless be grounded in a realistic cost assessment. Undoubtedly, victim-survivors and their advocates face considerable political constraints in building consensus around the implementation of substantive reparations programming. But in most transitional environments, it should also be acknowledged that resources are scarce and severe economic limitations do exist. Effective design, therefore, requires a financing proposal that is technically solid, meaning that "apart from performing a consistent and realistic cost analysis, [it] should establish plans for macroeconomic consistency so that the higher demand for public resources will be compatible with macroeconomic goals over time."²⁰⁰

Let me be clear, however, that reparations are a *legal right* of victim-survivors, and so such a financial framework in no way suggests that limited resources may be used as an excuse to sidestep reparations implementation. As LaPlante and Theidon explain, "[f]raming reparations as a right does not leave it to the discretion of the state to locate reparations among competing social needs and a shrinking share of the economic pie."²⁰¹ But, while I absolutely agree with LaPlante and Theidon in theory and sentiment, the reality remains that, in environments where countless victim-survivors have endured life-altering harms and shattering losses, we will never be able to fully repair everyone to the legal standard. Therefore, we should face the fact that our work is inherently partial, and that it will always, at some point in the process, come up against competing priorities and agendas. Our task is to work within that unfortunate reality, to fight vigorously against

¹⁹⁶ *Ibid.*, 670-1.

¹⁹⁷ To return to the previous discussion on coalition-building, see section one.

¹⁹⁸ "Rule of Law Tools," 32.

¹⁹⁹ Segovia, "Financing Reparations Programs," 671.

²⁰⁰ *Ibid.*

²⁰¹ LaPlante and Theidon, "Truth with Consequences," 246.

politically-imposed constraints, but to recognize that financial limitations do exist and to plan accordingly. With a solid understanding of our financial capabilities, we can better devise a reparations plan that – although perhaps not sufficient in magnitude to account for the depth of victim-survivors’ suffering – may offer enough coherence to effectively acknowledge, respectfully assist, and modestly contribute to victim-survivors, (re)building them a secure foundation upon which to stand.

Expectations

In the aftermath of the Iraq-Kuwait conflict of 1990-1991, the UN Security Council resolved to hold Iraq liable for war damage by establishing the United Nations Claims Commission (UNCC) to administer compensation for losses directly resulting from Iraq’s invasion and occupation of Kuwait.²⁰² Based on the fact that Iraq carries significant oil resources, the UNCC was able to approve awards totaling more than US \$52.4 billion over its 12 years of operation.²⁰³ Research by Hans van Houtte, Hans Das and Bart Delmartino suggests that, as with less endowed reparations programs, the design of a reparations (or in this case a more exclusively compensation) program ought to be grounded in a thorough and realistic stocktaking. It should first perform an honest assessment of money available to the program, and draw up a reliable estimate of resources needed. Second, it should weigh competing societal needs, and seek a proper balance (coherence) between reparations and other transitional programming. This ought to be determined at the earliest possible stage, and then effectively communicated to victim-survivors so as to make them aware of the extent and timing of reparations and to avoid frustration. Finally, once implementation has begun, great effort should be taken to refrain from changing levels and standards of reparation, so as to assure equal, nondiscriminatory treatment.²⁰⁴

The UNCC was a massive compensation operation, but its findings are nevertheless informative for broader reparations programming. The key takeaway is that we should understand, anticipate and manage expectations. Reparations design in advance of implementation should be rigorous in its research, comprehensive in its analysis, and as much as possible, confident in the reliability of implementation before building expectation. One area that requires more attention in this regard is the expectation that is

²⁰² Hans van Houtte, Hans Das, and Bart Delmartino, “The United Nations Compensation Commission,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 324-5.

²⁰³ As of January 2013, the UNCC had paid out US \$40.1 billion of the US \$52.4 billion total awarded, with remaining payments being made on a quarterly basis. See The United Nations Office in Geneva, “United Nations Compensation Commission Pays Out US\$1.3 Billion,” 24 January 2013, (accessed July 15, 2013); available from [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/B73AC2844C62F117C1257AFD002F5B49?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/B73AC2844C62F117C1257AFD002F5B49?OpenDocument). See also The United Nations Compensation Commission; available from <http://www.uncc.ch>.

²⁰⁴ Van Houtte, Das, and Delmartino, 371. To the third point, this is not to suggest that differentiations in reparation type and level ought not to be made, but rather only that, once a person exhibiting particular characteristics is offered a reparations benefit, a second person exhibiting those same characteristics should not then receive something of greater or lesser objective value.

built when victim-survivors agree or even volunteer to provide testimony to a truth commission. LaPlante and Theidon's work in Peru suggests that an "implicit contract" is established when victim-survivors share their histories of violence: "When victim-survivors speak about their suffering and losses, they place a responsibility on their interlocutors to respond: testimony is a demand for acknowledgement and redress."²⁰⁵ Even further, Vasuki Nesiya et al. describe the "dialectical process" of truth-telling and truth-seeking, whereby truth commissions become a forum not only for victim-survivors to share their truths, but also to seek more information about the harms that impacted them.²⁰⁶ This becomes especially important for families of the disappeared, as truth commissions may offer a means for victim-survivors to obtain more information about the whereabouts of their loved ones.

Implicit or explicit, valid or otherwise, we should anticipate the expectations that may be set when employing particular mechanisms, and guard against fueling such expectations unjustifiably. Of course, this will not always be feasible, but we should nevertheless stay alert to the possibility, and strive to minimize the likelihood of unduly raising expectations through transparency, active outreach, and a cautious approach to implementation. It is critical that leadership within the coordinate parts of the transitional justice and reparations frameworks are communicating effectively, so that external and internal coherence are managed and expectations set in one place are backed up by delivery from another. In reality, however, there is often great disconnect between the promises of one body and the follow-through of another, especially as between the larger transitional justice components. In South Africa, as in other contexts, the ultimate delivery of reparations was vastly different than that recommended by the TRC,²⁰⁷ due in part to the unwillingness of the government to implement the recommended measures, but the important point here is that transitional justice mechanisms (in the South African case, the TRC) should pay close attention to the expectations it is setting in its course of operations, especially if those expectations (i.e. regarding reparations) are not ones it can fulfill on its own.

Ultimately, however, given the complex set of moving pieces existent within a transitional environment, this is a process that will assuredly unfold in a multifaceted and non-linear fashion, and we should closely monitor and manage expectations. There will be setbacks. Gains made will be incremental. But if we consistently reflect upon expectations, if we acknowledge our constraints but nevertheless advocate relentlessly, and if we assemble our reparations programming into a structure that sees coherence as its north star, victim-survivors may finally begin to glimpse a meaningful change.

²⁰⁵ LaPlante and Theidon, "Truth with Consequences," 231.

²⁰⁶ Nesiya, et al., 21.

²⁰⁷ Goldblatt, 66-7.

7. The delivery of the actual reparations benefits is essential

Given that massive reparations programs often occur within societies confronting severe resource constraints, the scale of any one reparations benefit is likely to be disproportionately limited. This seeming insufficiency may be partially overcome by a program evidencing a coherent structure, which skillfully ties together a series of individual and collective benefits into a cogent package, thereby showcasing the seriousness of the state to do as much as it can to bring remedy to victim-survivors. Nevertheless, it is not enough to say that a program is coherent, as a series of deficient measures can still be considered coherent in their deficiency. Rather, the individual contents *within* the package are also critical, and should carry their own distinct meanings and values.

Beyond coherence, then, de Greiff pinpoints six other factors that should be considered when designing and implementing a reparations program: scope, completeness, comprehensiveness, complexity, finality, and munificence.²⁰⁸ Scope refers to the total number of beneficiaries included, while completeness measures how that number compares to the larger volume of potential beneficiaries.²⁰⁹ Whereas completeness then relates to the inclusiveness of potential *beneficiaries*, comprehensiveness concerns the inclusiveness of potential *harms or crimes*.²¹⁰ Next, complexity refers to the number of distinct benefit types and distribution methods, and finality to whether receiving benefits forecloses other means of redress. Finally, munificence is a measure of benefit magnitude, an imprecise yet central component of reparative significance.

Building upon de Greiff's taxonomy, but with an eye towards gender justice in particular, Rubio-Marín attaches two additional factors to the assessment of reparations programs: openness and transformative potential.²¹¹ Openness speaks to the level of participation amongst victim-survivors, victim-survivor advocates and groups, and broader civil society in reparations design,²¹² while transformative potential represents "the extent to which a reparations program has the capacity to subvert, instead of reinforce, preexisting structural inequalities."²¹³ Rubio-Marín's categories merit special consideration in gender-just reparations, and while each of de Greiff's classifications ought to be given

²⁰⁸ De Greiff, "Repairing the Past," 6-13.

²⁰⁹ Completeness often relates to how victim-survivors are defined in a given context, and which types of violations are deemed to trigger beneficiary status. See *ibid.*, 6. This parallels the earlier discussion in this paper on mandate construction, section two.

²¹⁰ Comprehensiveness overlaps with completeness, as excluding a particular harm from reparations consideration inherently means excluding particular victim-survivors. This, too, is connected to the section on mandates, as well as the section on the interrelatedness of harms and indivisibility of rights, section three.

²¹¹ Rubio-Marín, "A Gender and Reparations Taxonomy," 16.

²¹² *Ibid.* Openness should also include their participation in relevant processes before and after reparations design, including in the lead up to – and within – peace agreements, truth-telling mechanisms and reparations implementation. For more on this topic, see section one.

²¹³ *Ibid.*, 17. This concept of transformative potential is discussed at greater length in section nine.

due attention, the intersecting fields of completeness and comprehensiveness may be most critical to gender justice specifically, as both relate to victim-survivor inclusiveness, and who qualifies for recognition and reparations benefits.

Despite the scholarly elegance of this taxonomy, however, the reality is that the biggest disappointment of reparations programming is not in its design. Rather, most programs have fundamentally failed at implementation. By and large, this breakdown begins with a lack of political will, but political actors tend to deflect blame onto financial shortcomings. It is true that limited resources are a serious concern in transitional environments, and likely play a major role in restricting the potential magnitude of reparation benefits. But as the previous section makes clear, financial constraints are not in and of themselves reason to forego reparations implementation. Financial considerations may mean reducing the relative munificence – or magnitude – of reparations benefits, but by employing a structure that fosters internal and external coherence, the limited absolute values of any single benefits may still carry reparative meaning as a united package. Therefore, in most contexts where reparations are recommended but subsequently not implemented, it has as much – if not more – to do with a lack of political will than it does with financial limitations.²¹⁴

As the field of transitional justice has developed and progressed over the past several decades, reparations implementation has emerged as its weakest link. Other integral components – including, especially, criminal justice and truth-telling mechanisms – have cemented their place in most post-conflict contexts. Although still plagued by challenges of cost, selectivity and, depending on the situation, either an over- or under-reliance on local custom, these two mechanisms of criminal justice and truth-telling have the capacity to begin the process of (re)constructing the rule of law, and in so doing, perhaps affording recognition and other reparative effects to victim-survivors. The evolution of truth-telling mechanisms, in particular, has brought a greater emphasis upon victim-survivors, with commissions' concluding recommendations trending towards a more expansive and victim-centered approach to reparations.²¹⁵ On the downside, however, such developments have correspondingly led to greater expectations from victim-survivors, and as they have typically been unaccompanied by follow through on reparations implementation, a widening external *incoherence*.²¹⁶ Therefore, delivery of

²¹⁴ See for instance, “Rule of Law Tools,” 32.

²¹⁵ However, truth commissions should not be presumed universally applicable across all contexts. Truth-telling was initially a “tool used against covert, state-sponsored crimes to reveal clandestine violence, to establish the accountability of political and military leaders, and to publically acknowledge the previously silenced stories of victims.” Especially in situations where victim-survivors already know what happened and who is responsible, truth commissions may serve a less effective function or, even worse, may jeopardize social recovery. See Shaw, “Rethinking Truth and Reconciliation Commissions.”

²¹⁶ There is also the valid and important question of whether truth-telling may, at times, be culturally inappropriate and even detrimental to reparation; see Shaw, “Rethinking Truth and Reconciliation Commissions”; and Brandon Hamber, “Do Sleeping Dogs Lie? The psychological implications of the Truth and Reconciliation Commission in South Africa,” paper presented at a public seminar of the Centre for the Study of Violence & Reconciliation, Seminar No. 5, 26 July 1995.

the actual reparations benefits is essential; first, because it builds external coherence within broader transitional justice programming; and second, because it provides victim-survivors with at least a modicum of material and symbolic value, which is necessary for them to begin to bridge their pasts and futures. Most importantly, it is essential because victim-survivors have a legal *right* to reparations benefits for the serious harms they were forced to endure.

