

palgrave

GENDER IN HUMAN RIGHTS AND TRANSITIONAL JUSTICE John Idriss Lahai and Khanyisela Moyo

141

volume contains one-sided feminist
s and transitional justice and women's
s. It contributes a more balanced
tutions, and political institutions
disciplinary approach, the comparative
Gender, situating it within contemporary
al contexts. Chapters examine the progress
ities: from Peru to Argentina, from
ity of contexts, attending especially to

John Idriss Lahai is Research Fellow at the School of Law,
Queens University, Australia.

Khanyisela Moyo is Lecturer at the School of Law,
University of Ulster, UK.

palgrave
macmillan

CROSSING BOUNDARIES OF GENDER AND POLITICS IN THE GLOBAL SOUTH

GENDER IN HUMAN RIGHTS AND TRANSITIONAL JUSTICE

Edited by
John Idriss Lahai
Khanyisela Moyo



As the field of gender and politics has grown, it has become more global, more critical, and more interdisciplinary. The series Crossing Boundaries of Gender and Politics in the Global South creates a space for dialogue among scholars of global gender and politics who are dedicated to demonstrating the significance of gender for full political analysis. The series focuses on promoting works that:

- Cross traditional disciplinary boundaries to make innovative contributions to the study of politics
- Focus on gender and politics in countries and regions of the Global South or on interactions between the Global North and South
- Analyze transnational phenomena, such as transnational feminist organizing, the politics of migration, or gender and global labor regimes
- Integrate feminist or queer theory with studies of international relations or comparative politics.

More information about this series at
<http://www.springer.com/series/15404>

John Idriss Lahai • Khanyisela Moyo
Editors

Gender in Human Rights and Transitional Justice

palgrave
macmillan

obtained a Bachelor of Arts in Criminal Justice and Political Science from Gannon University before completing his Master of Arts degree in International Crime and Justice from John Jay College of Criminal Justice in New York. He has participated in two U.S. State Department Diplomacy Lab projects, one on identifying best practices and policy implications for the recruitment and retention of women in criminal justice for post-conflict states, and the other on the conservation/preservation of fisheries and megafauna from a transnational to international level.

CHAPTER 8

Justice and Reparation Policies in Perú and Argentina: Toward the Delegitimization of Sexual Violence?

Narda Henríquez and Rosario Figari Layús

INTRODUCTION

The chapter analyzes the role of trials for crimes against humanity and reparation policies in the treatment of sexual violence, in which they are systematically used as a disciplinary political resource within political violence scenarios such as the internal armed conflict in Peru and the military dictatorship in Argentina.

The outcomes presented in this chapter are the result of academic discussion and research conducted in Perú and Argentina over two years that allowed us to exchange data in an effort to build up a comparative perspective. The material analyzed here includes documents and interviews with various actors¹ involved in the reparation policies in Perú as well as in trials

N. Henríquez (✉)

Pontificia Universidad Católica del Perú, Lima, Peru

R. Figari Layús

Phillips University of Marburg, Marburg, Germany

© The Author(s) 2018

J.I. Lahai, K. Moyo (eds.), *Gender in Human Rights and Transitional Justice*, Crossing Boundaries of Gender and Politics in the Global South, DOI 10.1007/978-3-319-54202-7_8

207

for crimes against humanity in Argentina. In Argentina, the interviews were conducted between 2011 and 2012 in three cities: La Plata, Córdoba, and Santiago del Estero. In Perú, they were conducted in 2013 in Ayacucho. Interviewees cited here gave us permission to use the contents of their interviews but, for reasons of confidentiality, they remain anonymous.

In order to analyze the delegitimizing potential of reparation policies and prosecutions, it is necessary not to forget their relevance as a fundamental tool for the redress of victims of human rights violations, thus guaranteeing the victims' rights, which are internationally established. International legislation and academic scholarship define the relevance of material and symbolic measures to redress for victims of human rights violations (De Greiff, 2008). One of the most renowned and comprehensive documents on this was Theo van Boven's UN 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 (2005). These guidelines also outline four main forms of reparation: (1) *restitution*, (2) *compensation*, (3) *rehabilitation*, and (4) *satisfaction and guarantees of non-repetition*. Van Boven clearly understands the notion of reparation in a wider sense than the merely pecuniary. According to the Basic Principles, the victims' right to a remedy encompasses among other things (a) access to justice (section VIII) and (b) access to factual information concerning the violations (section X). The inclusion of access to the truth and to justice also plays a very important role as a means for victims' reparation. When it comes to sexual violence, the reparation provided by compensations and prosecutions is reinforced by the public acknowledgment attached to those measures. Several scholars have stressed the importance of defining truth not only as knowledge about what happened, but also as acknowledgment: the determination of facts about the past, and a full, public, and official acknowledgment thereof (Weschler, 1990). The acknowledgment function of reparation policies and trials is vital for victims and may have a social impact by critically exposing sexualized violence.

This chapter is divided into four sections. In the first section, we analyze the concept of the processes of legitimization and delegitimization, as well as the important role that the state plays in them. In the next section, we briefly give account of the political use of sexual violence and rape in situations of internal armed violence and dictatorial violence. Afterward, we move on to the concrete analysis of cases, starting with the Peruvian case where we will discuss sexual violence in the internal armed conflict,

by analyzing how the Peruvian state dealt with such violence, through reparation policies. Finally, the Argentinean case will be explained with a summary of the systematic use of sexual violence in the military dictatorship and the legal treatment in both the years of legal impunity in the 1990s, as well as the current trials for crimes against humanity taking place since 2005 in Argentina. It should be noted that we refer mainly to sexualized violence although in Perú and Argentina prosecution and reparations refer to rape rather than a broader concept of sexual violence. It is widely known that this is a broadly discussed topic in the literature not only by feminists but also at the academic level and among the human rights organizations in Perú and Argentina. This chapter not only points out the difficulties still being faced regarding the data but also aims to show the challenges encountered and the strategies used while dealing with judicial and reparation policies.

THE LEGITIMIZING ROLE OF THE STATE

When we refer to the (de)legitimization of sexualized violence by the state, we speak about the central role its institutions and policies can have in disseminating speeches and legitimizing or delegitimizing social beliefs of sexualized violence and, therefore, in the visibility and levels of acceptance and tolerance within society.

According to several authors, the concept of legitimacy refers to a widespread perception that certain actions, entities, or persons are desirable or appropriate within a socially structured system of norms, values, and beliefs (Suchman, 1995, 574; Zimmerman & Zeitz February 20, 414). This legitimacy thus involves a process of evaluation of certain practices and values—a process that is carried out either by an individual, a group, or institutions. That assessment process, which can lead to acceptance or rejection, is both part of, and influenced by, a particular social, political, and gender order.

In this regard, the consideration of certain practices or standards as legitimate will result in unquestioned compliance. Understood in this way, legitimacy is a prerequisite for achieving stability and the reproduction of certain beliefs and practices, usually involving social and gender inequality, within a certain social order. Zelditch explains that legitimization is a kind of auxiliary process that explains the stability of a structure classification (2001, 51), a classification that is reflected in everyday social and power relations and usually involves significant differences and hierarchies for the

benefit of some and to the detriment of others. A clear example of this occurs in social gender relations, reflecting the patriarchal hierarchy that, as such, maintains the status relationships in which women have a subordinate role. However, legitimacy is socially constructed and, therefore, it is a dynamic phenomenon that may vary according to different cultural, social, and political changes. Social perceptions are not static or total, but can fluctuate over time and vary from one social group to another (Suchman, 1995). Thus, legitimacy is not definable in absolute terms and can, therefore, be weakened. The corrosion, decline, and questioning of practices and beliefs that in the past were perceived as acceptable is what we call the process of delegitimation. The concept as a process is essential when referring to legitimacy, as it accounts for its fluidity, its gradual nature, and its limits. In other words, both the legitimacy and delegitimation are phenomena that are socially constructed over a period of time. They do not appear out of the blue, or within all social groups or without complexities. For their reproduction—or weakening—over time, the legitimacy of certain practices or beliefs requires social and institutional support. Here, the role of the state is fundamental.

The discourse and actions of the state influence the way society thinks about, values, and questions a particular phenomenon. Thus, institutions or state policies communicate various beliefs which in turn can contribute to the reproduction of these same beliefs and the practices that derive from them (Barreto, Borja, Serrano, & Lopez-Lopez, 2009). Thus, the state participates in processes of legitimization or delegitimation since, through the formulation and implementation of programs, policies, and laws, it has the power to support or undermine practices and values either of inequality and violence or their opposites. The role of the state in a process of (de)legitimation is reflected in the way it treats specific problems such as sexual violence, and whether these problems are ignored or included in state policies and, if included, how this is done. This is even more relevant when the perpetrators of such violence are agents or security forces of the state.

The state usually acts with duality when faced with sexual violence perpetrated within political violence. On the one hand, sexualized violence is clearly not a type of violence that institutions approve of or would openly promote; on the contrary, they tend to assume legislation and policies to fight it. In these cases, the legitimization of sexualized violence or rather, the non-delegitimation is produced in other subtler ways—what we call an *institutional silence*. In the case of sexual assault in situations of political

violence,² this silence is reflected in the exclusion of this problem and its consequences, in either whole or in part, from the policies of justice and reparation. Institutional silence is one of the main forms of legitimization of sexualized violence while, on the contrary, its inclusion in reparation and justice programs may result in a significant though gradual process of visibility and delegitimation of this type of gender based-violence.

One factor influencing the legitimizing role of the state is the strength or weakness of its institutions and presence, especially in rural and remote areas. In countries with precarious public institutions and a weak state presence, such as Perú, the scope of policies is smaller and local traditional beliefs and practices become more important. Although we cannot address these issues in detail, in general terms, where the presence of the state is weak or limited other referents of authority participate (traditional, local, and charismatic) as a source of legitimacy. Unlike in Argentina where the presence of the state is larger, but not always effective, in the case of the Andean countries, Diez (2012, 124–125) has stressed the existence of overlapping levels of public and communal authority. He notes that there is a differentiated knowledge of public institutions according to men and women, so that in Perú and Bolivia, women are aware of existing institutions, but do not use them or do so to a lesser extent than men, and in many cases often point out that the municipality or non-governmental organizations (NGOs) are the organs of the administration of justice.³

THE USE OF SEXUALIZED VIOLENCE AS AN INSTRUMENT OF POWER

With the pioneering study by Susan Brownmiller (“Against our will: Men, women, and rape,” 1975), it became clear that rape operates as a means of social control over women, and, therefore, as a form of violence which goes beyond the individual victim. This kind of violence aims to exercise power over others. The role of sexual violence works as an instrument of domination, which involves the constant sexualization of different kinds of aggressions and relations (Pohl, 2004). In dictatorial or armed conflict contexts, sexualized violence has been used for various purposes: as torture to extract information, to denigrate, humiliate, and punish, to demoralize the considered enemy, and even to procure sexual enjoyment for the participants in the war. A key element of these practices is linked to the strengthening of the roles that feminize the body, and in the case of violence against women, is also imprinted in the social learning enrolled in

patriarchal common sense about the “ownership” of the body of women by men. As Aucá (2011, 62) points out, “sexualized political violence reinforces that learning.”

Social learning, institutional complicity of perpetrators in cases of war and armed conflict, silence, and shame add to the defenselessness of the victims, as well as to the permanence of family or community stigma and the sequelae in the lives and future plans of affected women and men.⁴ All this is a difficult complex to deal with. In contemporary societies in Latin America, there are no modern states that, at least in their discourse, legitimize sexualized violence. However, authoritarian practices and projects that use and abuse the bodies of women and girls persist.

The fact that in the second half of the twentieth century, sexual violence has become not only a question of moral but also legal and criminal consequences for the perpetrators is mainly to the merit of the struggle of the feminist political movement (Muehlenhard & Kimes, 1999). In Latin America, in recent decades, there have been substantive institutional changes, especially in the field of legal frameworks. All this is happening amid open or indirect resistance. Public policies address some relevant aspects of the consequences that sexual violence has on affected women but leave others untouched. Although prosecution and reparation policies generate undeniable records of gender-based violence, the institutional culture of the security forces and the practices and beliefs in villages and communities are slow to change. It is no surprise that, after more than 40 years of feminism, sexual violence still persists, and is silenced or tolerated in a sophisticated and brutal way in Latin America.

The following discusses the role of state policies as instruments of (de)legitimation of sexual violence in a context of political violence, focusing on their strengths and challenges. In order to allow for a more detailed discussion of these processes, we will first analyze the Peruvian experience of reparation programs. After this, we will look at the prosecution for crimes against humanity in Argentina.⁵

PERÚ: POLITICAL VIOLENCE, RAPE, AND STERILIZATIONS

During the armed conflict in Perú, political violence and systematic rape were superimposed onto the ordinariness of domestic violence. While sexual violence was an affront suffered by women of all ages in various areas of the country, it mainly affected women in rural areas, where much of the armed conflict unfolded. This is where the traditional mandates were

reproduced and where the totalitarian project of the subversive group was imposed more harshly. *Sendero Luminoso* (Shining Path) redefined gender roles among its members, reproducing the archetypes of feminine and masculine, and committed sexual violence against others. However, the main perpetrators of sexual violence, particularly rape of women, during the armed conflict were members of the armed forces, as the report of the *Peruvian Comisión de la Verdad y Reconciliación* (Commission for Truth and Reconciliation) and other research confirms (Boesten, 2008; Henríquez, 2006; Leiby, 2014). Reparation policies regarding sexualized violence in Perú have addressed only rape. Without ignoring the relevance and consequences of forced sterilizations carried out by the authoritarian government of Fujimori and the claims and debates during these years, this chapter will only focus on the modality of rape and its reparation programs.

Rape in the Internal Armed Conflict and the Reparation Policy

In Peru, the institutional silence on sexual violence in the internal armed conflict is broken by the work of the Commission for Truth and Reconciliation (hereafter CTR) established by the government of Valentín Paniagua and whose work ended with the presentation of their Report in 2003.⁶ This contrasts with the silence of other institutions and state agents⁷ (armed forces and police) who were the main perpetrators of rape. The next step in breaking the institutional silence occurred with the adoption of a comprehensive redress policy, which triggered a major process of mobilization of the organized and unorganized affected populations to register to become beneficiaries of individual economic reparations. Although highly relevant as a public policy attending to the demands of those affected, the policy is nonetheless insufficient and it also remains a delimited field to those directly involved; thus, the reparation policy remains outside of national priority issues, secreted into the imagination as a matter of distant towns and villages. In this sense, with regard to sexualized violence, it has little impact on the political culture, nor does it concern itself with the everyday affronts to the dignity of women.

The armed conflict, which began in 1980, developed especially in areas of the Peruvian highlands. Despite the massacres and enforced disappearances, these actions were slow to register on the concerns of elites and rulers as well as on public opinion until the acts of terror reached the main cities and Lima. Therefore, the public hearings conducted by the CTR

functioned as a symbolic recognition of these affected populations from, mostly, Quechua-speaking areas.

The work of the CTR in Perú is a milestone in recognizing the gender perspective in the context of armed conflict and the first time in Latin America that an explicit mandate adopted by the commissioners was included. The team⁸ in charge of that task worked with a support network across the country and contributed to the final report of the CTR, which includes a chapter on gender-based violence (CTR, 2003). This work presented evidence showing the pain and the dramatic situations experienced by the affected populations; it also reported sexual violence suffered by women, specifically including rape as a form of involvement. It was a small group of women who dared to break the silence; some even appeared in public hearings. In Perú and Argentina, women felt that what happened to them was of less importance or gravity than the tragic deaths of loved ones or the uncertainty of disappearances.⁹

It should be noted that rape and sexual violence occurred during the conflict but that neither feminist organizations nor human rights organizations paid special attention to these facts. This is due to both the silence of the affected women themselves, and the existing geographical and cultural distances in the country. In the atmosphere of terror, human rights organizations played a fundamental role against massacres and disappearances across the country. Thus, they were perceived as a disturbing factor by all those political actors involved in war. Feminist groups were often besieged and threatened by the Shining Path.¹⁰

The CTR Report shows that, though women of all ages were the main victims of rape, men also experienced this kind of violence. According to the CTR Report, 83% of sexual violence cases are attributable to state agents, while sexual crimes by members of the Shining Path relate primarily to mutilation and forced sexual unions. The Report also shows that among women, rape represents 8.6% of all violations of human rights and that in most cases rape was associated with other violations (Henríquez, 2006, 83–85). This was the tip of the iceberg of sexual violence, the rest of which remained hidden.