While recognizing that massive reparations programs tend to confound the traditional meaning of reparation as necessitating ‘full’ redress, victim-survivors of gross violations of international human rights law and serious violations of international humanitarian law should nevertheless be provided – to the extent possible – with *effective* reparation, which includes the following forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²¹⁷ Each of the five categories is significant, carrying unique value as individual forms while contributing to a larger frame of coherence. Through a victim-centered process that emphasizes victim-survivor priorities, practitioners ought to pursue a design of internal coherence across the reparative forms, a strategy that infuses gender justice into every methodological approach and programmatic execution, and a relentless campaign²¹⁸ of advocacy and pressure upon decision-makers to follow through on implementation.

The paragraphs that immediately follow focus on the reparative forms, or the ‘what’ of reparations benefits implementation, whereas the section to come – section eight – looks at the *process* of delivering said reparation, or the ‘how’ of reparations benefits distribution.

Restitution

Restitution entails, to the extent possible, restoring the victim-survivor to the original situation before the violation or harm occurred.²¹⁹ The Basic Principles afford a breadth of meaning to the term, which encompasses the restoration of liberty, enjoyment of human rights, identity, and family life and citizenship, to name a few.²²⁰ In practice, however, restitution tends to focus on lost property. In many situations of armed conflict or political repression, large numbers of people lose their homes and possessions to destruction, pilfering or displacement, and so upon the cessation of violence, they will naturally call for the return of that which was taken from them. This likely includes more than just the physical home, as other lost possessions may have dire consequences for the survival and sustained life plans of families and communities. For instance, as Mazurana and Carlson describe, “[t]he loss of livestock is particularly devastating for rural peoples, who rely on their animals as a walking bank (as a means to access education, health care, and medicines, and to perform important ceremonies such as those surrounding marriages, funerals, and births).”²²¹

²¹⁷ See Basic Principles, para. 18.

²¹⁸ Implementation should also be overseen by an ongoing monitoring and evaluation effort.

²¹⁹ Basic Principles, para. 19.

²²⁰ *Ibid.*

²²¹ Mazurana and Carlson, 195.

But a gender-just reparations program should do more than restore property. It is critical that any efforts towards restitution also address the potential legal – both formal and customary – challenges of restoring property to women and girls. In many contexts, women are kept from holding land or property titles by discriminatory laws of patriarchal conception. As such, any attempt at property restitution should *at least* include coverage for informal ownership of land, housing and possessions, and be complemented by a coherent emphasis on ending discrimination in legal property ownership through accompanying institutional change.²²² Notably in this regard, the Moroccan Equity and Reconciliation Commission broke from traditional Moroccan inheritance law, which would have provided daughters with half the amount granted to sons, and instead recommended equal payments to female and male family members. The recommendation of the Commission was subsequently implemented as proposed by the Moroccan state.²²³

Beyond the legal impediments of ensuring gender justice through property restitution, there is also the larger question of whether restoring the victim-survivor to the original situation which existed before the violation occurred would in fact be a form of restitution. For female victim-survivors especially, returning them to their pre-conflict environment may only serve to situate them back within a context of gender discrimination and violence. As Rubio-Marín highlights, the challenge for gender-just reparations programs in this regard will be to find the right balance between repairing harms “in ways that help victims reconstruct their lives while contributing as much as possible to the subversion of whatever form of gender subordination” existed in the first place.²²⁴ For women and girls, restitution should be transformative, bringing them back not to where they were, but instead to where they ought to have been as equal rights holders.²²⁵

Ultimately, then, restitution broadens beyond the confined terms of physical property and encompasses a meaning that approaches the more comprehensive umbrella of overarching reparation. While such an understanding begins to touch upon each of the five forms, it is important that one additional comment be made on the specific topic of restitution, and that is with regards to the loss of *intangible* ‘property,’ or what Duggan and Adila Abusharaf refer to as “gendered political assets (reputation).”²²⁶ Such consideration is especially critical for victim-survivors of sexual violence, whose inflicted harms may translate into a perceived loss of ‘purity’ and accompanying ostracism emanating from their families and communities (not to mention their own potential internalization of conflict, guilt and shame). In such instances, it is quite conceivable that the loss of these gendered political assets has a much greater impact upon victim-survivors than the loss of physical property. As such, we should be cognizant of the deleterious effects of violence upon the intangible assets of victim-

²²² See Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 104-5; Mazurana and Carlson, 195.

²²³ Hayner, 173.

²²⁴ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 102.

²²⁵ Rubio-Marín, “Gender and Collective Reparations,” 396.

²²⁶ Duggan and Abusharaf, 649.

survivors, and not presume that restitution is satisfied with the return of physical property. Further, it should also be recognized that victim-survivors of particular violations such as sexual violence may decide to remain silent about the harms they endured, with public acknowledgment having the potential to leave them worse off than bearing their burden silently. Accordingly, avenues should be created for victim-survivors – if they so choose – to receive reparation without being forced into public truth-telling;²²⁷ time limits on accessing reparation benefits should not be unduly restrictive;²²⁸ and creative approaches should be employed to reach those victim-survivors that are particularly vulnerable – such as women and girls – who might not have the means, opportunity or will to come forward on their own.²²⁹

Serious attempts ought to be made not only to restitute physical property, but also to repair those gendered political assets wounded in the violence. In the case of sexual violence, such restitution might take the form of physical and psychosocial rehabilitation, in addition to psychosocial counseling to the spouse of the victim-survivor. It might also mean symbolic recognition through the construction of educational spaces that seek to inform the community about the prevalence and associated harms of sexual and gender-based violence originating within (or likely before) the conflict, and efforts towards changing discriminatory legislation or cultural attitudes that associate sexual violence with anything less than a severe crime. In such ways, (transformative) restitution is both a methodological form and an overarching goal of reparations programming.

Compensation

In many cases, however, physical restitution is not possible. A home may have been destroyed, livestock killed, or dear possessions lost or stolen. In their purest form, these things cannot be returned. But depending upon the wishes of victim-survivors, it is conceivable that they be replaced: a new home, a fresh stock of animals, items that mirror those taken. For some, this may be sufficient. For others, they may prefer material restitution, or compensation at the monetary value of the property lost. For women and girls especially, compensation may be the preferred option, as they may have no legal course – as females at present – to acquire property in their own name.

Beyond the loss of physical property, however, compensation should ideally be considered for any economically assessable damage resulting from gross violations of international human rights law or serious violations of international humanitarian law.²³⁰ Harms to intangible assets, as described above, may also have profound consequences upon the economic means of victim-survivors. To compensate one woman for the loss of her home, but not another for the intangible losses associated with sexual violence –

²²⁷ Unlike in South Africa, where financial reparation was only available to those who were able or prepared to approach the TRC; see Goldblatt, 74.

²²⁸ For more on the importance of *time* in reparations programming, see section eight.

²²⁹ See for instance in Timor-Leste, where scholarship program funds were delivered at the same time as services for women, so that women who were reluctant to take the time to meet their own needs would be able to do so when accessing scholarships for their children; Wandita, Campbell-Nelson, and Pereira, 312.

²³⁰ Basic Principles, para. 20.

including the potential shame, ostracism, and unmarriagability that all too often follow a woman who has been a victim-survivor of sexual violence – seems rather misguided and not well attuned to the long-term economic realities that victim-survivors of sexual violence face. This is not to undervalue the loss of one’s home or physical property, as such an occurrence can be tremendously destabilizing and life-threatening, but rather to acknowledge that we should also give serious consideration to the economic impacts of intangible loss.

The idea of compensating women or girls (or men or boys) as victim-survivors of sexual violence is a subject that carries a great deal of tension in many cultures. But as Rubio-Marín contests, this is no reason to avoid the topic. Rather, it may only mean that we need to be creative in our approach,²³¹ seeking avenues to recognize victim-survivors and distribute compensation in ways that are culturally sensitive, stressing the absolute necessity of protection of the victim-survivors’ dignity, privacy and integrity.

A similar challenge exists when compensating victim-survivors for the loss of a loved one. Especially in the case of a death of a child, spouse or other intimately-connected family member, attributing an economic value to a life seems a cruel and inherently-flawed exercise. And it is. When the *Madres de la Plaza de Mayo* in Argentina were offered reparative compensation for their loved ones that had been forcibly disappeared, they rejected it outright as nothing more than “blood money.” However, such principled stances may be unavailable to the economically destitute.²³² For those struggling to survive, there may be no choice, and so the least we can do is bestow upon victim-survivors a value that is substantive and meaningful.

In the aftermath of the Argentinean dictatorship, the *Comisión Nacional sobre Desaparición de Personas* (National Commission on the Disappearance of Persons) recommended that economic assistance be provided to the families of the disappeared. As Maria Jose Guembe describes, although this recommendation centered on enforced disappearance alone, it set the stage for broader reparations laws to come. But it was not until subsequent pressure from victim-survivors and their advocates, reports from the IACtHR, and a new government taking office under President Carlos Menem – who was himself a former political prisoner – that state policy began to shift in favor of awarding compensation to victim-survivors. A decree was drafted that would award former political prisoners who met a set of criteria with compensation equal to one-thirtieth of the monthly salary assigned to the highest-ranked civil servant, for each day of detention.²³³ This standard of basing compensation upon civil servant salaries became a model for subsequent reparations programs.

²³¹ Rubio-Marín, “The Gender of Reparations in Transitional Societies, 108-9.

²³² See Brandon Hamber and Richard A. Wilson, “Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies,” *Journal of Human Rights* 1, no. 1 (2002), cited in LaPlante, “On the Indivisibility of Rights,” 167.

²³³ María José Guembe, “Economic Reparations for Grave Human Rights Violations: The Argentinean Experience,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 21-31.

In Chile, reparation payments were based on average civil servant's salary, and as Nesiah et al. explain, it was significant that compensation was not gender-differentiated. In communities where significant gender disparities exist in real wages, it is critical that redress is proportionate to the harm suffered, not based upon the individual's pecuniary loss.²³⁴ Rather than tying compensation to lost earnings specific to the particular individual, using a standard (and localized) reference point such as civil servant salary helps to ensure that women, girls and other vulnerable groups are afforded equal treatment for the violations they endured.

It is also critical that compensatory reparation for the loss of a loved one is approached with a non-discriminatory lens towards the lived realities of local family units. Individuals in partnerships not officially recognized by the state should not automatically be excluded from reparations qualification, nor should children borne out of wedlock or living under the care of non-biological parents. In conflict situations, particularly in Africa, women may take responsibility for additional children "orphaned" by the war, but few if any reparations programs have taken the needs of these children into account.²³⁵ Inevitably, reparations programs will be plagued by finite resources, but that is no reason to draw lines in the sand that ignore lived realities. Lines should reflect relationships of *dependency*, not only national law and biology.

It should also be acknowledged that compensatory reparation is more than just material restitution. It involves not only that which is necessary to restore an individual to the original situation before the violation occurred – including providing for material damages, physical and mental harms, moral damages, and costs required for legal, medical and psychosocial services – but also entails those *opportunities* lost as a result of the violation, such as in employment, education, social benefits, earnings and earning potential.²³⁶ Assessing the economic impact of harms, therefore, should extend beyond the isolated moment of the original harm. It should be placed into a broader context that recognizes the economic dimensions of harms as their effects move chronologically forward. As such, these impacts and lost opportunities span not only the time between the original harm and the present day, but they pervade the future. The loss of a parent, spouse or breadwinner, for example, may have profound consequences not only upon the immediate lives of victim-survivors, and not only upon where their lives would have been today if not for their loss, but also upon their opportunities going forward.

These economic effects may be particularly harrowing for women and girls, as their harms and losses do not occur in isolation. Rather, they often exist under a patriarchal umbrella that exacerbates their barriers to repair. Legal impediments may render property restitution a challenge without a male counterpart; gender-based violence may do irrevocable harm to intangible assets; and the loss of a male spouse or breadwinner may leave women and girls with fewer means available to access resources, land and opportunity. Within such systems, unless we explicitly target the vulnerability of women

²³⁴ Nesiah, et al., 36.