Several studies have noted the continuity of violence against women between domestic violence and sexual violence in situations of war (Boesten, 2014). However, domestic violence in peacetime differs from violence in times of war with regard to the kind of powers to which women are submitted. The common aspects are related to the feminization of bodies, including men, exacerbation of manhood, and the subjugation

tion of women by means of sexuality. The power that restrains women in peacetime is the domain of a male individual; it may be reinforced by the complicity of the family or local morality. The forces that women face in wartime threaten their physical safety and that of their families and enclose them completely. They experience what Weber calls “total domination” of body, home, community, and time. The domination of the women’s subjective world by those who conduct the war is based on strength, terror, and the “taking control” by force that is enacted by local law enforcement.

The Report’s recommendations included a Comprehensive Redress Plan for victims.¹¹ In general, the CTR considers victims to be “all persons or groups of persons who because or by reason of the internal armed conflict in the country between May 1980 and November 2000, have suffered acts or omissions that violate norms of international human rights law (IHL)—enforced disappearance, kidnapping, extrajudicial execution, murder, forced displacement, arbitrary detention and violation of due process, forced recruitment, torture, rape, and injuries or death in attacks that violate international humanitarian law.”¹²

Law No. 28592 on Comprehensive Reparation Policy (CRP) and the regulations for its implementation establish individual and collective reparations. According to Article 47 of the regulations, individual beneficiaries are: (a) the relatives of the disappeared or deceased victims comprising a spouse or partner, children and parents of the disappeared or dead victim; (b) the direct victims comprising those displaced, innocent people who have been imprisoned, those tortured, victims of rape, hostages, members of the Armed Forces, the National Police and members of the self-defense committees and civil authorities wounded or injured in actions that violate Human Rights throughout May 1980 to November 2000; (c) the indirect victims comprising the children resulting from rape, people who, while being minors, were integrated in a Self-Defense Committee (SDC), people unduly indicted for terrorism and treason and people who were undocumented.¹²

To undergo redress, people had to enroll in the Register of Victims (RV) that resulted in a long but significant mobilization process of affected populations. The Register was a task of the so-called Reparations Council (*Consejo de Reparaciones* in Spanish) that became one of the most notable milestones with respect to the visibility of human rights violations and of the delegitimation of both state violence and violence executed by the other actors in war, including self-defense committees.¹³ Regarding rape, figures far exceed those contained in the CTR, as shown in the report of

the Council (2013, 44), which states that there are many "silent tragedies," including the abuse suffered by women.

As shown below, the RV counts 2781 cases of rape, which is four times the CTR count. It also registers 106 children resulting from rape.

Table 8.1 shows the main type of human rights violation that each person reported in order to obtain reparation. While rape was the object of individual monetary reparation, this was not the case of other forms of sexual violence, even though it appears in the register. Table 8.2 only refers to the cases of sexual violence in general and rape in particular reported by men and women separately. Sexual violations against men represent 1.7% of the cases of rape (54 of 3156), while constituting 39.9% of all the cases of sexual violence reported.¹⁴

In order not to expose women, who often felt ashamed, the Reparations Council decided to take their testimonies as the main evidence of their victimhood of sexualized violence without resorting to further witnesses as in the case of other human rights violations. The historical context in

Table 8.1 Register of victims by type of human rights violations

Type of human rights violations	Victims	Relatives	Total
Forced displacement	35,337	0	35,337
Torture	30,687	0	30,687
Death ^a	22,378	59,212	81,590
Forced disappearance ^a	7399	16,113	23,512
Rape ^b	2781	106	2887
Kidnapping	2692	0	2692
Wounded or injured victims	2006	0	2006
Arbitrary detention	1161	0	1161
Victims with disabilities	802	0	802
Wrongful imprisonment ^c	719	0	719
Forced recruitment	436	0	436
Minor member of SDC	362	0	362
Sexual violence	120	0	120
Undocumented	29	0	29
Unduly indicted	10	0	10
Grand Total	106,919	75,431	182,350

Source: Institutional memory of the Reparations Council 2006-2013, 55

^aIn the Relatives column, the parents, spouse or partner, and children are considered

^bIn the Relatives column, only children born as a result of the rape are considered

^cThe original word in the Spanish version of the register of victims is "presos inocentes" (innocent prisoners)

Table 8.2 Rape and sexual violence, by sex

Sex	Rape	Sexual violence	Total
Female	3102	726	3828
Male	54	482	536
Grand Total	3156	1208	4364

Cases reported

Source: Institutional memory of the Reparation Council 2013, 59

the area of the sexual crimes was enough proof to back the truthfulness of the women's testimonies. Even though precautions were taken by those who carried out the protocol for registration to keep the identity of raped women anonymous, confidentiality was very difficult to maintain in their communities, especially when they received the monetary compensation.

With regard to the implementation of reparation policies in general, we believe that the state has missed an opportunity to build up a new relation with the people affected. The monetary compensation is a check that arrives at a local bank without providing additional support to the victims. Despite this impersonal mode and the criticism that affected populations have expressed toward the amount and the type of reparation, the money received was a relief to their personal and family circumstances.¹⁵ Usually, communal and municipal authorities have been more interested in collective reparations than individual redress. People also claim that the assemblies in the local community usually do not address these issues.¹⁶

One Quechua-speaking woman, who has received pecuniary compensation for having been a victim of rape, recounts the distrust and fear that persist. It is a story of suffering but also of agency because in the midst of violence she took part in "rondas"¹⁷ and had to move with her family to another village. She decided to apply for the monetary reparation since she thought it would be helpful at least to pay for the medicine she needs. Her testimony conveys the pain and shame, as does the decision to declare herself affected and receive redress. She explained it as follows:

so they came saying *Halt!* and so we thought they might be coming, "sir we are not terrorists or anything, we are comuneros" [member of the community] ... they said "terruquitas" [young women terrorists] that's how they called us and they took us, saying *Hell, Let's go!* (...) they took us, that's when they raped us, and tied my husband (...). I have not told anyone because we were afraid, in the community, we are ashamed, so we have not

toed anyone, we never had. ... Now, but some of the association know that I am affected, most of them know. In Quinua there are several victims as well, but they do not participate [in the reparation program], they are not registered, they are my cousins, ... they are all dead.¹⁸

The financial compensation is a legitimate but insufficient recognition mechanism. The process is valuable when the person stands up, breaks the silence, his/her word is effective and recognized, there is a document certifying his/her status as beneficiary and therefore the state recognizes him/her as worthy of a service. However, this process developed in a cultural and political vacuum, redress became an instrument rather than a process to redefine the distance in the relationship between the state and the people. There are also cases in which people disagreed on whether to register or not, or on who should receive reparations and who should not.

On the other hand, the redress policy is often perceived as a social program and often there is insufficient information. A survey by APRODEH,¹⁹ on collective reparations indicates that men know more about the programs than women do. Moreover, when asked "in what conditions" are they beneficiaries of reparations, 17% of women say by necessity and 15% by being affected, while among men 30% say they are beneficiaries by their condition of being part of the affected population.

Finally, in these conditions reparation operates more as an isolated and specific policy rather than as a comprehensive policy. This distant and solo process of paid compensation will hardly aid the "guarantees of non-repetition." Despite these limitations, economic reparations reach families who need that support.

Human Rights Networks, Accountability, and Sexualized Violence

Domestic and international human rights legislation is an important tool to establish jurisprudence and to contribute to preventing future abuses. International networks of human rights organizations and feminist NGOs are playing an important role in obtaining accountability for sexual violence. In this regard, the role of the Inter-American Commission on Human Rights has been very relevant. As DEMUS (2013), a feminist NGO, points out, in the 1990s several rape cases that reached the Inter-American Commission on Human Rights were considered as a "form of torture."²⁰ A recent case against the Peruvian State is particularly

important because it accounts for several advances in the treatment of sexual violence in the Inter-American system: the case of Gladys Espinoza Gonzalez versus Perú,²¹ in which her illegal and arbitrary detention, which occurred on April 17, 1993, and the torture and rape endured at the premises of the National Police are reported (Portal, 2013, 9–10). The Inter-American Commission made use of the Final Report of the Commission of Truth and Reconciliation and other reports from international organizations, alluding to the widespread use of sexual violence in the fight against Shining Path and recognizing the specific consequences for women affected by sexual violence.