²³⁵ Mazurana and Carlson, 191.

²³⁶ Basic Principles, para. 20.

and girls, we may overlook and undervalue the economic effects upon female victim-survivors, or even exclude them from receiving adequate reparations altogether.

Even within reparations programs themselves, one of the biggest challenges for women and girls is accessibility: due to discriminatory land title rights or inheritance laws; procedural hurdles related to documentation, language, or geographic proximity; and forms of reparation distribution that lead to women's and girls' benefits ending up in men's hands.²³⁷ With such an understanding, then, we should approach reparations implementation holistically, recognizing, first, that the effects of harms to victim-survivors often seep outward beyond the immediate rights violation and its physical recipient; and second, that access to reparation for both the immediate harms and their accompanying effects may similarly be overly restrictive unless our programmatic design explicitly acknowledges and confronts the gendered dimensions of harms that have occurred, and appropriately places them within the larger institutions and structures that have permitted or even fomented the establishment and continuation of such gender norms. This framework can then serve as the focal point for developing an implementation methodology that combats discrimination and affords access in a more inclusive manner. As was explored in sections two and three of this paper, a harms-based notion of vulnerability that appreciates the indivisibility of rights may provide the most gender-just framework through which to understand and approach the multifaceted economic consequences of violence upon female victim-survivors.²³⁸

These more inclusive methodologies will affect how we evaluate the economic consequences of violence upon (female) victim-survivors, and our conclusions will impact who receives compensatory reparation and at what amount. But it is important to acknowledge that in most (if not all) massive reparations programs, the ultimate level of compensation delivered to any one individual will be small in comparison to her or his 'level' of suffering. But it can still afford reparative value if accompanied by a victim-centered process, meaningful recognition representing the seriousness of the state, and an implementing structure that incorporates a coherent array of reparative forms and transitional justice mechanisms.

Rehabilitation

The third category of reparation – rehabilitation – receives the least attention in the Basic Principles, which only acknowledges that rehabilitation “should include medical and psychological care as well as legal and social services.”²³⁹ Yet it is often the services broadly captured under the heading of rehabilitation that are most prioritized by women in the aftermath of violence. Focusing on basic needs for them and their families, female victim-survivors tend to emphasize assistance in the areas of physical and mental health services, housing, employment and education.²⁴⁰

²³⁷ For more on the process of *how* victim-survivors access reparations, see section eight.

²³⁸ For more on the harms-based notion of vulnerability, and the notion of indivisibility of rights, see section three.

²³⁹ Basic Principles, para. 21.

²⁴⁰ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 109.

Therefore, in a victim-centered and gender-just reparations program, it is important, first, to give due weight to the priorities of victim-survivors, and ensure that such rehabilitative services are made available. A female victim-survivor's ability to rekindle a 'normal' life after a period of conflict is likely to be an uphill battle, but it becomes a Sisyphean task when accompanied by a spouse who lost his livelihood in the war and has no prospects for employment; or by a child with no opportunities because she missed a decade of schooling and has no means to make up the education; or by the repercussions of her own sexual-based victimization, where she now requires fistula repair surgery, ongoing medication after having contracted HIV, and psychosocial counseling not only for the experience of sexual-based violence itself – and the potential banishment from her family or community – but also for the physical and mental strength to care for the child borne as a result of rape. These are all very real outcomes confronted by reparations programs, and with such a contextual foothold, it is easy to see why female victim-survivors prioritize social services for themselves and their families. Especially for those most vulnerable and marginalized, such basic services may have never been available even prior to the period of mass violence, and so the opportunity to avail themselves of such treatment is understandably paramount.²⁴¹

Yet at the same time, we should acknowledge that these services often fall under the heading of development, owed to individuals as *citizens* and therefore insufficiently specific to their entitled reparation resulting from harms they endured as *victim-survivors*.²⁴² As the above examples make clear, however, effective reparation may not be possible without these types of programs. Therefore, the appropriate response is not to diminish the importance of rehabilitation services within reparations programs, they are essential. Instead, the response should be to ensure that any such rehabilitative services offered as part of a reparations program: 1) are implemented in a manner that vocalizes and explicitly ties said services to their reparative origins; and 2) are employed with internal coherence, meaning that they are sufficiently accompanied by other forms of substantive reparation.

Further, in a gender-just reparations program, rehabilitative services should not only be made available, but they should also be specifically attuned to women's and girls' needs, as gender bias may otherwise exclude them from receiving the benefits they require.²⁴³ It is essential to remember that victim-survivors of serious crimes often need specialized health services, which are not available in post-conflict settings where the majority of the victim-survivors live. Victim-survivors of sexual violence, for instance, may require gynecological surgery, which may not only be inaccessible geographically, but is also likely to cost a great deal and not be covered by basic healthcare assistance. General access to education services may overlook the particular challenges girls face from their school environments, such as gender-insensitive textbooks or harassment on the way to and from school.²⁴⁴ One way to overcome these preexisting biases is to be explicit about

²⁴¹ This leads us, again, back to the interrelatedness of harms and the indivisibility of rights.

²⁴² De Greiff, "Justice and Reparations," 470-1.

²⁴³ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 111.

²⁴⁴ Mazurana and Carlson, 197.

what these rehabilitative services cover, and ensure that such a design includes the elements that target women and girls specifically.²⁴⁵

Notably, the Basic Principles also bring attention to the effects of mental suffering, listing “mental harm” as an injury warranting reparation in the form of compensation, and highlighting “psychological care” as a component of rehabilitation services.²⁴⁶ Yet “[w]ith the notable exception of Chile... there is almost no experience with mental health services being provided to large numbers of victims or their families, as part of an intentionally designed, national reparations program.”²⁴⁷ There have been targeted interventions related to particular aspects of the transitional justice process – with psychological support offered to victim-survivors as they testified in Peru, South Africa and Sierra Leone. However, this is a relatively new field, and its evaluation suffers generally from a lack of empirical data as to the psychological distresses – and corresponding approaches to mental health treatment – *specific* to the aftermath of gross violations of international human rights law and serious violations of international humanitarian law.²⁴⁸ It is critical that more research be carried out in this area, especially in non-Western contexts where individual identity may stand less forefront than the larger collective.

Even beyond intervening psychological care, there is little empirical data on the psychological value of receiving reparations more generally.²⁴⁹ As Lykes and Mersky observe, however, there is a general sense among mental health and psychosocial researchers and practitioners that many of the varying forms of reparation can have an important impact on psychosocial conditions at both the individual and collective level, and that the prospective healing effects of any one measure may depend on how well it coheres with other reparative and transitional justice endeavors.²⁵⁰ Significantly, then, each of the forms of reparation has potential psychosocial value. Those already discussed – including restitution, compensation and rehabilitation – comprise the more direct forms of reparations benefits, whereas the forms of satisfaction and guarantees of non-repetition are more reliant on process, and specifically within a gender-just program, on whether implementation is “crafted with gender-aware forethought and care.”²⁵¹ This makes intuitive sense, as material reparations afford a tangible value – in the form of, for instance, livestock, compensation or health services – while the value of the remaining forms of reparation is much more experiential. The potential to afford reparative effects from symbolic reparation or guarantees of non-repetition really hinges on how they are received by victim-survivors, and the utility and meanings that they attribute to them. In this way, their value derives from – or at least begins at – a mental or psychosocial interaction.

²⁴⁵ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 111.

²⁴⁶ Basic Principles, para. 21.

²⁴⁷ Lykes and Mersky, 591.

²⁴⁸ See *ibid.*, 591-3; see also Mazurana and Carlson, 200.

²⁴⁹ Mazurana and Carlson, 200.

²⁵⁰ See Lykes and Mersky, 590-1.

²⁵¹ Nairobi Declaration, para. 3(A).

Of course, material reparations may also carry symbolic meanings beyond the tangible deliverable, and their value may accordingly be pronounced when their distribution is similarly crafted with forethought and care. The distinction made here is that these first three forms of reparation may afford concrete ‘value’ in and of themselves, whereas the latter forms of reparation depend to a much greater extent upon how they are internalized within individual and collective victim-survivors.

Rehabilitation helps to bridge this gap between the material and symbolic forms of reparation, as it can entail direct benefits through treating physical or mental health injuries, undertaking legal action, or availing victim-survivors of other social services necessary to reintegrate them into society, such as education or employment opportunities. At the same time, rehabilitation may also encompass more symbolic modalities around that which is necessary to rehabilitate into a functioning, ‘normal’ life. There is great potential for reparative effects to be felt, for instance, from the rehabilitative elements of issuing a disappearance certificate that allows legal transition without compelling emotional and spiritual transition, or from affording a loved one a proper burial that adheres to local customs or personal worldviews, or from public acknowledgment of the truth and state acceptance of responsibility. Through this lens, the form of rehabilitation overlaps with the broader sense of restitution discussed earlier, and the meanings of reparation more generally.

In many contexts, true rehabilitation requires larger structural change. Especially for female victim-survivors of sexual violence, mutilation and enforced disappearance, healing may only come “from a transformed society that stops the process of holding victims themselves (partly) responsible for their own victimization.”²⁵² A gender-just program, therefore, should strive not only to correct that which requires rehabilitation from the conflict, but also to progressively transform the underlying system which breeds gender-based discrimination and victim-blaming and condones gender-based violence.

Satisfaction

As Hamber describes, all acts or objects of reparations “represent or indirectly express something abstract or invisible” to individuals, symbolizing: first, something to victim-survivors; and second, something about those giving or granting the reparations.²⁵³ The first level – symbolizing something to victim-survivors – affords potential acknowledgment and recognition of victim-survivor suffering, and may assist in processes of coping, labeling responsibility (and thereby redirecting blame and lessening internal guilt) and modest healing. The second level – symbolizing something about those giving or granting the reparations – may represent the broader community’s willingness to confront the past, accept victim-survivors (back) into society, and change direction going forward.²⁵⁴ When those giving or granting reparation do so through a victim-centered approach – with empathy, humility and genuine repentance – the second level of symbolism may greatly enhance the first. In this way, Hamber discusses the importance of “narrowing the micro and macro,” or effectively bridging the gap between

²⁵² Rubio-Marín, “Gender and Collective Reparations,” 397.

²⁵³ Hamber, 565-6.

²⁵⁴ *Ibid.*, 566.

the inner-directed grief and suffering of individuals, and how that suffering is placed and understood within the real sociopolitical world.²⁵⁵ He continues:

Reparations are a deep interpersonal and social barometer for victims. They tell the victim much about their place in society and signal whether there is social space for their grief, anger and feelings of injustice. This is important because generally in political violence it is ‘the society’ (the social world) that is the cause of their suffering, and without social recognition of this their suffering runs the risk of continuing to exist only in their ‘internal world’ where it can be acute and isolating.²⁵⁶

The symbolic value of reparations may bring satisfaction for victim-survivors, both on an internal – whether individual or collective – level, as well as through that individual’s or collective’s experience of interpersonal or inter-societal relationships. Although all forms of reparation – including material reparations – have the potential to carry such symbolic meaning when designed and delivered with forethought and care, it is traditionally under this heading of satisfaction that the more intangible and symbolic modes of reparation reside. According to the Basic Principles, the reparative form of satisfaction includes any or all of the following: 1) measures taken to end violations; 2) public truth-telling; 3) the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance with their proper recovery, identification and (re)burial; 4) official declarations restoring the dignity, reputation and rights of victims; 5) public apologies with acceptance of responsibility; 6) sanctions against those liable; 7) commemoration; 8) dissemination of accurate information regarding the violations that occurred through ongoing trainings and education.²⁵⁷

These modes of reparation intersect with other branches of transitional justice, including truth-telling, institutional change and criminal justice. In this way, internal and external coherence merge, where these external mechanisms have the potential to enhance reparative effects for victim-survivors. At the same time, however, there may be minimal reparative effect if these mechanisms do not cohere with material reparations. As LaPlante and Theidon describe, for instance, criminal justice is focused on prosecuting individual perpetrators, and therefore precludes the possibility of holding the state accountable as an entity. Accompanying economic reparations, however - even though likely only available in modest quantities – may provide symbolic value by signaling the state’s acknowledgment of and acceptance of responsibility for victim-survivor suffering.²⁵⁸ Therefore, the reparative modes of satisfaction and their transitional justice counterparts may result in reparative meaning for victim-survivors, but it is difficult to imagine their eliciting such reparative effects when not complemented by a coherent emphasis on material reparations.