Another relevant antecedent recalled by DEMUS is the sentence of the court in the case of the *Miguel Castro Castro Prison versus Peru* from November 25, 2006, which refers to "gender justice and recognition of sexual violence" as a serious violation of human rights of women. The court includes nudity, vaginal inspections, and violence toward pregnant women as serious violations of human rights. The court recognizes "that rape of a detainee by an agent of the State is a particularly serious and reprehensible act, taking into account the vulnerability of the victim and the abuse of power displayed by the agent" (IACHR, 2006, paragraph 311). It also recognizes the differential impact of women's human rights violations and the consequences of such violations.

Mass sterilizations also highlight the ways in which, through public policies, states can also exert violence against women. Indeed, during the Fujimori government a sterilization program was launched as public policy (Prado, 2012). Although the government presented it as a voluntary program, reports and documentation show its highly coercive nature that mostly reached poor women in rural areas.

In 2003, before the Inter-American Court of Human Rights (IACHR), Peru vowed to compensate the victims and advance trials. Some redress, especially concerning economic and health benefits, has been achieved. However, prior to November 2012 when the case against three ministers of health, eight senior officials, and Fujimori himself was reopened, trials had been delayed for years. Allegations of unconsulted sterilizations are supported by evidence given by health workers, doctors, nurses, and women themselves, showing how they were coerced and deceived. However, there are ongoing attempts to archive the case and the case is complex as well. In August 2015, the prosecutor has archived it once more. The complainants²² are still appealing after two decades, trying to reopen the case through continuous public statements.²³

Twelve years after the CTR Report and 20 years after the arrest of Shining Path's leader, Abimael Guzman, reparations are slow and a *lance* palliative to so much suffering. The CTR Report was strongly criticized by several segments of the population and the political elite, but it has gradually gained legitimacy in Lima and the provinces in recent years. However, demands for justice and reparation find little support in the public arena. On the one hand, there is little attention and solidarity with distant populations by both public institutions and civil society and, on the other hand, there is no questioning of the legitimacy of the reparation undertaken by the state. The major resistance lies in providing official information on military commanders in conflict zones by the Ministry of Defense and the regular discussions in the media among conservative sectors about the rulings of the Inter-American Court.

ARGENTINA: REPRESSION, JUSTICE, AND INSTITUTIONAL SILENCE

As in Peru, sexual violence was also one of the means of repression used by the state security forces against those considered the opposition. During and even before the civil-military dictatorship in Argentina, torture and forced disappearances were the predominant methods used by the military to suppress and discipline anyone considered an opponent of the so-called National Reorganization Process. For political repression more than 450 clandestine detention centers (CDCs) were established throughout the country where people were taken hostage and held in captivity which could last from days to even years (CONADEP, 1984; Cels, 1982).²⁴ In the CDCs, sexual violence was systematically perpetrated by agents of the military and police security forces (Paolini, 2011; Sonderreguer & Correa, 2010). According to the testimonies of survivors, during the systematic torture sessions, sexual abuse against detainees, particularly women, was an everyday event in all CDCs. Sexual violence and rape to which detainees were subjected were not isolated events, but rather systematically practiced to annihilate and degrade the subjectivity of victims (Balardini, Oberlin, & Sobredo, 2011, 119). Another particularly gruesome fate was reserved for women who were abducted while still pregnant. Many of these women were kept alive in extremely harsh conditions until they had given birth. Immediately afterward, most of them were killed and their babies were given to families connected with the military or police to be re-educated according to "true" Argentinean values. Approximately 300

of these cases have been officially reported, but other estimates run to 500 (Ginzberg, 2002).

With the first constitutional government after the dictatorship under President Raul Alfonsín, starting in 1983, the famous trial of the military *juntas*²⁵ as well as the establishment of the National Commission on the Disappearance of People (hereafter CONADEP) took place, which aimed to find out what had happened to the disappeared. Testimony given in the CONADEP and in the Junta Trial was aimed at proving the existence of a systematic plan of repression and legally conceptualizing the notion of disappearance (Balardini et al., 2011, 107). The first testimonies in the Junta Trial in 1984 and 1985 revolved around situations of systematic torture in the CDCs. While women attested to the different forms of sexualized violence, including rape,²⁶ this was no easy task given that, as stressed by Sonderreguer, they were not asked specifically about the sexual violence they suffered (Sonderreguer & Correa, 2010). Therefore, it was left to the women to volunteer testimony of such violence, but the situation failed to provide a proper social framework for its discussion. Testimony focused on providing information relevant to the identification of other prisoners who had been killed or disappeared. The accusations against the perpetrators were based on offenses under the Argentinean Criminal Code,²⁷ which did not include charges for crimes against sexual integrity,²⁸ even though multiple references had been made to such crimes in numerous testimonies (Balardini et al., 2011, 107). Evidence presented in court showed the systematic use of torture on detainees, including the type of abuse that is characteristic of gender-based violence; however, these incidents were not prosecuted as such (Ibid.). As a result, the accusations of sexualized violence—perpetrated against both women and men—were subsumed within the offense of torture and were thus displaced.

In turn, as noted by Balardini, Oberlin, and Sobredo, victims of sexual violence have often been silent in order not to detract attention from (in their own words), "more important things," that is, uncovering the whereabouts of their disappeared relatives, friends, or partners (2011, 111). Women felt that testimony of what had happened to the disappeared should have priority. This is confirmed by an ex-detainee and witness in the current trials with reference to her testimony in the 1980s. As another survivor said: "[a]mong all the horror in the concentration camps, rape seemed secondary. With my husband's death, with everything that happened in there, all the horror, rape was displaced" (quoted in Balardini et al., 2011, 111). Thus, sexual violence as a crime in itself was barely subject to

investigation and prosecution in the trial against the military Junta. The implicit judgment was that sexualized violence and its consequences did not belong in the state's public agenda.

While technically the possibility of prosecution of these crimes remained in effect in times of impunity—because, remarkably, the Full Stop Law (1986) and Due Obedience Law (1987) or Presidential Pardons²⁹ (1989, 1999) did not include rape—sexual crimes were not reported nor investigated in the 1990s.³⁰ Here, the question arises as to how to report sexualized violence out of the context of the political repression in which took place. How to report the rape, if torture and murder were not punished? In turn, the silence of women is understandable in a context of impunity in which there was a high degree of social stigmatization of victims of state terrorism in general, and of the victims of sexual violence in particular. These social and political conditions did not favor the reporting of sexualized crimes. It is here that state institutions could have acted on their own initiative to investigate these crimes. They did not. Institutional silence prevailed.

The possibility of reporting such cases depends not only on the legal framework but also on the social and family context in which victims are embedded. This context may encourage or inhibit these kinds of stories. Indeed, social stigma in their communities is one of the difficulties faced by many of the people, in making public the indignities that they suffered. Consequently, in many cases, victims of this kind of gender based violence go through a double ordeal; the rape and the subsequent rejection by their family and social context, in which they are considered guilty of the crime they suffered (Vasallo, 2011).

Both the constitutional governments, of Raúl Alfonsín in the 1980s and Carlos Menem in the 1990s, passed important laws³¹ concerning economic reparation for relatives of disappeared persons, survivors, and ex-political prisoners (Guembe, 2008). This series of laws offered financial compensation for different types of crimes such as illegal detention, torture and murder or disappearance (Guglielmucci, 2015). However, in contrast to the Peruvian case, reparations in Argentina completely ignored sexualized violence. Reparations in Argentina were controversial, not because of their exclusion of sexual violence, but rather for the fact that they were ratified parallel to the amnesty laws and pardons. Thus several, though not all, victim groups and human rights organizations saw financial compensation as a kind of trade-off in which money was offered in exchange for the impunity of perpetrators, and, therefore, they were rejected by several

victims (Freudenreich, 2010, 89). The silence of the reparation policies concerning sexualized violence and rape was condoned not only by the civil society but also by academia. Even though there are important contributions on the topic of reparation policies in Argentina (see, e.g., Tello, 2003; Wilson, 2004; Guembe, 2008; Freudenreich, 2010; Guglielmucci, 2015), bibliography on this issue remains scarce and there is no problematization of the absence of sexualized violence in them.