²⁵⁵ *Ibid.*, 571.

²⁵⁶ *Ibid.*

²⁵⁷ Basic Principles, para. 22.

²⁵⁸ LaPlante and Theidon, “Truth with Consequences,” 245.

Public truth-telling may also be a critical form of satisfaction, even if not pursued through a formal truth commission. Priscilla Hayner, in her pioneering work on truth commissions and transitional justice, highlights the crucial distinction between knowledge and acknowledgment, articulated at the first major conferences on transitional justice in 1988.²⁵⁹ For some victim-survivors, she describes, “a truth commission does not so much tell them new truth as formally recognize and acknowledge what has before been denied.”²⁶⁰ By effectively “lift[ing] the lid of silence,”²⁶¹ such official acknowledgment may – as per Hamber’s two levels of symbolism – produce inner-directed meaning that allows for progress in healing, while also offering further reparative value by bringing victim-survivors one step closer to reconnecting with their broader society and its governing state.

LaPlante and Theidon explain how, “[a]fter years of marginalization and ethnic discrimination, Peruvian victim-survivors finally encountered a state endorsed forum in which their stories and demands were heard and acknowledged.”²⁶² The truth commission helped to highlight to victim-survivors that they were not alone, and that their experiences of loss and suffering fit within a collective narrative.²⁶³ Such encounters help to narrow the gap between Hamber’s micro and macro, effectively positioning individual meanings within larger societal realities. However, the reparative satisfaction acquired through this process diminished with the subsequent lack of reparations implementation more than two years later,²⁶⁴ again suggesting that although satisfaction or symbolic reparation may be important steps, on their own they are ultimately not enough.

Whether through a truth-telling body or otherwise, one form of satisfaction that often plays a critical role in post-conflict or post-political-violence transitions is in the “search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed.”²⁶⁵ Until these processes are undertaken, many victim-survivors may effectively remain in legal, emotional or spiritual turmoil. In Argentina, one of the earliest and most well-known cases of state-led enforced disappearance campaigns, family members and those intimately connected to the disappeared were forced to subsist in a state of legal limbo for years, unable to process their loved ones’ wills, sell their apartments, or close their bank accounts. Their only option was to declare their loved one “presumed dead,” a decision that afforded no recognition of state responsibility, and therefore was so beset with psychological anguish and political capitulation that most – except the most economically destitute – were unwilling to take it. But in 1994, a new status of “forcibly disappeared” was created, which offered a legal equivalency to death for the purposes of civil matters, but stopped short of declaring the

²⁵⁹ Hayner, 21. Hayner notes that Professor Thomas Nagel of New York University is credited with first articulating the distinction between knowledge and acknowledgment.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*, 20.

²⁶² LaPlante and Theidon, “Truth with Consequences,” 238.

²⁶³ *Ibid.*, 239.

²⁶⁴ *Ibid.*, 241.

²⁶⁵ Basic Principles, para. 22(C).

person dead.²⁶⁶ This new legal category availed family members of their right to access the property of their loved ones, but perhaps more importantly, it was a step that offered both implicit recognition of their suffering and some measure of institutional support to move beyond their psychological limbo (if and when they were ready to do so).

Simon Robins describes how family members of the missing may be tormented not only by their own internal manifestations of uncertainty, but also by how their inner-directed suffering conflicts with demands from their families and communities. His work on the disappeared in Nepal highlights that, especially for younger women whose husbands are missing, the nature of this “ambiguous loss” presents a striking tension between women’s unresolved marital status and community perceptions towards women who leave the family home or seek to remarry.²⁶⁷ Within such environments, “the search for the disappeared” may be effectively complemented by local memorialization processes that seek to publically recognize and commemorate loved ones as missing (rather than dead), while also addressing surviving family members’ psychosocial imperative to challenge existing stigma and exclusion, and “collectively reconfigure the social space in which survivors live.”²⁶⁸ Memorialization can then serve as a reparative form of satisfaction, narrowing the gap between Hamber’s micro and macro, offering both personal value and sociopolitical meanings that may help victim-survivors regain access to their families and communities.

In addition to the search for those missing or lost, it is also essential that a reparations program appreciates the importance of proper treatment of the dead, including through “assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities.”²⁶⁹ Beyond the emotional anguish of not appropriately caring for the death of a loved one, surviving family members in many cultures may carry tremendous burdens from having not performed the rites necessary for proper mourning and spiritual transition. In the aftermath of violence, then, affording families and communities the opportunity to engage in localized rituals and (re)burial practices can bring profound meaning and reparative effects to survivors, helping to absolve them of their responsibilities to the dead. However, this is often complicated by conflicting preferences and cultural beliefs around potential exhumation and reburial, especially when it comes to those buried in mass graves.²⁷⁰ Before any determinations are made, therefore, a thorough assessment should be performed that is grounded in the wishes of

²⁶⁶ Hayner, 171.

²⁶⁷ Simon Robins, “Constructing meaning from disappearance: Local memorialisation of the Missing in Nepal,” Paper submitted to ISA 2012 San Diego, Panel: *In Search of Truth and Reconciliation*, 1 April 2012. For more on “ambiguous loss,” see Pauline Boss, *Ambiguous loss*. (Cambridge, MA: Harvard University Press, 1999).

²⁶⁸ *Ibid.*, 17, 20.

²⁶⁹ Basic Principles, para. 22(C).

²⁷⁰ See for instance the debate over exhumation and reburial after the 2004 massacre in the Lango village of Barlonyo, northern Uganda; Keith Proctor, “‘They Were Just Thrown Away, and Now the World is Spoiled’: Mass Killing and Cultural Rites in Barlonyo,” *Feinstein International Center*, Tufts University: Medford, USA, 2013.

surviving family members and, in the case of mass graves, seeks to build community consensus for a particular course of action.

In a gender-just reparations program, the reparative effects emanating from such forms of satisfaction may need to touch on more than just the first two levels of symbolism – those being, symbolizing something to victim-survivors, and representing something about those giving or granting the reparations. Hamber and Palmary highlight the importance of a third level from a gender lens, where “[r]eparations *at a collective level* also represent or indirectly express how a society understands and represents gender relations.”²⁷¹ The design of symbolic forms of reparation in a gender-just program should then ideally seek to address the gendered dimensions across all three levels, seizing the transformational opportunity to represent female victim-survivors as citizens with equal value and rights.

One form of symbolic reparations that may play a significant part in reparative satisfaction, while also holding the potential to convey illustrative gender meanings, is the delivery of apologies. As with other modes of symbolic representation, words may be expressed (or actions performed), but the symbolism of those words may be reflected to a much greater extent by whom is chosen to speak, where that person chooses to speak from, and how he or she chooses to deliver those words.²⁷² As a paradigmatic example, after reading the report produced by the National Commission on Truth and Reconciliation, Chilean President Patricio Aylwin delivered an emotional statement on national television, begging forgiveness from victim-survivors on behalf of the state.²⁷³ Such public acknowledgement and apology – by the president, on national television, and resonating with apparent sympathy and remorse – can bring profound meaning to victim-survivors. It can also begin to reduce stigma emanating from particular harms – especially around crimes of sexual and gender-based violence – helping to initiate the processes of healing and reintegration.²⁷⁴ If such apology and acknowledgment targets women and girls specifically, it has the potential to effectively touch upon all three levels of Hamber and Palmary’s symbolism: providing meaning to individual victim-survivors (as women and girls), reconnecting female victim-survivors with their state and society, and representing to women and girls a changing conception of gender relations within society. Significantly in this regard, despite the otherwise lackluster effort of the Sierra Leone Government to champion a substantive program of reparations, President Ernest Bai Koroma did follow through with the TRC recommendation that the President – as the “Father of the Nation” and head of state – publically apologize and acknowledge the

²⁷¹ Hamber and Palmary, 357.

²⁷² See Rubio-Marín’s discussion on the gendered relevance of apologies, “The Gender of Reparations in Transitional Societies,” 114.

²⁷³ “Discurso de S.E. El Presidente de la República, Don Patricio Aylwin Azocar, al dar a Conocer a la Ciudadanía el Informe de la Comisión de Verdad y Reconciliación,” March 4, 1991, published in English as “Statement by President Aylwin on the Report of the National Commission on Truth and Reconciliation,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz, vol. 3. (Washington: US Institute of Peace Press, 1995), 169-173, cited in Hayner, 48.

²⁷⁴ Mazurana and Carlson, 209.

harms suffered by women and girls during the conflict in Sierra Leone.²⁷⁵ This representative gesture may be of great importance to female victim-survivors, if perceived to be sincere and heartfelt.

Beyond symbolic acts, memorials – as visual representations – are perhaps the most well-known form of symbolic reparation. Yet most memorials seeking to epitomize the impact of political violence in societies transitioning out of conflict tend to privilege violence against men, while violence against women becomes silenced or depoliticized.²⁷⁶ This relates back to the prioritization of CPR violations over ESCR violations, and the gendered nature of viewing the effects of conflict as being primarily *physical*, instead of also recognizing the profound impacts upon financial, psychosocial and spiritual wellbeing. Further, the gendered representations of most memorials choose to not only remember actions more likely to involve men, but when they do remember women, they often paint them as lacking in agency.²⁷⁷ Women and girls continue to be portrayed in one-dimensional fashions, relegated exclusively to the private sphere of passivity. Instead, memorial design ought to take a critical gender lens to prospective representation, and embrace greater complexity. Memorialization in a gender-just reparations program should strive to afford individual meaning to female victim-survivors as individuals and as females, but also to situate them within a larger collective that, on the one hand, is sufficiently contextualized to sociopolitical realities so as to give its meanings truth, while at the same time, offers movement away from its past and towards a new political order premised upon gender equality.

One notable example of this in practice involves an International Committee of the Red Cross (ICRC) intervention in Nepal, where wives and mothers of the missing were given modest financial assistance to create their own forms of commemoration. In most cases, the women chose a physical object that could function as both a memorial and offer a service to the community. The names of those missing were recorded on the object, to bring recognition to them as missing, but also to ensure that both the missing and their families were not forgotten. Giving the object a functional utility helped to instill greater social relevance, potentially contributing to families' reintegration into their communities.²⁷⁸ The ICRC intervention, therefore, empowered affected females with the opportunity to design their own means of remembrance, and in so doing, allowed them to produce something that brought both individual meaning and significance to the community. By placing the decision-making power in the hands of female victim-survivors in particular, it may have also played a modest role in challenging gender norms in the community.

²⁷⁵ See Human Rights Commission of Sierra Leone, "Restoring Women's Dignity: President Ernest Bai Koroma's Apology to Sierra Leone Women Implements TRC Recommendation," *Awareness Times*, 29 March 2010 (accessed July 21, 2013); available from <http://news.sl/drwebsite/exec/view.cgi?archive=6&num=14972>.

²⁷⁶ Hamber and Palmary, 331-2; see also Rubio-Marín, "The Gender of Reparations in Transitional Societies."

²⁷⁷ *Ibid.*, 339.

²⁷⁸ Robins, 16-7.

Yet it is often the case that a tension exists between the need for localized meaning and the desire for progressive change, or the give and take that Rubio-Marín addresses in her discussion of corrective and transformative reparation.²⁷⁹ In the context of memorials often silencing women's agency, or only addressing their suffering when it derives from relationships with the men in their lives – such as through their roles as mothers and wives – Rubio-Marín points out that an exclusive focus on women's experiences *only as* mothers and wives may reinforce patriarchy, but it should also be said that their experiences as victim-survivors are partly shaped through social meanings, which should be acknowledged if they are to feel duly recognized.²⁸⁰ Gender justice may ultimately necessitate an entirely transformative agenda, but in the short-term a middle ground between corrective and transformative may be more in line with victim-survivor wants and needs. In the end, reparations design should be approached with a nuanced understanding of these competing forces, and always proceed with the wellbeing of victim-survivors at its forefront.

Guarantees of non-repetition

Guarantees of non-repetition may be the reparative form with the best chance to transform gender relations and construct a new political order.²⁸¹ Unlike the other four categories of reparative form, which in literal meaning seek only to restore the victim-survivor to a condition that existed prior to a given period of conflict, the term 'guarantees of non-repetition' inherently necessitates an exploration of the underlying causes of the violations, so as to stop them from occurring again in the future. In this way, the conceptual basis for this form of reparations requires a look further into the past, with the aim to shape structural patterns further into the future.

As with the reparative form of satisfaction, the modes of delivering guarantees of non-repetition overlap with broader transitional justice mechanisms including, especially, institutional change. The Basic Principles include the following: 1) ensuring effective civilian control of military and security forces; 2) ensuring that all proceedings abide by international standards of due process, fairness and impartiality; 3) strengthening the independence of the judiciary; 4) protecting persons in the legal, medical, healthcare, media and human rights professions; 5) providing human rights and humanitarian law education to all segments of society and trainings to law enforcement, military and security sectors; 6) promoting the observance of codes of conduct and ethical norms by public servants and economic enterprises; 7) promoting mechanisms for preventing and monitoring social conflicts and their resolutions; 8) reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.²⁸² Each of these modalities has the potential to contribute to broader structural (re)development, but they may also provide reparative effects to victim-survivors.

²⁷⁹ See for instance Rubio-Marín, "Gender and Collective Reparations," 393-9.

²⁸⁰ *Ibid.*, 398.

²⁸¹ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 117.

²⁸² Basic Principles, para. 23.

Implementing such measures may reduce the chance that victim-survivors are exposed to violence in the future, thereby augmenting the internal and external coherence of reparations programming.²⁸³ Although institutional change in many cases will take time to assemble, actions taken under the heading of guarantees of non-repetition need not only be long-term in outlook. As Rubio-Marín and other authors make clear, in the aftermath of conflict, women and girls may be forced to manage more than the legacies of a violent past; they may also have to confront new and sometimes higher levels of violence in their present.²⁸⁴ In these all-too-common scenarios, the conclusion of a public peace overlooks the lack thereof in the private sphere, a strikingly gendered phenomenon. But given its future-oriented outlook, guarantees of non-repetition may steer attention to such foreseeable tendencies, and adopt measures to prevent repetition (whether context-specific repetition or gendered cross-contextual trends) in the short-term.²⁸⁵

These more immediate undertakings available to duty bearers may also protect and enable victim-survivors to gradually come forward and claim their due reparation from past injustices. In this way, the adoption of new or revised gender-sensitive laws on witness protection, property ownership and non-discrimination can and should – behind genuine leadership – occur without delay.²⁸⁶ Admittedly, it will take time for such enactments to filter down to the community, and especially for victim-survivors to believe in their legitimacy, but these actions can nonetheless signal the beginning shifts of change and, with time, concretize their guarantee of non-repetition.

The institutionalization of guarantees may also bring reparative effects to victim-survivors through a recognition that their suffering has at least served as an engine for change.²⁸⁷ Such reparation, then, is premised upon a broader transformation, as such guarantees will not be ‘felt’ unless victim-survivors genuinely believe that the system which permitted their initial violations is increasingly protective of their (individual and collective) wellbeing. If that transformation grounds itself in a gender-just approach that seeks to elevate the status of women to one of equal citizenship, its process of implementation may afford reparative meaning to women as a collective across Hamber and Palmary’s three levels of symbolism: bringing symbolic value to female victim-survivors collectively, representing the reform-ing view of state and society towards these female victim-survivors and women more broadly, and erecting the accompanying structure that will help to solidify an attitudinal guarantee of not repeating such gendered injustice.

²⁸³ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 117.

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ Contrast this with the Government of Uganda, which still has yet to enact a substantive witness protection law, and maintains a sweeping amnesty act for all who renounce and abandon involvement in the conflict against the government, effectively blocking access to reparation for the vast majority of victim-survivors. See Mazurana, et al., “Making Gender-Just Remedy and Reparation Possible,” 57-9.

²⁸⁷ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 117.

8. Process is paramount

The success of a reparations program is, more than anything else, about process: a victim-centered, gender-just process. Each of the preceding sections of this paper offers conceptual and practical guidance on content, but that content finds meaning through process. Section one highlights the significance of including victim-survivors and their advocates in the design and implementation of transitional mechanisms, but getting them in the room may be inconsequential if they are not actively engaged in the process as contributing – or rather, leading – members. Section four underscores that justice should be ‘felt’ locally within sociopolitical realities, but it should also actively stand its ground in the face of discrimination masking as tradition. Navigating such terrain is a process that requires consultation, context and resolve. Section seven touches upon the substantive forms of reparation, and one type of symbolic reparation that carries particular value for victim-survivors is the delivery of apologies. Yet a meaningful apology is not a single one-directional event that closes off further discussion of the past. Rather, it is a step in a process of opening space for dialogue, and especially one for victim-survivors, to have their voices heard.

Therefore, process is a principal theme that flows the length of this paper. While the larger paper addresses the reparations process as it is affected by the wider spectrum of societal transition, this section focuses on the process of delivering reparations: specifically, how victim-survivors are made aware of the existence of a reparations program; how they can inform and shape that program and the processes that carry it forward; how they are able to effectively gain access; how they approach and receive reparation in a manner that promotes their safety, dignity and individual/collective wishes; and transitioning into section nine, how they perceive the reparative meanings behind that process. Gendered implications are infused within and throughout.

Outreach and engagement

A reparations program (like any TRC potentially before it) should first make the public – and victim-survivors in particular – aware that such a policy and eventual program is envisioned. As detailed in section one, this should begin with the active participation and consultation of victim-survivors, their groups (including women’s groups) and advocates. Their involvement should be sought through pre-established linkages and a well-coordinated outreach campaign. Outreach that stems, at least in part, from existing connections to victim-survivors not only helps to uncover and target many of those most vulnerable and marginalized, but effective engagement with known victim-survivors also helps to further their own reparatory processes. From the outset, therefore, outreach is dual-purpose. It should seek to locate victim-survivors, so as to actively engage them in reparations program design and decision-making, while at the same time raise awareness of the program more broadly.

Communication should be pursued through a range of media outlets, including radio, television and newspaper, as well as through community focal points, such as religious and traditional centers and their respective leaders. Beyond information disseminated via the public relations department of a reparations program or TRC, a working relationship

with the broader media can contribute enormously to the program's capacity to reach its target audience(s).²⁸⁸ Alexander Segovia attributes the failure of the Haitian CNJV, in part, to the lack of such a communications strategy, which could have shared the work of the Commission with broader Haitian society and thereby helped to build the political capital necessary to effectively implement its recommendations.²⁸⁹

Just as important as coverage, though, are the elements of style, structure and content.²⁹⁰ Outreach should be translated into local dialects, be accessible to the illiterate, and adopt creative approaches and formats that aim to reach the less visible, including women and girls. Moreover, messaging should do more than seek engagement and raise awareness of the program's existence. It should also inform the public of the purpose and mandate of the reparations program, of victim-survivors' right to reparation, and of the process and protocols by which they can access that reparation, including any administrative details regarding time and place.

For women and girls, a media strategy should also be adopted that speaks to their unique circumstances and vulnerabilities. Female victim-survivors may not know that their harms potentially trigger reparation, or they may be especially hesitant to come forward with their stories. This is often the case with victim-survivors of sexual violence, and so it will be essential to embrace a proactive media strategy that clarifies sexual violence as a crime within the mandate of the reparations program (if applicable), and that appropriately explains the processes through which victim-survivors can approach the program confidentially, if they wish to do so.²⁹¹

Because of the high levels of stigma facing victim-survivors of particular crimes – families of the disappeared, children forced to participate in fighting forces, victim-survivors of sexual violence, children born of rape – processes will need to be put into place to enable them to come forward in ways that do not label them as victims of these high stigma crimes. Similar approaches are used in working with child soldiers, where they often come under the heading of “separated children” along with children who are displaced and separated from their families. In the case of children born of rape, many of whom do not know their origins, their caregivers should be able to come forward to claim reparation in ways that do not inform the children of their violent origins if this is against the wish of their mothers and or caregivers.

Outreach efforts towards these victim-survivors may be effectively complemented by general public education campaigns, such as ones in opposition to violence against women.²⁹² In Timor-Leste, the CAVR-recommended reparations program prioritized those victim-survivors that had endured the most severe harm, including (among others)

²⁸⁸ Nesiiah, et al., 16. Although this report is in reference to truth commissions, its recommendations regarding outreach and media strategy may also be applicable to reparations programming.

²⁸⁹ Segovia, “A History of Noncompliance,” 167.

²⁹⁰ Nesiiah, et al., 33.

²⁹¹ *Ibid.*, 16-7.

²⁹² Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 74.

victim-survivors of sexual violence, widows and single mothers. The inclusion of single mothers helped to provide an umbrella category that could include victim-survivors of sexual violence as well as widows, thereby allowing for a layer of protection and confidentiality. But for those cases in which anonymity was less feasible, the CAVR also recommended a public education campaign that sought to mitigate discrimination against victim-survivors of sexual violence, instead placing the blame more squarely on the perpetrators.²⁹³ In such ways, outreach is not only about making victim-survivors aware of the reparations program, and it is not only about informing them of their rights and of the program's mandate, but it is also about educating the public more broadly in a humble effort towards instilling non-repetition and thereby generating transformation.²⁹⁴

Although a reparations program can only hope to offer a modest contribution to victim-survivor recovery, it can create mechanisms that institutionalize a targeted effort on behalf of victim-survivors. For women and girls in particular, the CAVR in Timor-Leste recommended that at least 50% of the resources of its reparations program be earmarked for female beneficiaries.²⁹⁵ Setting such a quota from the outset helps to ensure that the program is designed in such a way that outreach to women and girls is effectively prioritized, and continues to be so through active monitoring and consistent follow up.

Accessibility

A coordinated campaign of effective outreach and victim-survivor engagement, then, are the first components that should be in place to afford victim-survivors accessibility into a reparations program. Correspondingly, the “[p]ractices and procedures for obtaining reparation should be sensitive to gender, age, cultural diversity and human rights, and should take into account women’s and girls’ specific circumstances, as well as their dignity, privacy and safety.”²⁹⁶ As with the challenges associated with a weak outreach program, one of the greatest obstacles for female victim-survivors in accessing reparation has to do with procedural hurdles.²⁹⁷ These may include – in addition to difficulties accessing information – territorially centralized procedures, lack of economic resources, time constraints, inadequate payments mechanisms, high evidentiary standards, lack of confidentiality and protection, and fear of accompanying stigmatization and reprisals.²⁹⁸

Access to information, a key challenge within outreach efforts, should remain a point of emphasis as the reparations program proceeds into implementation, as linguistic barriers, illiteracy and rural isolation will otherwise continue to impede access to reparation for those victim-survivors that remain particularly vulnerable, including women and girls. Similarly, implementation should account for geographic limitations, as many victim-survivors will be unable, on their own, to reach central office locations. Claudia Paz y

²⁹³ Wandita, Campbell-Nelson, and Pereira, 309-12.

²⁹⁴ Importantly, though, messaging should also be crafted with care, so as not to overinflate victim-survivor expectations.

²⁹⁵ Wandita, Campbell-Nelson, and Pereira, 308.

²⁹⁶ Nairobi Declaration, para. 2(E).

²⁹⁷ Rubio-Marín, “A Gender and Reparations Taxonomy,” 12.

²⁹⁸ See for instance *ibid.*; Rubio-Marín, “Setting the Agenda,” 34-5; Goldblatt, 75-6; Paz y Paz Bailey, 116-7; Guillerot, 164-5; Wandita, Campbell-Nelson, and Pereira, 307; Nesiah, et al., 38-9.

Paz Bailey discusses how for many women in Guatemala – especially those living outside the capital – access to PNR central offices was impossible due to lack of economic resources and lack of adequate roads.²⁹⁹ Therefore, central offices may need to be accompanied by branches in more accessible locations, mobile staff members may need to be employed to conduct community visits, or victim-survivors should be afforded sufficient financial resources and accompanying consideration for life schedules to ensure all seeking access are afforded genuine access.