Trials of Crimes Against Humanity: Toward Institutional Delegitimization of Sexualized Violence?

The arrival to the government of Nestor Kirchner in 2003 gave voice to the claims of justice that human rights organizations had been presenting for years. This led to a change in the political and judicial situation of victims and perpetrators of the dictatorship. In 2003, the Argentinean parliament revoked the amnesty laws (a decision confirmed by the Supreme Court in 2005), giving rise to a new period of oral and public trials for human rights violations, which are currently taking place across the country. The crimes committed by the military dictatorship are considered by all federal courts as crimes against humanity.³² Between January 2006 and December 2015, 153 verdicts were issued by different federal courts in almost every province of the country (Ministry of Public Prosecution, 2015, 9). During this period, 660 former members of the security forces (military and police) and some civilians (among them a Catholic priest, a doctor, and a judge) were convicted and 60 were acquitted (Ibid., 10). While impunity and reparation policies had reproduced the silence of sexualized violence, conversely, trials began gradually to generate other types of attitudes and narratives (Figari Layús, 2015).

However, very gradually and with difficulty, during the trials, many women who had been victims of sexual abuse and rape began to tell their stories for the first time. Thus, the process of delegitimization, which necessitates a critical position toward this type of violence, was initiated by the judiciary generating the gradual breakdown of silence and even producing a domino effect. In fact, sexual abuses were harshly exposed in the first oral trial that took place after the repeal of the amnesty laws in 2005, known as the "Hlaczik/Poblete case."³³ As Balardini, Oberlin, and Sobredo (2011, 136) explain, during that trial the cruelty of the abuse to which detainees were submitted came as a surprise, especially because the acts of sexual violence that were exposed also involved male detainees.

According to survivors, degrading practices included enforced homosexual relations between cellmates and rape by repressors at the CDC. Cases of sexual violence in particular were shrouded in silence not only in society but also within the family. As stated by a survivor and witness in a trial in the Province of Buenos Aires: "I was only recently able to say it out loud. I had never put it into words before. We didn't tell our families because we didn't want to upset them" (quoted in Balardini et al., 2011, 111). Indeed, survivors have consistently played down the violence they personally suffered during their captivity in front of their partners, relatives, or fellow militants. However, the trials have started to provide a space for the communication of such taboo experiences of violence. In a trial in the Province of Santiago del Estero, a plaintiff lawyer referred to testimony that shocked her:

In a recent trial, one of the witnesses told the story of his wife who had committed suicide. He said [at the trial] that his partner had been raped [during the dictatorship]. He had never spoken about it before. Their daughter was there and she did not know about it. (...) And it was hard to hear him say: "I apologize to my daughter, who doesn't know about this, but I have to say it so that everyone knows what these people did to us?" (...) She was the mother of his four children.³⁴

In many cases, the family was told nothing; in others, it was a tacit knowledge that was never put into words. Another interviewee who gave testimony at the trial about the rape she endured in prison narrated her experience with her family who attended the hearing: "My son knew. And so did my mother, but we didn't speak about it. My sister didn't speak to me about it either, she found it very hard." The court presents itself as a legitimate public space in which witnesses not only tell their stories to the judges but also to and for their own families.

The courage to give testimony about sexualized violence is reflective of a change in the victims' perceptions and in the social and institutional context that makes it possible to speak. Such an institutional preparedness to listen to these testimonies entails challenging the silence that legitimized this kind of violence or failed to call it into question. Trials, as an exercise of the law and an institutional mechanism, convey a message to society, including the victims, about what can or cannot be said. However, this process of publicly uncovering and recognizing the different modalities of state violence is not free of difficulties as it is shown below.

Persistent Challenges

Unfortunately, as demonstrated by several scholars, breaking the silence and giving testimony about sexualized violence encounters more obstacles than the reporting of other crimes (Mertus, 2004; Staggs Kelsall & Stepakoff, 2007). Although it has been proven that rape was a systematic practice in the majority of the CDCs in Argentina and some women had begun to report the crimes to the courts (many more women have been raped and have not reported it), only two defendants of the 63 trials that had taken place by December 2011 were actually convicted. Sexual violence entailed only 0.5% of all crimes convicted between 2006 and 2011, leading to the exclusion of sexual abuse and rape from many verdicts (Cels, 2012, 46). As a result, most cases of sexual abuse against women (and men) remain hidden behind cases of torture.

Although, as shown in Fig. 8.1, there has been a gradual increase in sentences for sex crimes between 2013 and 2015 with 13 convictions, this is a relatively small figure compared with the total number of convictions per year. While the silence of victims is one reason for this, it is not the only one. Especially in the first years of prosecutions, tribunals regarded cases of rape as isolated cases, not as the systematic practice that it actually was (Balardini et al., 2011). In other words, in contrast to torture, in the first years of the trials, sexual crimes were not categorized by judges as crimes against humanity, which are not subject to the statute of limitations. Instead, sexual violence was considered as an isolated crime with a statute of limitation of 30 years (Carbajal, 2011). Testimonies by witnesses of rapes are considered by some judges to be inadequate evidence for



Fig. 8.1 Verdicts for Sexual Crimes in Contrast to Total Verdicts 2006–2015. Source: Public Ministry of Prosecution (2015)

a conviction, so that many defendants are acquitted. When prosecuting torture, these harsh criteria are not applied. Several judges consider that being held captive in a CDC is enough to imply torture. Another reason for the paucity of convictions for rape is that, according to Balardini, Oberlin, and Sobredo, many judges still, though decreasingly, subsume this crime under the figure of torture, thus not treating it as an independent crime (2011, 137). This leads to the invisibility of sexualized violence and to its impunity.

The manner in which the court addresses this kind of gender-based violence can prompt or inhibit testimony about this crime. As shown in other contexts in which trials took place, such as the ICTY and Sierra Leone, excluding the question of sexual violence can reinforce silence and victimize women once again (Buckley-Zistel, 2013; Mertus, 2004; Staggs Kelsall & Stepakoff, 2007). This can be very damaging to victims given that, when they dare to speak out, the judicial system does not afford them proper treatment and often even ignores their testimony. A survivor from Santiago del Estero narrated her experience in court and the judges' response when she gave testimony in the trials:

To me, rape was the most difficult issue to speak about, because it is a topic that is only now coming out. (...) I was the first one who dared to speak about it in public (...) and they didn't even take it into account when asking questions, that's an issue they wouldn't speak about. I said "yes, I was raped," (...) the judges never asked me any questions.³⁵

However, this phenomenon is not unique to the conservative province of Santiago del Estero. An attorney of one of the complainants in the trials from the City of La Plata explained that testimony about sexualized violence is "completely ignored by the judges. For example, a survivor identified one of her rapists. A criminal action was begun, [and] he was acquitted because of the victim's testimony was not enough to prove that the event had happened."³⁶

Giving no value to the victim's testimony as a key piece of evidence of the rape is perhaps a paradigmatic example of gender inequality that the patriarchal system, prevalent in society as a whole and entrenched in the judiciary, supports. The judges' failure and psychological unpreparedness to listen to testimony about sexual violence reproduces silence and precludes victims from giving testimony (Staggs Kelsall & Stepakoff, 2007). Proof of this lies in the fact that the issue is still surrounded by silence,

even if to a lesser extent. An interviewee from Santiago del Estero confirms this: "I think there were many more cases of rape here in Santiago. Women don't dare to speak about it."³⁷ The difficulty of giving such public testimony after years of silence requires a great personal effort that does not always receive an adequate response from the court. As in other courts such as in the ICTY, testimony is usually hindered by the attacks that survivors suffer, especially at the hands of defense attorneys (Mertus, 2004).

When the courts neglect crimes of sexualized violence, this does not only lead to their impunity, but entails that rape survivors become victims for a second time; the first time as victims of the crime, the second as victims of a judicial system that is incapable of action. This is particularly difficult for the victims, as many women kept silent for years because of the stigmatized nature of the crime. Their effort to overcome their fear in order to report these crimes in court goes unrewarded. In other words, criminal trials may lead to a *secondary traumatization* of the victims. Sabine Rupp (2003) defines *secondary traumatization* as all those types of damage that occurred not at the hands of the immediate perpetrator of sexual violence, but indirectly through the behavior or actions of the occupational groups involved, persons in contact with the victims, or state institutions and agencies, such as, in our case, the judicial system. As explained by a plaintiff lawyer from Córdoba, this re-victimization is not unique to these trials, but is also present in cases of sexualized violence in the private sphere:

It is a common occurrence with this type of crime. This happens not only within the framework of [the trials of] state terrorism but also with the law in general. Many women refuse to speak about it because telling the prosecutor about the experience is a further re-victimization. The prosecutors or the officials under their charge are not often tactful enough to realise who they are dealing with and how traumatic the event has been for the victim.³⁸

The process of delegitimization of sexualized violence is undermined by the reluctance or negligence of the judiciary in dealing with such cases. Judges often lack the psychological training to deal with these sensitive cases, leading to potentially highly unpleasant and embarrassing situations for the victims at the hearings. Thus, many different obstacles must also be overcome, such as the sexist and gender discriminatory behavior and perspectives that the judiciary still exhibits, the lack of sensitivity on the part of judicial officers and the fact that sexual crimes are still offenses in "private prosecution" (Balardini et al., 2011, 196–200). The fact that

the crime of rape figures in the Argentinean Criminal Code as "private prosecution" implies that the only person who can report it is the victim herself.³⁹ Because of this, sexualized violence against and rapes of disappeared women and men remain unpunished when victims do not report it. Even though there may be witnesses to a rape against them, the state cannot initiate any legal action.

The judiciary in Argentina is still permeated by certain structures, concepts, and actors with strong traditional patriarchal and hierarchical values that undermine the process of reparation that the trials aim to achieve. The judicial system and its members, who in Argentina usually belong to the upper class and conservative sectors, virtually feudal in some provinces, are also suffused by such patriarchal beliefs about gender relations that these often hinder the prosecution of sexualized violence as gender-based and systematic crimes.

The reporting of these crimes depends not only on a particular legal framework, but also on the social context that encourages women to report and speak about them rather than hinder them from doing so. In this sense, the few convictions for sexual violence emerging from these trials have already had a positive impact on initiating a public debate about sexual abuse, an issue that had not been addressed before. This can be seen in the way sexual violence during the dictatorship has become a topic in an increasing number of newspaper articles, NGO reports, and books that have been published over the last year based on the evidence from witnesses in the trials about the topic. Sexual abuse has been a taboo subject for the last 30 years, and remains so when its targets were men, who usually do not classify the violence they suffered during their captivity in the clandestine detention centers as sexual, though its sexualized character becomes clear in their testimony. This is still a pending issue that involves a more generalized taboo and not one specific to the Argentinean courts.

CONCLUSIONS

The justice and reparation policies in Perú and Argentina addressed in this chapter are crucial state-sponsored mechanisms in post-conflict and post-dictatorship contexts to redress victims' rights and needs. Reparations and prosecutions, when they are properly carried out and have a victims-centered perspective, play a relevant role in uncovering the systematic use of sexualized violence as well as delegitimizing it in both the public and private spheres.

Rape is not an act between two people, it involves gender unequal power relations, public institutions and mechanisms that act with tolerance and permissiveness and hide information. In this regard, state policy in the

field of redress, such as prosecutions in cases of rape, are relevant instruments to the delegitimation of these affronts to women, their integrity and dignity. However, their scope will be limited if they are not accompanied by complementary measures at a macro and micro level such as civic solidarity actions as well as support by institutions⁴⁰ and effective local authorities. Understandably, many women who have suffered sexualized violence prefer to remain silent, which we have to understand and respect especially in cases of rape; what is unacceptable is institutional silence and complicity. This is aggravated when the perpetrators of such violence were the agents of the state. State actions, either by action or omission, may gradually influence social perceptions and beliefs about sexual violence, its victims and its perpetrators, fostering attitudes of tolerance, stigmatization and/or rejection of the victims, as well as indulgence toward the perpetrators. A process of delegitimation of such violence, while a gradual process of reconfiguration of beliefs and social relations, requires constant action by the state in all its institutions, and not just isolated policies.

Both cases outlined in this chapter show important differences but also common aspects regarding how transitional justice policies deal with rape and sexualized violence. While in Peruvian reparation policies, rape, though not other forms of sexual violence, has been one of the crucial crimes addressed, it was totally ignored by the reparations laws in the 1980s and 1990s in Argentina. Instead, the current human rights trials in Argentina are the ones that have begun to give account of the systematic use of rape during the military dictatorship. While, as described here, there are persistent problems and challenges in the reparation policies and prosecutions of sexual violence, the mere fact that these measures address it not only makes this kind of violence visible, but also gives place to a process of institutional questioning, thus breaking the silence and opening public debate on an issue that is usually a taboo. In this regard, sexual violence against men is still a pending topic to be addressed by transitional justice policies in both study cases. A new generation of research on memory studies, armed conflicts, and post-conflict has been developing in recent years and meaningful works from the feminist standpoint and from human rights organizations are showing new dimensions of sexual violence that should be taken into consideration for further policies that might also nurture new theoretical approaches.

However, the inclusion of rape in transitional justice policy is not only a matter of revealing the truth about the use of gender-based violence in scenarios of political and institutional violence. It is also an acknowledgement of the responsibility of the state, through its security forces, in the instrumentalization of that type of violence. This acknowledgment function

is accomplished by reparation policies and prosecutions through their investigations and sentences that give accounts of the gravity of the harm caused by state violence and the suffering of victims. As Parlevliet (1998, 3) outlines, the strength of acknowledgement seems to have an impact on several levels: On a psychological level, "it means an affirmation that one's pain is real and worthy of attention." On a social level, it can put an end to the isolation and fear that accompany survivors of gross human rights violations. On a political level, it symbolizes that the state takes responsibility for what happened in the past. Acknowledgement is the opposite of denial. While state denial and institutional silence contribute to avoiding any measures against gender-based violence, its acknowledgement through state policies can contribute to prevent it and gradually modify unequal gender power relations. In this sense, the official acknowledgment of the use of sexualized violence as a crime against humanity that must be redressed by the state is a crucial step toward the delegitimation of these heinous practices, which may have important consequences not only for the directly affected but also for the society as a whole.

NOTES

1. The interviewees are women who suffered sexual violence in Perú and Argentina who either received reparations or participated as witnesses or plaintiffs in the trials, plaintiffs' lawyers, and local experts, among others.
2. This institutional silence can also be seen in the treatment given to domestic violence.
3. In this regard, a study on domestic violence (Pinzas, 2001) in rural areas in Perú shows that when it occurs women turn to close friends or relatives but resent the intervention of public institutions. Although this is changing, women still usually make use of family relationships and community networks.
4. In Perú, as in other countries, men have suffered sexual abuse, but there is less documentation and fewer studies. The common denominator is that such abuses also result in the "feminization" of bodies. One of the pioneering works in this regard is that of Riquelme (1990) about sexual violence on political prisoners in El Salvador. For the Peruvian case, Leiby (2014) has also given account of this issue.
5. We must take into account the difficulties involved when working with data on sexual abuses and the definitions and concepts policymakers and researchers might work with uncritically, as well the stereotypes and common sense that prevails among judges and other members of the judiciary.

6. The Report refers to political violence that took place from 1980 to 2000, a period with three Presidents, Fernando Belaunde, Alan García and two terms of Alberto Fujimori.
7. Even the Armed Forces published a book about the conflict but omitted, among other things, any reference to sexualized violence.
8. The team was led by Julissa Mantilla, see Henríquez (2006).
9. The exception to public silence on sexual violence in the armed conflict was young Georgina Gamboa who reported in the media in the early years of the 1980s how she was raped by seven *sinchis* (special unit of the police forces). This complaint was supported by the feminist organization "Manuela Ramos" and the human rights NGO COMISEDH; Georgina Gamboa later gave her testimony before the CTR.
10. In this context, however, feminism deployed campaigns against domestic violence against women and succeeded in getting a law passed in Congress in 1990.
11. The denomination of victim is a subject of debate regarding the construction of identities that does not recognize the affected agency; moreover, there are also continuous debates about the extent of the CRP and Law No. 28592 to the extent that they do not include members of "subversive organizations." Guillerot and Magarell (2006) refer to debates related to these issues.
12. The reparation was implemented according to the priorities of the regulation: the elderly, widows, disabled victims, and orphans.
13. Once the registration process was completed and the information provided by victims confirmed, another public organ, the Multisectoral Commission (*Comisión multisectorial de Alto Nivel* in Spanish), established in 2004, was in charge of providing the beneficiaries in their own locations with monetary compensation.
14. This data shows close pattern to Leiby's research (2015) which works with non-published data of the CTR regarding sexualized violence committed against men and women.
15. The amount of economic compensation received by victims is 10,000 soles (3000 dollars approx.). The affected organizations also demand the modification of the law (DL 050) according to which reparations are given only to those registered before December 2011. This date excludes many victims.
16. Personal communication, July 2013, Ayacucho.
17. The "rondas" refer to anti-Shining Path peasant self-defense groups and practices of the community.
18. Personal communication, victim, translated from Quechua, December 2013, rural district of Ayacucho.
19. Applied to 600 people in 10 towns of five provinces in 2010.
20. This is the case of Raquel Martín as stated in the Report of the Inter-American Commission on Human Rights, Case 10.970 March 1996 and that of María Elena Loayza according to the sentence of the Inter-American Court of Human Rights September 1997.