Significantly, victim-survivors need to be granted the time to access reparations at their own pace. For many victim-survivors, but especially those who have suffered from crimes of sexual violence, it may not be psychologically feasible to approach the reparations program within a limited timeframe. As Ross so adeptly explains, “[t]here is a temporal dimension to the expression and reception of harsh experience; it may take time for events to settle in such a way that they can be narrated... Silence may point to the limitations of particular discursive forms; some things simply cannot be articulated within the sanctioned languages and social spaces currently available to experience.”³⁰⁰ Unfortunately, in South Africa, the Committee on Reparations and Rehabilitation decided that the government was unlikely to accept an open-ended proposal on reparations’ eligibility, and therefore foreclosed the possibility of (those still voiceless) victim-survivors accessing reparations in the future.³⁰¹

Yet such a model, as practiced in South Africa, premises access to reparations not only upon an application being submitted within a short window of time, but equally upon a prior act of truth-telling.³⁰² This latter element of conditioning reparation upon truth-telling further restricts access for victim-survivors, regardless of any potential benefits to be gained from the act of truth-telling. It places a heavy burden upon victim-survivors to expose their truths in ways legitimized by the commissions, and to do so quickly, rather than opening a safe space for victim-survivors to approach if and when they are ready. Such time-bound coercion may bring harmful consequences, and may deprive many victim-survivors – including some of those most vulnerable – of the opportunity to access reparation.

A reparations program should not place such demands upon victim-survivors, nor should it position itself as a point of closure in their recovery. Instead, access to a program of reparations is a starting point, with the potential to offer what can only be described as an altogether impartial and modest contribution towards victim-survivor repair. But if genuinely victim-centered in approach, that starting point can open up space for ongoing processes to follow.³⁰³ Crucially, though, it should be available to victim-survivors when they are ready,³⁰⁴ and so reparations programs should contain a provision that allows for

²⁹⁹ Five additional offices were opened throughout the country to overcome this obstacle. Paz y Paz Bailey, 117.

³⁰⁰ Ross, 86.

³⁰¹ Colvin, 191; Goldblatt, 76.

³⁰² Goldblatt, 74, 80.

³⁰³ See for instance in Guatemala, Arriaza and Roht-Arriaza, 226.

³⁰⁴ See Nairobi Declaration, para. 3(G).

victim-survivors that did not come forward during its initial operations to subsequently apply for reparations eligibility.³⁰⁵ The CAVR in Timor-Leste made such a recommendation, proposing that the reparations program allow two additional years (after the 18-month period of CAVR operation) to “identify other potential beneficiaries outside the CAVR’s processes.”³⁰⁶

Yet an emphasis upon time openness should be balanced by a concurrent need for timeliness, as the reparative process is unduly harmed by significant delays in the delivery of reparations benefits. In South Africa, frustration over such delays threatened to undermine the reparative effects that may have been felt from participating in the TRC, with the damage compounded by the apparent “immediate delivery” of amnesty to perpetrators.³⁰⁷ Similarly in Peru, despite very positive initial interactions with the CRV, many victim-survivors became disillusioned and cynical towards the CRV due to subsequent delays in implementing reparatory measures.³⁰⁸

There need not, however, be an inherent contradiction between time openness and timeliness. A reparations program can deliver benefits while still remaining open to future applications. Several programs, including those in South Africa and Timor-Leste, have offered urgent reparations in advance of subsequent (and supposedly more comprehensive) measures. Yet so-called urgent reparations demand an element of urgency, with the main complaint filed by victim-survivors regarding the Urgent Interim Reparations program in South Africa being that it still took too long to be implemented.³⁰⁹ The CAVR in Timor-Leste defined in advance the particular criteria and harms that would trigger urgent reparation, and decided to earmark three percent of the CAVR’s operating budget to the urgent reparations program, which would provide benefits in the form of monetary compensation, active referral to existing services, healing workshops, funds for local organizations that would offer services to victim-survivors, and, as a pilot study, a collective reparations program in conjunction with three NGOs.³¹⁰ Although the emphasis upon timeliness in an urgent reparations program may mean sacrificing a degree of breadth and depth initially, an effective follow-on program can offer a complementary approach that affords greater completeness and comprehensiveness. Similarly, a program that incorporates an element of time openness into its structure can construct a phased delivery strategy that sets aside a certain percentage of its resources to those victim-survivors – including, especially, victim-

³⁰⁵ Nesiah, et al., 38-9.

³⁰⁶ Wandita, Campbell-Nelson, and Pereira, 309.

³⁰⁷ See Wendy Orr, “Reparations Delayed is Healing Retarded,” in *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, eds. Charles Villa-Vicencio and Willem Verwoerd (Cape Town: University of Cape Town Press, 2000), 242-3, 247, cited in Colvin, 192-3.

³⁰⁸ LaPlante and Theidon, “Truth with Consequences,” 231.

³⁰⁹ See Anna Crawford-Pinnerup, “An Assessment of the Impact of Urgent Interim Reparations,” in *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa*, eds. Brandon Hamber and Thloki Mofokeng (Johannesburg: Centre for the Study of Violence and Reconciliation, 2000), cited in Colvin, 189.

³¹⁰ Wandita, Campbell-Nelson, and Pereira, 302-8.

survivors of sexual violence – that are not able to come forward during its initial period of operation.

Once victim-survivors have sought access to reparations, we should give careful consideration to the most victim-centered mode of distribution. For women and girls especially, being granted reparations does not mean that the reparations benefit will end up in their hands. For example, property restitution may bring no assistance to female victim-survivors if founded upon discriminatory land title or inheritance laws. A requirement that applicants have a bank account (or accompanying documentation)³¹¹ to receive compensation may exclude many victim-survivors, especially poor and illiterate women who often defer (or are forced to defer) to husbands and other men on business matters.³¹² Due to women's all-too-common position within patriarchal family units and their accompanying greater socioeconomic dependency on male breadwinners,³¹³ a gender-neutral distribution plan may effectively mean that women's (or children's) benefits flow directly into men's pockets, or at the least, not into theirs.

Instead, design of appropriate forms of distribution should properly account for women's and girls' lived realities. In the case of economic compensation, one important decision concerns whether to distribute payments as a lump sum or as a pension. Although lump sums may maximize choice and have the theoretical potential for greater immediate benefit, coming into sudden wealth may also create division and conflict within families and communities.³¹⁴ For women and girls in particular, smaller regular payments are less likely to be disputed and abused,³¹⁵ and therefore have a greater likelihood of reaching their intended recipient. Further, the regularity of reparative payment may also contribute to victim-survivor feelings of recognition, and begin to (re)instill a sense of trust in public institutions.³¹⁶

A second consideration with regards to economic compensation is whether to rely on priority orders or a system of apportioning when distributing benefits among family members. The programs that have adopted priority order systems – such as in Argentina, Brazil, South Africa and Guatemala – have used different approaches to ordering, in some cases prioritizing descendants over spouses (Argentina), and in others, placing spouses ahead of descendants (Brazil, South Africa and Guatemala).³¹⁷ Other countries have apportioned payments based on preset percentages (including Chile, Peru and

³¹¹ Note also that documentation requirements more generally (beyond those related to a bank account) may pose a particular challenge for the displaced, and should not be used to exclude access to reparations; see for instance Paz y Paz Bailey, 116.

³¹² Applicants in South Africa, for instance, had to have a bank account to receive reparations; see Goldblatt, 73-4.

³¹³ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 107.

³¹⁴ "Rule of Law Tools," 31.

³¹⁵ Goldblatt, 81.

³¹⁶ "Rule of Law Tools," 31; however, as noted in the report, pension distribution programs require the creation of lasting institutional systems, a concept which may not have enough political will to displace the easier option of offering lump sums.

³¹⁷ Rubio-Marín, Sandoval, and Díaz, "Repairing Family Members," 282.

Morocco).³¹⁸ On the whole, apportioning seems to better ensure that the harm suffered by all is taken into account, and prevents a system that relies upon the assumption of certain family members spending part of their money on others (i.e. presuming a beneficiary will allocate some of the benefits to his or children, rather than distributing those benefits to the children directly).³¹⁹ Further, although apportioning comes with fixed percentages, this need not mean a lack of flexibility. Percentages are determined to structure allocation within a family unit, but the magnitude of the total benefit to that family may vary depending on the number of dependents, its rural or urban location, and the type of harm or violation incurred. Finally, whether priority orders or a system of apportioning, a key consideration is whether the distribution mechanism adequately reflects the lived realities of victim-survivors and their relations of dependency. In other words, it should not only recognize legal and biological relationships, but should also be attuned to the needs of individuals in, for instance, polygamous unions, unsanctioned marriages, and homes that have embraced additional children orphaned by war.

Critically, distribution of compensation also requires internal coherence with other forms of reparation. As discussed in sections six and seven, gender-sensitive rehabilitative services (including health services targeting the particular needs of women and girls) should accompany material restitution and compensation. Timor-Leste offers a unique model of linking reparations for children with services for their mothers, who might otherwise be reluctant to attend to their own needs.³²⁰ Other mechanisms for distributing benefits might include microfinance programs or skills-training opportunities, which have the potential to further empower female victim-survivors.³²¹ Crucially, however, these modalities should only be used to complement – not replace – compensation benefits, as their forward-looking approaches in isolation neglect to adequately address the effects of violence upon victim-survivors in their present lives.³²²

It should also be advised that debate around appropriate and accessible distribution mechanisms ought not be confined to the more material forms of reparation. Memorialization and other modes of symbolic reparation also struggle with “issues of accessibility, capturing multiple voices, reflecting the complexity of roles during conflict, and including the most marginalized voices.”³²³ As more ‘traditional’ forms of symbolic representation (i.e. large monuments) tend to be seen as the domain of men, we ought to consider whether women and girls may demand their own forms of symbolic redress.³²⁴

³¹⁸ “Rule of Law Tools,” 31-2; *ibid.*, 282-4.

³¹⁹ Rubio-Marín, Sandoval, and Díaz, “Repairing Family Members,” 282-3.

³²⁰ Wandita, Campbell-Nelson, and Pereira, 312.

³²¹ For more on gender, microfinance and reparations, see for instance Anita Bernstein, “Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary Reparations,” in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009); for more on microfinance and reparations generally, see Hans Dieter Seibel with Andrea Armstrong, “Reparations and Microfinance Schemes,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006).

³²² Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 107.

³²³ Hamber and Palmary, 362.

³²⁴ *Ibid.*, 358-9; see also Rubio-Marín, “The Gender of Reparations in Transitional Societies.”

What may be required are parallel approaches that seek to both situate women and girls progressively within – and thereby challenge – old gender norms and hierarchies, as well as to adopt transformative representational forms that reflect a new political order based on gender equality. Grounded first in female victim-survivor inclusion and consultation, such symbolic (and procedural) approaches to greater gender-just accessibility will help to nurture a process, which may gradually open the space for genuine healing to occur.

Opening safe spaces

The process of ensuring accessibility to victim-survivors, then, is more than effective engagement, outreach and overcoming the procedural hurdles that block approach to reparations programs. True accessibility also demands an environment that is conducive to that approach. It is true that access to information and the removal of obstacles are important elements in forming the initial contours of a conducive environment, but a reparations program should offer much more than effective entry. For victim-survivors – and women and girl victim-survivors in particular – interactions within and following the program also deserve significant attention and resources. Specifically, a gender-just reparations process ought to place particular emphasis upon cultivating an environment that affords victim-survivors dignity, protection, and sensitivity to their individual and collective needs.

An important factor in constructing an accessible and safe environment for reparations claims is the relaxation of evidentiary standards. As with truth commissions, the greater emphasis on victim-survivors suggests that the level of proof necessary to substantiate claims be lower than the standard of criminal trials. The emerging standard for truth commissions is to rely on “balance of probabilities” or “preponderance of evidence,” which essentially consider whether there is more evidence to show something to be true than not to be true.³²⁵

Especially in cases of sexual violence, proof should not necessitate a medical examination. Given that massive reparations programs often occur years after the violations in question, it is highly unlikely that physical evidence of sexual violence would continue to exist, and a medical exam would then only serve to further denigrate the victim-survivor. The challenge is to get public officials to accept that sexual violence leaves behind more than physical evidence, as it has consequences upon mental health that can be assessed through psychological evaluation.³²⁶ Therefore, instead of medical examinations, the testimony of the victim-survivor, a psychological evaluation of their mental health, or even a system of presumption based on patterns of criminal conduct could be used as sufficient sources of evidence.³²⁷

Beyond relaxed evidentiary standards, victim-survivors should also find a reparations program (or accompanying truth commission) that caters to their unique and diverse needs for providing statements or testimony. For some, public denunciation may be important in fighting the stigma associated with certain crimes, as when many female

³²⁵ Hayner, 142.

³²⁶ Guillerot, 165.