21. Inter-American Commission on Human Rights. Report No. 67/11, *Case 11,157. Admissibility and merits. Gladys Carol Espinoza Gonzales versus Peru*, March 31, 2011.
22. Among the complainants are Hilaria Huaman Huilca, Rudecinda Quilla Huaman, Serafina Ylla Quispe, who have been relying on the support of the Institute of Legal Defense.
23. Despite judicial inefficiency, allegations have had a great media coverage during presidential election campaigns, such as in 2010, as well as during the 2016 campaign currently underway (El Comercio, 2015). By the end of his government, Humala established the register (D.S.006-2015) named *Registro para Víctimas de Esterilizaciones Forzadas* (REVIESFO).
24. While many people died in them, most were "transferred" from there and their bodies were thrown from the so-called death flights or killed and buried in anonymous graves.
25. In which nine senior army officers were sentenced.
26. It is estimated that the number of rapes is much higher than reported (Sonderguer & Correa, 2010).
27. The crimes tried were unlawful deprivation of freedom, torture, torture followed by death, murder, and theft.
28. Crimes against sexual integrity are restricted under Argentinean law and are limited to cases that can be understood broadly as "gender-based violence" (Balardini et al., 2011, 111).
29. Pardons of President Carlos Menem were a series of ten decrees through which civilians and military were pardoned, including the military convicted at the trial of the Juntas.
30. These laws do not include other crimes such as appropriation of minors and theft of property. While there were criminal prosecutions and convictions in cases of appropriation of children, that is not the case of sexual violence (Cels, 2012, 35).
31. In 1986, the Alfonsín administration passed Law 23,466 that provided the children and the spouse of the disappeared with a pension of 75% of the minimum wage (Guembes, 2008). In 1991, the Menem presidency passed law 24,043 providing compensation to all those people who had been illegally arrested during the period of the military dictatorship.
32. According to the Rome Statute for the creation of the International Criminal Court (1998), the category of "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial,
- national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, enforced disappearance of persons; and the inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Rome Statute 1998, Art.7).
33. The "Hlaczik/Poblete case" was a leading case in the Argentine jurisprudence concerning the theft of a child, abducted with her parents. This case led to the significant decision of the amnesty laws being declared null and void. In 1978, a police task force kidnapped José Poblete Roa, a Chilean citizen, and his wife, Gertrudis Hlaczik, along with their eight-month-old daughter, Claudia Victoria. During their captivity, the baby was taken from her parents who were later disappeared. The kidnapped parents were held, tortured and were victims of sexual violence, in the detention center known as "El Olimpo," in the Floresta district of the city of Buenos Aires. After a long investigation, the child Claudia Poblete was found at the late 1990s living with a retired police lieutenant colonel and his wife, who had hidden her real identity for 22 years (Roht Arriaza, 2004, 112–113).
34. Personal communication, April 2011, City of Santiago del Estero.
35. Personal communication, April 2011, City of Santiago del Estero.
36. Personal communication, March 2011, City of La Plata.
37. Personal communication, April 2011, City of Santiago del Estero.
38. Personal communication, March 2011, City of Córdoba.
39. Articles 72, 119, 120, and 130 of the Argentinean Criminal Code regulate cases of crimes for which criminal prosecution can only be exercised with express consent from the victim, provided the victim survived. That is what is known as the "private prosecution" condition, which determines that the criminal investigation of these crimes does not depend on system agents, as is the case with most other crimes, but on the victim's report. This requirement is not effective when the victim dies, as per paragraph 1, article 72 of the Criminal Code. In that case, the crime is investigated like any other crime (Balardini et al., 2011, 125).
40. Schmelzle (2011) notes that in societies of low statehood, interventions of public authority are not enough and can be perceived as foreign, so that "domestic institutions" are required to mediate for the legitimacy of state action.

REFERENCES

- Aucá, A. (2011). Género, violencia sexual y contextos represivos. In A. Analia et al. (Eds.), *Grietas en el silencio. Una investigación sobre la violencia sexual en el marco del terrorismo de Estado* (pp. 26–68). Buenos Aires: CLADEM/INSGENAR.
- Balardini, L., Oberlin, A., & Sobreño, L. (2011). Gender violence and sexual abuse in clandestine detention centers. In Center for Legal and Social Studies

- and International Center for Transitional Justice (Ed.), *Making Justice: Further discussions on the prosecution of crimes against humanity in Argentina* (pp. 106–142). Buenos Aires: Siglo Veintiuno Editores.
- Barreto, I., Borja, H., Serrano, Y., & Lopez-Lopez, W. (2009, September–December). La legitimación como proceso en la violencia política, medios de comunicación y construcción de culturas de paz. *Universitas Psychologica*, 8(3), 737–748.
- Boesten, J. (2008). Narrativas de sexo, violencia y disponibilidad: Raza, género y jerarquías de la violación en el Perú. In F. Urrea Giraldo, M. Viveros Vigoya, & P. Wade (Eds.), *Raza, etnicidad y sexualidades: Ciudadanía y multiculturalismo en América Latina* (pp. 199–220). Bogotá: Universidad Nacional de Colombia.
- Boesten, J. (2014). *Sexual violence during war and peace: Gender, power and postconflict justice in Peru*, *Studies of the Americas*. New York: Palgrave Macmillan.
- Brownmiller, S. (1975). *Against our will. Men, women, and rape*. New York: Fawcett Books.
- Buckley Zistel, S. (2013). Redressing sexual violence in transitional justice and the labelling of women as “victims”. In T. Bonacker & C. Safferling (Eds.), *Victims of international crimes: An interdisciplinary discourse* (pp. 91–100). The Hague: Springer.
- Carbajal, M. (2011). Casi todas sufrieron abusos. *Página 12*. Retrieved from <http://www.pagina12.com.ar/diario/elpais/subnotas/160611-51510-2011-01-17.html>
- Cels – Center for Legal and Social Studies. (1982). El secuestro como método de detención (Kidnapping as a method of detention), Buenos Aires. Retrieved from <http://www.cels.org.ar/common/documentos/elsecuestro.pdf>
- Cels – Center for Legal and Social Studies. (2012). *Informe 2012 sobre la situación de los derechos humanos en Argentina*. Buenos Aires: Siglo XXI Editores SA.
- Comisión de la Verdad y la Reconciliación (CTR in English). (2003). *Informe final* (Vol. IX). Lima: CVR.
- Comisión Nacional sobre la Desaparición de Personas – CONADEP. (1984). *Nunca más. Informe de la Comisión Nacional sobre Desaparición Forzada*. Never again. Report of the National Commission on Forced Disappearance, Editorial Universitaria de Buenos Aires.
- Consejo de Reparaciones. (2013). *Todos los Nombres (Institutional Report of the Reparations Council) 2006/2013*. Lima: Ministry of Justice and Human Rights.
- De Greiff, P. (Ed.). (2008). *The handbook of reparations*. New York: Oxford University Press.
- Diez, A. (2012). *Conceptos Políticos, Procesos sociales y Poblaciones Indígenas en Democracia, estudio binacional Perú/Bolivia*. Lima: Manuela Ramos- Ciudadanía, Comunidad de Estudios Sociales y Acción Pública.
- El Comercio. (2015). *Piden crear registro de víctimas de esterilizaciones forzadas*. Retrieved from <http://elcomercio.pe/politica/justicia/piden-crear-registro-victimas-esterilizaciones-forzadas-noticia-1828213>
- Figari Layús, R. (2010). *The role of transitional justice in the midst of ongoing armed conflicts: The case of Colombia*. Potsdamer Studien zu Staat, Recht und Politik 5. Potsdam University.
- Figari Layús, R. (2015). Políticas de impunidad y justicia: El doble filo de la ley en Argentina, sus consecuencias sociopolíticas y efectos en las víctimas. *TALLER (Segunda Época). Revista de Sociedad, Cultura y Política en América Latina*, No. 5, Dossier Temático: Justicia de Transición en Latinoamérica.
- Freudenreich, J. (2010). *Entschädigung zu welchem Preis? Reparationsprogramme und Transitional Justice*. Reihe Potsdamer Studien zu Staat, Recht und Politik. Potsdam University.
- Ginzberg, V. (2002, August 20). El embajador y el plan sistemático. *Página 12*.
- Guembe, M. J. (2008). Economic reparations for grave human rights violations: The Argentinian experience. In P. De Greiff (Ed.), *The handbook of reparations* (pp. 21–54). New York: Oxford University Press.
- Guglielmucci, A. (2015). Transición política y reparación a las víctimas del terrorismo de Estado en la Argentina: Al gunos debates pendientes. *Taller Segunda Época. Revista de Sociedad, Cultura y Política en América Latina*, 4(5), 24-42.
- Guillerot, J., & Magarell, L. (2006). *Reparaciones en la Transición Peruana. Memorias de un Proceso Inacabado*. Lima: APRODEH 373.
- Henríquez, N. (2006). *Cuestiones de género y poder en el conflicto armado en el Perú*. Lima: CONCYTEC.
- IACHR. (2006, November 25). Case of the Miguel Castro-Castro Prison v. Peru, Inter-American Court of Human Rights (Series C) No. 160.
- Leiby, M. (2014). *Documentando la violencia sexual en los conflictos armados: el caso peruano*. Lima: IDEHPUCP, Memoria No. 14, Dossier.
- Leiby, M. (2015). Sexual violence against political prisoners: An examination of empirical evidence in El Salvador and Peru. In A. Ackerman & R. Furman (Eds.), *Sexual crimes: Transnational problems and global perspectives*. New York: Columbia University Press.
- Mertus, J. (2004). Shouting from the bottom of the well the impact of international trials for wartime rape on women’s agency. *International Feminist Journal of Politics*, 6(1), 110–128.
- Muehlenhard, C. L., & Kimes, L. A. (1999). The social construction of violence: The case of sexual and domestic violence. *Personality and Social Psychology Review*, 3, 234–245.

- Paolini, A. (2011). Judicialidad de los delitos sexuales en el marco de las causas de lesa humanidad. In M. Vassallo (Ed.), *Grietas en el Silencio, Una investigación sobre la violencia sexual en el marco del terrorismo de Estado* (pp. 233–274). Rosario: Cladem.
- Parlevliet, M. (1998). "Considering truth. Dealing with a legacy of gross human rights" violations. *Netherlands Quarterly of Human Rights*, 16(2), 141–174.
- Pinzas, A. (2001). *Jerarquías de Género en el Mundo Rural*. Lima: Flora Tristán (Ed.).
- Pohl, R. (2004). *Feindbild Frau. Männliche Sexualität, Gewalt und die Abwehr des Weiblichen*. Offizin Hannover.
- Portal, D. C. (2013). *Justicia de Género, violencia sexual en Conflicto armado interno peruano como crimen de lesa humanidad*. Lima: DEMUS.
- Prado, E. (2012). Esterilizaciones Forzadas fue una política de Estado de Fujimori. *La República*. Retrieved from <http://www.larepublica.pe/25-11-2012/esterilizaciones-forzadas-fue-una-politica-de-estado-de-fujimori>
- Public Ministry of Prosecution. (2015). *El estado de las causas por delitos de lesa humanidad en Argentina. Balances y Desafíos. Datos actualizados al 23 de diciembre del 2015*. Retrieved January 4, 2016, from <http://www.fiscales.gob.ar/lesa-humanidad/wp-content/uploads/sites/4/2015/12/Ver-Informe.pdf>
- Riquelme, H. (1990). *Era de Nieblas, Derechos humanos, terrorismo de Estado y salud psicosocial en América Latina*. Caracas, Venezuela: Nueva Sociedad.
- Rohr-Arriaza, N. (2004). Argentina: Truth and consequences. In *The Pinochet Effect. Transnational justice in the age of human rights* (pp. 97–117). Philadelphia: University of Pennsylvania Press.
- Rupp, S. (2003). Sekundäre Traumatisierung durch Behördenprozesse. In *Fachtagung: Nachhaltiger Opferschutz durch interdisziplinäre Zusammenarbeit* (pp. 30–52).
- Schmelzle, C. (2011). *Evaluating Governance, effectiveness and legitimacy in areas of limited Statehood*. SFB 26 Governance Working Papers, Free University of Berlin.
- Sonderguer, M., & Correa, V. (2010). *Violencia de Género en el Terrorismo de Estado: Políticas de Memoria, Justicia y Reparación*. "Emilio Mignone" human rights center, National University of Quilmes.
- Staggs Kelsall, M., & Stepakoff, S. (2007). "When we wanted to talk about rape": Silencing sexual violence at the special court for Sierra Leone. *The International Journal of Transitional Justice*, 1(3), 355–374.
- Suchman, M. C. (1995). Managing legitimacy: Strategic and institutional approaches. *Academy of Management Journal*, 20(3), 571–610.
- Tello, M. (2003). La Fuerza de la cosa dada: derechos humanos, política y moral en las "indemnizaciones" a las víctimas del terrorismo de Estado en Argentina. *Antropología e Derechos Humanos*, 2, 37–73.
- Van Boven, T. (2005). *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 Doc. E/CN.4/2005/L.
- Vasallo, M., et al. (2011). *Grietas en el Silencio: Una investigación sobre la violencia sexual en el marco del Terrorismo de Estado*. Rosario: Cladem.
- Weschler, L. (1990). *A miracle, a universe. Settling accounts with torturers*. New York: Penguin Books.
- Wilson, C. (2004). Argentina reparations bonds: An analysis of continuing obligations. *Fordham International Law Journal*, 28(3), 786–826.
- Zelditch, M. (2001). Theories of legitimacy. In J. Jost & B. Major (Eds.), *The psychology of legitimacy. Emerging perspectives on ideology, justice, and intergroup relations* (pp. 33–53). Cambridge: University Press.
- Narda Henríquez**, Ph.D., is a Peruvian sociologist with a long trajectory in the areas of social change, poverty studies, and gender studies. Henríquez is the director of Postgraduate Studies (PhD) at Pontificia Universidad Católica del Perú (PUCP). Henríquez was one of the founders of the first women's studies program at PUCP and has written several books on issues of social and political change. She holds a Sociology Ph.D. at the L'École des Hautes Études en Sciences Sociales, Paris. She was the former president of the Peruvian National Association of Sociologists and a gender consultant to Perú's Commission on Truth and Reconciliation. Among main publications are: "Conflicto social en los Andes: protestas en el Perú y Bolivia" (ed.), Fondo Editorial PUCP, Lima: 2014, and *Cuestiones de Género y Poder en el Conflicto Armado en el Perú*, CONCYTEC, Lima: 2006.
- Rosario Figari Layús**, Ph.D., is an Argentine researcher based at the Phillips University of Marburg in Germany from where she holds a PhD in political Sciences. She holds a Master in Social Sciences degree from Humboldt University of Berlin and a degree in Sociology from the University of Buenos Aires. Her areas of work and research are transitional justice, human rights, and political violence. She has worked as a researcher and lecturer at various institutions including the University of Buenos Aires, the Free University of Berlin, University of Heidelberg, the Institute for Interdisciplinary Research on Conflict and Violence (IKG) at the Bielefeld University and the University of Konstanz in Germany. Figari Layús is the author of *The Role of Transitional Justice in the Midst of Ongoing Armed Conflicts: The Case of Colombia* (2010) and of *The Reparative Effects of Human Rights Trials: Lessons from Argentina* (2017).