³²⁷ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 79.

victim-survivors of sexual violence in Sierra Leone asked to narrate their experiences publicly before the TRC.³²⁸ For others, confidentiality is paramount, and systems should accordingly be in place to ensure victim-survivor privacy. In conjunction with a truth commission or similar mechanism, victim-survivors should have the opportunity to provide information confidentially through an individual interview, to have their identities hidden while offering testimony (through in-camera hearings, facial imagery distortion, or erecting some form of physical barrier), or to participate openly in public forums, as per their preference. Critically, victim-survivors should not be compelled to offer information, whether privately or publicly, and silences should be respected.

Given the very real fear of reprisals and stigmatization for many victim-survivors, confidentiality – both during and after approach – should be assured. It is often the case that perpetrators continue to live within victim-survivor communities, so their personal or collective security may be gravely threatened by a breach of confidentiality. Public awareness more broadly may cause a different kind of harm to victim-survivors, especially when it comes to sexual violence and disappearance. As Paz y Paz Bailey describes, for victim-survivors of sexual violence in Guatemala, “[c]ondemnation by their communities 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 reparations program.”³²⁹ Despite the potential to gain from reparative benefits, victim-survivors often decide that the risks may be much greater.

Understandably, victim-survivors may place little trust in their public institutions, which often failed to play a protective role during the prior conflict or have outright contributed to their suffering.³³⁰ Any victim-survivor that premises his or her coming forward upon guarantees of confidentiality should not be encouraged to do so unless such promises are effectively assured. Protection programs should be developed, but capability assessments should be realistic and staff upfront with those considering approach. In the meantime, or in parallel, public education campaigns can be launched, and work can be done within the communities to which female victim-survivors belong – starting with community leaders – to prevent or reduce their potential stigmatization,³³¹ regardless of whether they decide to come forward.

Yet protective measures are not only put in place to protect victim-survivors from their families and communities. Accessing a reparations program or truth commission also has the potential to re-traumatize, or exacerbate internal feelings of shame and guilt. Therefore, a safe environment requires more than the assurances of confidentiality outside the confines of the transitional justice mechanism. It also necessitates a process that is truly attuned to the needs and wishes of victim-survivors as they participate within the program. Each individual will interact with that process in his or her own unique way, as the decision to vocalize difficult truths is not one that necessarily affords psychological healing. To the contrary, it may even be damaging to psychological

³²⁸ Nesiah, et al., 31.

³²⁹ Paz y Paz Bailey, 116.

³³⁰ See for instance in Peru, Guillerot, 164.

³³¹ *Ibid.*, 166.

health.³³² To minimize such a likelihood, or to maximize the potential for reparative effects, truth commissions and reparations programs should make mental health and psychosocial workers (and/or self-help groups) available to victim-survivors during and after their interfaces with these transitional justice systems. For women and girls in particular, they should be afforded the option to approach their respective mechanism in a manner that best reflects their chosen process, which may include not only considerations of private or public forums, but also testimony at a distance, via proxy, or in the presence of other women.³³³

Essential to such a gender-just process is appropriate personnel. “Male and female staff who are sensitive to specific issues related to gender, age, cultural diversity and human rights, and who are committed to international and regional human rights standards should be involved at every stage of the reparations process.”³³⁴ This spans from initial outreach to ultimate delivery, but it is especially critical in two types of positions: first, those tasked with direct interaction with victim-survivors, including statement-takers, investigators, psychosocial counselors and others directly receiving victim-survivor testimony; and second, those responsible for overall design and implementation policy within the reparations program, a managerial status akin to commissioner within a truth commission.

For female victim-survivors, it may be vital that such positions have a strong female presence. Especially in patriarchal societies, a visible and vocal female staff – including leadership – may help to break the barriers around program accessibility, and may also signal the beginnings of broader structural transformation. Although men may be just as able to appreciate gender injustices, empathize with female victim-survivors, and actively combat gender norms and hierarchies, it should also be admitted that in some instances women may just not feel comfortable sharing their stories with men. In Sierra Leone, for instance, the TRC made it a policy that any interviews of witnesses whose testimonies involved sexual violence were to be conducted by female commissioners,³³⁵ a decision which – if only in reference to female victim-survivors of sexual violence – seems quite reasonable.³³⁶ A bit more nuanced, perhaps, the CAVR in Timor-Leste made sure to include at least one woman in each research team conducting a household-mortality survey, so that she could then carry out a separate interview with at least one adult woman in each household.³³⁷ Although one’s capacity to respectfully interact with

³³² See Hamber and Wilson, cited in LaPlante and Theidon, 237-8. See also, Shaw and Waldorf, 11-4.

³³³ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 79.

³³⁴ Nairobi Declaration, para. 2(D).

³³⁵ Sierra Leone Truth and Reconciliation Commission, vol. 1, ch. 5, 241, cited in King, 257.

³³⁶ Male victim-survivors of sexual violence could also be beneficiaries of reparations benefits in Sierra Leone, but if all testimony related to sexual violence were to be conducted by female commissioners, it should be acknowledged that male victim-survivors may – in some circumstances – be less inclined to approach the TRC.

³³⁷ See Ayumi Kusafuka, “Locating Lost Voices: The Emerging Truth of Gender Violence in Timor-Leste,” *International Center for Transitional Justice*, Aug. 2006, cited in Nesiiah, et al., 19.

female victim-survivors has a lot more to it than just biology, in some cases, there is no substitution for female staff.

What may be most important in the selection of staff, though, is the extent to which individuals are gender-sensitive in their approach. This often comes with experience and training. Especially for those staff members without experience addressing gendered human rights abuses, but useful for all, systematic and ongoing gender sensitivity trainings are essential.³³⁸ This can be bolstered by the inclusion of women's groups and activists, both local and international, who can advise on content as well as help to ensure that gender issues remain a top priority by putting consistent pressure on program leadership.

Training and experience are critical to our capacities to effectively perform a gendered analysis of political violence, and to making certain that our interactions with female victim-survivors are always approached with the utmost care and forethought. Even further, training can help to teach one to be sensitive to the subtleties of less direct forms of expression, an important skill when working with female victim-survivors. Especially when referring to instances of sexual violence, women may not clearly state what occurred, and instead may reference the threat of rape, rape of other women, or use vague terminology.³³⁹ Officials, therefore, need to be trained to really listen to women, and to learn to interpret their subtle and context-specific meanings, if the depth and extent of female victim-survivor experiences is to be truly appreciated. And it should also be said that effective listening is not confined to absorbing speech. It should also include receiving silences, as "there is far more to being heard than simply speaking."³⁴⁰

Women also have the tendency to focus on the victimization of others, rather than violations committed against themselves, which they often find "marginal, private, peripheral or secondary."³⁴¹ They may become involved in the pursuit of justice through victims groups and human rights organizations, but typically in their roles as relatives: as mothers, wives, daughters and sisters. Their emphasis upon the wellbeing of their families is in no way to be diminished, but it is also important to give women and girls the opportunity to speak of their own suffering, if and when they are ready to do so. The TRC in South Africa, for instance, included the following caution on the form used to take statements from the public: "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."³⁴² In such ways, women should be encouraged – though absolutely not pressured – to address their own injustices.³⁴³

³³⁸ See for instance Nesiah, et al., 12.

³³⁹ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 80.

³⁴⁰ Ross, 83.

³⁴¹ Rubio-Marín, "The Gender of Reparations in Transitional Societies," 74.

³⁴² Goldblatt, 78.

³⁴³ It is critical, however, as Fiona C. Ross explains, not to underestimate the dangers of women testifying in public, and to question whether 'safe spaces' can realistically be created for women to speak out. See Ross.

Significantly, as was addressed in section three of this paper, it is also important to highlight that women and girls may be victim-survivors of harms suffered as a result of ‘direct’ violations to their family members, i.e. in their relational capacity to those harmed. The life-altering effects upon women and girls resulting from violations committed against their spouses, children, parents and siblings may be “gross human rights abuses” in their own right. Therefore, providing a space for women and girls to speak of their own violations does not mean to then exclude their harms suffered as wives and mothers. It just means to relocate the attention to their wellbeing, and not only to that of their husbands, parents, children and siblings.

Too often, however, women and girls do not self-identify as victim-survivors because they do not perceive their victimization as a human rights violation. Subjected to crimes – such as sexual violence – that are also perpetrated against women and girls during peacetime, female victim-survivors may not recognize that the cruelties inflicted upon them are in fact violations warranting redress, or they may believe their demands would be useless in the face of preexisting impunity.³⁴⁴ To counter the trend to underreport, it might be useful to launch a concurrent media campaign, which clarifies that crimes of sexual violence (and, potentially, gender-based violence more broadly) are gross violations of international human rights law and serious violations of international humanitarian law, which demand substantive reparation.³⁴⁵ It may also be advisable, as occurred through the CAVR in Timor-Leste, to track data regarding respondent gender and the nature of violations being reported, so that staff can be aware of female victim-survivor participation and engage in proactive outreach to encourage them to submit statements and avail themselves of some measure of redress.³⁴⁶

³⁴⁴ Guillerot, 146-7.

³⁴⁵ See Nesiah, et al., 17.

³⁴⁶ See Kusafuka, cited in Nesiah, et al., 18.

9. Spotlight the past and connect to the future

One of the most significant aspects of process – and therefore of the reparations program as a whole – is the set of messages conveyed through the act of granting and delivering reparations, and the responding victim-survivor perceptions of any reparative value located within that process. Returning to Hamber’s levels of symbolism for individuals, where the second level symbolizes something about those giving or granting the reparations and the first level symbolizes something to victim-survivors,³⁴⁷ there is great potential for reparative meanings to be transferred or squandered from the second level to the first. It follows that the process of creating safe spaces – which may bring access to reparation and foster an environment conducive to longer-term healing – is then premised in part upon the messages conveyed by those enabling their opening. As such, the way victim-survivors’ perceive and receive acts or objects of reparations may be determined to a great extent by the manner in which they are determined and presented – including, for instance, *who* is seen to be ‘giving’ the reparation (is the President publicly addressing the nation or has it been tasked to some lower-level bureaucrat?); *where* he or she is when presenting it (is the act or object of reparation being offered at a location of particular meaning to victim-survivors, and female victim-survivors in particular?); *how* they are doing so (are staff members conducting their victim-survivor interactions with respect and compassion, or with discourtesy and indifference?), and other *process-oriented* considerations.

In a reparations program, the overarching authority undertaking (or consenting to) the reparations is, more often than not, the state. This is so for a host of reasons, including its governing mandate within the environment in question. But most importantly from a reparations perspective, by assuming responsibility for a program of reparations, the state may contribute to the reparative effects experienced by victim-survivors by symbolically representing its readiness to part from the past. As de Greiff explains, the process of granting and ultimately delivering reparations then becomes a manifestation of the seriousness of the state and its willingness to do things differently moving forward.³⁴⁸

Especially in the context of a massive reparations program, where full restitution is a likely impossibility, the perceived symbolic meanings behind the process of granting and delivering reparation may carry considerable weight for victim-survivors, as material benefits on their own tend to be largely deficient in magnitude. Diana Cammack relates this challenge to the context of Malawi, where she explains how people understand the difference between *kulipira* – paying the full value of something – and *kupupesa* – a sense of identifying with the victim-survivor, acknowledging that the value offered is not enough, but stating that it is as much as the giver can do. She continues, that “for Malawians the *spirit* in which this token is given, more than the *amount* of the payment, determines the extent to which it contributes to the healing process.”³⁴⁹ It is this spirit that helps to define a victim-centered and gender-just process: a spirit of sincerity, of

³⁴⁷ Hamber, 565-5.

³⁴⁸ De Greiff, “Justice and Reparations,” 463.

³⁴⁹ Diana Cammack, “Reparations in Malawi,” in *The Handbook of Reparations*, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 239-40.

repentance, and of seriousness in effort. Within a program that is at its very nature fundamentally impartial, true reparative value comes not from received benefits alone, but rather from those benefits being tied into a larger program of coherence, inclusion and accessibility, which opens safe spaces for victim-survivors to gradually – and at their own pace – begin to connect their pasts to a brighter future.

Given the limitations of a reparations program, de Greiff posits that such reparations are best thought of as part of a political project.³⁵⁰ When the standard of compensation cannot feasibly be measured in proportion to harm – as is the case in most reparations programs – he contends that a political perspective allows for a broader conception of justice than that which could be satisfied solely through the legal pursuit of individual claims. A reparations program may bring, first, a (modest) contribution to the quality of life of victim-survivors; or *kupupesa*, when offered with the requisite spirit. But when viewed through the lens of a political project, these reparations may also – after first spotlighting the individual and collective wrongs of the past – afford a broader measure of forward-looking justice by beginning to (re)establish a societal foundation based on inclusion and equal citizenship.³⁵¹ It then becomes a further manifestation of the seriousness of the state, striving to institutionalize change and concretize a guarantee of non-repetition. In this way, the political project coincides with the larger goals of transitional justice, which seek not only to deliver tangible reparation, but also to externally cohere with a wider movement towards structural transformation.

Therefore, in an effort to build upon the modest contributions to individual and collective redress, and align with this broader notion of justice, de Greiff outlines three specific aims of reparations as a political project: recognition, civic trust and social solidarity.³⁵² Recognition – as a form of symbolic reparation – involves both individual meaning and sociopolitical contextualization, but the larger political objective takes it a step further and seeks to recognize victim-survivors not only as individuals (and collectives), but also as citizens.³⁵³ Trust is highly relative and relational, but de Greiff premises its essence upon the “expectation of a shared normative commitment,” wherein individuals have a mutual sense of dedication to shared norms and values. Civic trust, then, emanates from a society that bases its sociopolitical constitution upon inclusion and equal citizenship, and where the legal system relies on the trust of its citizens in one another and in the system itself to function effectively.³⁵⁴ Similarly, a system grounded in equal citizenship requires an institutional impartiality, in which each citizen is structurally viewed through an equal lens. Social solidarity derives from this lens of impartiality, where its societal law incorporates the interests of all. Even further, though, social solidarity is an interpersonal and structural attitude, which exhibits “the type of empathy characteristic of

³⁵⁰ De Greiff, “Justice and Reparations,” 454-66. De Greiff also notes that it is important to keep in mind that most reparations programs are designed in the context of a transition to democracy, which has an effect on how justice should be understood in such contexts.

³⁵¹ On this forward-looking perspective, see *ibid.*, 465-6.

³⁵² *Ibid.*, 459-66.

³⁵³ On recognition, see *ibid.*, 460-1.

³⁵⁴ On civic trust, see *ibid.*, 461-4.

those who have the disposition and the willingness to put themselves in the place of others.”³⁵⁵

De Greiff’s framework for conceiving of reparations programs as, in part, political projects aimed at fostering recognition, civic trust and social solidarity, provides conceptual guidance that may assist in bridging the gap between individual (or collective) measures of reparation and the broader societal goals of justice and democracy promotion. In this way, reparations as a political project may contribute to the external coherence of the transitional justice program, and may evoke reparative effects in the process. Unfortunately, however, there is little empirical evidence to substantiate (or refute) de Greiff’s underlying theory. Over the past twenty years, a sizeable portfolio of empirical research has amassed on the topic of reparations programs, but most of that research has concentrated on the more immediate responses to reparations design and implementation (or more likely, their lack thereof). To effectively measure the extent to which reparations have contributed to this larger political project – to a (re)formed recognition of citizenship, or a (re)storation of civic trust, or a (re)establishment of social solidarity – is a task that would seem to require further research, including longitudinal studies. To my knowledge, such empirical work has not yet been undertaken, or at least not at a precedential level. It still remains to be seen whether reparations satisfy victim-survivors’ general sense of justice in the long-run,³⁵⁶ let alone these more opaque notions of justice as aligned with a political project. This is in no way meant to suggest that de Greiff’s conceptual framework is misplaced; only to highlight that it exposes a lacuna in the field that demands further empirical research.

Although we may not yet know whether the restoration of civic trust is even feasible for individual (or collective) victim-survivors in the aftermath of brutal and pervasive periods of violence, we can nevertheless follow de Greiff’s philosophical center by grounding our efforts in inclusion and equal citizenship. It is possible that victim-survivors never (re)develop trust in their neighbors who perpetrated crimes, or in their institutions which oversaw or even led the call to violence, but that is no reason to refrain from engagement, which can begin to replace the discriminatory forms of the prior era. Building on the forward-looking nature of de Greiff’s political project, a reparations program should have two conceptual goals. The first is *kupupesa*, or a series of reparative benefits that, although undeniably partial, are nevertheless individually substantive, collectively coherent, and both conceived and delivered through a process that evidences a sincerity and seriousness on behalf of the state. Second, after thoroughly acknowledging and seeking to repair the harms of the past, the program should begin to carry victim-survivors (with fluidity, if possible) into a present and future that afford an improved quality of life and an institutionalization of their status as valued and equal citizens.

For women and girls, this alignment of the ‘backward-looking’ reparations agenda with the ‘forward-looking’ institutional and legal reform agenda is complicated by what Rubio-Marín describes as the corrective and transformative dimensions of a reparations

³⁵⁵ On social solidarity, see *ibid.*, 464-6.

³⁵⁶ LaPlante and Theidon, “Truth with Consequences,” 248.

project, introduced in section four above.³⁵⁷ The corrective dimension seeks a return to normalcy, or the status quo that existed prior to the violation or larger period of violence. The transformative dimension, on the other hand, refers to the project's capacity to subvert preexisting structural inequalities,³⁵⁸ in other words, to challenge that same sense of normalcy. Although the longer-term goals of a gender-just reparations program are clearly founded upon a system of gender equality which, in most contexts, will require transformative change, it is not instantly clear that the immediate reparative needs of female victim-survivors are necessarily ones seeking transformation.

Although restoring female victim-survivors to their pre-conflict status may mean situating them back within the ordinary violence of preexisting gender hierarchies, it may nevertheless signal a break from the more recent period of extraordinary violence, and therein afford reparative value and (potentially) a more immediate return to life functionality. Such consideration should first reflect upon the so-called continuum thesis, which questions whether what happens to women in conflict is on a continuum with the nature of everyday violence against women.³⁵⁹ Most scholars seem to agree that the language of continuity is, on the one hand, necessary to fully appreciate the types of harms that women and girls are likely to endure in heightened periods of conflict, as well as to effectively design a gender-just reparations program and its larger transitional response in the post-conflict stage; yet on the other hand, inadequate to wholly explain the dramatic *discontinuities* that accompany such life-altering experiences of violence. Therefore, a gender-just reparations program should take a nuanced approach that thoroughly grasps both the connectivity and the distinctiveness within and between the preceding eras, and find at its core the voices and context-specific needs of female-victim survivors themselves.

Often this will necessitate a methodology that seeks to balance the corrective and transformative gender dimensions of the reparations project. An overemphasis on the corrective side may perpetuate ingrained systems of discrimination, squandering the transitional moment to effectuate change. It could also overlook the underlying enabling conditions that gave rise to the conflict in the first place, which could then – unaddressed – very well repeat themselves in its aftermath.³⁶⁰ As Julie Guillerot explains, in Peru the fact that women and girls experienced similar forms of violence prior to the conflict (in 'peacetime') meant that Peruvian society often failed to identify them as victims.³⁶¹ In such a situation, anything less than a transformative agenda will leave women and girls vulnerable at best, if not interminably invisible.

Moreover, we should proactively combat the documented tendency of gender-based violence to rise alongside the cessation of the more public forms of violence.³⁶² This all-too-common shift of public violence into the private sphere that accompanies transitions

³⁵⁷ Rubio-Marín, "Gender and Collective Reparations," 394.

³⁵⁸ Rubio-Marín, "A Gender and Reparations Taxonomy," 17.

³⁵⁹ See for instance Walker, 28-33.

³⁶⁰ Nesiha, et al., 25.

³⁶¹ Guillerot, 147.

³⁶² See for instance Duggan and Jacobson, 158.

to ‘peace’ – as men return home, project their aggression and hostility, and exploit the opportunity to experiment with the new-found boundaries of what can acceptably be done to women – is (un)fortunately predictable, and so any decision that leans on the corrective dimension of reparations should, at the very least, be accompanied by a series of substantive protection measures, which help to ensure the prevention of widespread domestic (and broader gender-based) abuse in the aftermath of conflict.

Unfortunately, however, placing too much stress on the transformative side may also have its challenges. As with Hamber’s emphasis on narrowing the micro and macro, reparative value for female victim-survivors may ring hollow if not situated within sociopolitical realities. Their experiences of harm and loss are, at least in part, shaped through the social meanings of their contextualized environments.³⁶³ What may be paramount for women and girls, then, is a return to a functioning, ‘normal’ life, wherein corrective forms of concrete reparation may take precedence over the more ideological-seeming essence of transformative change.

But in many cases, a return to a ‘normal’ life may not be possible without transformative change. For example, effective rehabilitation for victim-survivors of sexual violence or enforced disappearance likely requires a great deal more than medical treatment and psychological counseling (although such interventions are critical). True healing may necessitate a society-wide attitudinal shift in the way victim-survivors are perceived, so that blame is taken away from victim-survivors and shifted onto perpetrators.³⁶⁴ Yet such a transformation takes time, perhaps even a generation(s), and so there may be occasions where the best we can do is to ensure sufficient corrective reparation, while laying the groundwork for gradual transformation. In such instances, we break the discontinuities of ‘extraordinary’ violence, and chip away at the deeper-seated continuities of ‘ordinary’ violence against women.

Each individual (or collective) victim-survivor will present a unique and context-specific set of circumstances, which will need to be thoughtfully evaluated before drawing up the responding reparations program. At a minimum, though, programs of gender-just reparation should not be designed or implemented so as to embrace sex discrimination.³⁶⁵ They should strive to attain the most meaningful balance for each individual victim-survivor between the corrective and transformative; a balance that affords reparative value in the present tense, but also begins to solidify a structural realignment rooted in equal rights and inclusive citizenship. Spaces should be opened up for women and girls – when they’re ready – to claim their own agencies, and to speak their own truths or choose their own silences.

As with the broader movement of transitional justice, reparation is a process. It will likely unfold in myriad directions, straying from its intended design and constructing new paths to subsequently follow. It will not conclude with the closing of the formal reparations program, but will persist in the manner that victim-survivors recall their pasts and

³⁶³ Rubio-Marín, “Gender and Collective Reparations,” 398.

³⁶⁴ See for instance Rubio-Marín, “Gender and Collective Reparations,” 397.

³⁶⁵ Rubio-Marín, “The Gender of Reparations in Transitional Societies,” 84.

approach their futures, and in the ways that their communities and institutions enable them to make that transition. Gender-just reparations for women and girls begin and end with female victim-survivors, creating a new political order premised upon female inclusion and gender equality by way of a reparative process of female inclusion and gender equality.

Conclusion

The past twenty-five years have seen a significant shift in the way states transition out of periods of armed conflict and political turmoil. With inputs from the international community, a number of conflict-affected states have increasingly pursued transitional justice mechanisms to redirect their trajectory away from histories of mass violence. Yet despite these efforts, attention remains disproportionately directed at perpetrators and combatants – through retributive pursuits in the form of criminal tribunals, reconciliation endeavors, and DDR programs aimed at reintegrating ex-combatants. Each of these initiatives remains an imperative component of state transition, but their prioritization unnecessarily comes at the expense of victim-survivors. Further, the gendered concentration upon perpetrators and combatants places primary emphasis upon men and boys, leaving female victim-survivors doubly aggrieved.

Yet it need not be so, nor should it be. While the realpolitik emphasis upon combatant reconciliation and reintegration is not to be discounted, the inflicted harms upon victim-survivors demand greater recognition and redress. This paper highlights that a rebalancing of attention towards reparative justice is not a zero sum game. While I strongly contend that greater resource ought to be allotted to reparations programming, the success or failure of such programs is not wholly contingent upon the level of financial contribution. Instead, outcomes also depend to a great extent upon coherence and process, and the ways in which victim-survivors are made to *feel* that their suffering is being duly acknowledged, genuinely repented, and seriously addressed.

This is a fundamental rethinking of the approach to reparations programming. Despite increasing rhetoric around the need for reparation in post-conflict environments, implementation has not been happening. Political leaders attribute this to resource constraints and competing priorities, but it ultimately comes down to a lack of political will. Therefore, if we can reformulate advocacy around reparations towards a greater emphasis upon the importance of *process* – based around gender-just and victim-centered inclusion, recognition, and programmatic coherence – and not only upon the need for greater financial inputs (although that remains a critical and foundational element), decision-makers will have less reason to ignore, overlook or delegitimize the crucial role of reparations in (re)building a just and peaceful society. A gender-infused and process-oriented program can then more effectively follow through with implementation, bringing real and lasting meaning to female victim-survivors and beginning to cement a transformational shift towards gender equality for all women and girls.