



**Guidelines on Transformative
Reparations for Survivors of
Sexual Violence**

Guidelines on Transformative Reparations for Survivors of Sexual Violence

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Introducción

Reparations are a central element in transitional justice that offer a tangible opportunity to correct the harm caused to victims of grave human rights violations. Beyond other mechanisms such as truth and justice, reparations have the capacity to alleviate the harm against victims much more directly and respond to their pressing needs (De Greiff 2006). Nonetheless, reparations for these crimes require a careful and holistic approach, and one that recognizes the profound harm caused to the victims and the strong social stigma surrounding sexual violence.

Recent conflicts in Rwanda, the Balkans, Guatemala, and Colombia have all revealed the severity and scope of sexual violence used as a weapon of war, and its powerful impact on women's lives and the communities affected by violence. Despite this growing understanding, the measures put in place by the international community and states to combat impunity in cases of this crime, and to guarantee comprehensive reparations to its victims, remain insufficient. A more appropriate approach is needed to generate deeper changes that offer guarantees of non-repetition.

These guidelines examine the transformative approach to reparations for cases of sexual violence in situations of conflict. The transformative approach to reparations for survivors of sexual violence emerged with the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007). This declaration establishes that "reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls." That is, reparations cannot be limited only to repairing the specific harm; they must change the structural conditions that allowed the acts to occur in the first place. The transformative approach encompasses the political, social, economic, and cultural changes needed to keep the events from reoccurring, and allow women to transition from their position as victims to one of change agents, breaking out of their initial status of exclusion.¹

Impunity Watch presents this guide with the intention of helping to address sexual violence through a holistic approach, in which reparations contribute to a transformation of the gender inequality that allows this type of crime to occur. Victims must claim a central role in the construction

¹Sanne Weber. (1 March 2018). From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions, *International Journal of Transitional Justice*, (12) (1), pp 88–107, <https://goo.gl/rGgEfp>

and implementation of the reparations, and their full recognition in society must be guaranteed. This document examines different international experiences in reparations established through judicial tribunals as well as administrative proceedings. A series of considerations are also offered on design and verification mechanisms for the implementation of these reparations.

This guide is divided into four chapters. Chapter one presents a theoretical discussion on the crime of sexual violence and the harm it causes. The next chapter delves into greater detail on the concept of transformative reparations for victims of sexual violence, based on international guidelines and best practices. Chapter three describes the practical reality in this field, presenting examples of reparations for sexual violence. These examples outline reparations ordered by national and international courts, as well as certain cases of administrative reparations programs that can offer lessons that may be incorporated into judicial rulings. Chapter four offers a look at keys for the design, implementation, and monitoring of reparations, and the verification of their social impact.



Trial of the case Sepur Zarco, Guatemala. Photo: Quimby de León.

1. Sexual violence in conflicts

National and international attention for this issue has grown over recent decades, with attempts to improve the understanding of the impacts of violence from armed conflict upon women's lives (see Cockburn 1998; Enloe 2000; Clark and Moser 2001; Skjelsbaek and Smith 2001). This topic moved into the spotlight after the mass rapes committed in conflicts in Bosnia and Rwanda. International tribunals from the former Yugoslavia and Rwanda set important international jurisprudence by recognizing sexual violence as a form of genocide and a crime against humanity (Walsh 2008; Chappel 2014). The Foca case heard at the International Criminal Tribunal for the former Yugoslavia was the first case that exclusively covered accusations of sexual violence against women. In this case, three Serbs were convicted of sexual abuse against women at a "rape camp," classifying rape, torture, and slavery as crimes against humanity and war crimes (Mertus 2004).

Recognizing sexual violence as a weapon of war is important because this form of violence had previously and historically been seen only as collateral damage (Duggan and Abusharaf 2006; Kirby 2013; O'Rourke 2013; Sjoberg 2016). Sexual violence is a tactic used to control or intimidate an enemy through women's bodies, which are seen solely as tools for the physical or symbolic reproduction of ethnic or social groups. Sexual violence is also used as a political instrument to drive displacement, torture, and genocide.

Nonetheless, analyzing sexual violence exclusively as a weapon of war, used in the context of an extraordinary event, forestalls understanding of the deeper causes and gender inequality that open the door for this type of violence. The conclusion of the conflict does not necessarily represent the end of sexual violence (Duggan and Abusharaf 2016; Baines 2015; Crosby,



Lykes and Caxaj 2016). Militarization and the normalization of violence in post-conflict societies can continue to cause violence against women. Men often use violence - including sexual violence, to reassert the gender relations and subordination of women (Pankhurst 2008b; Sigsworth and Valji 2012). Violence often shifts to the household and private spheres in post-conflict environments (Cockburn 2004).

Given this dynamic, sexual violence during conflicts cannot be seen as a phenomenon detached from other forms of violence against women that come from deep-seated structures of gender inequality, which predate the conflicts themselves. To truly prevent sexual violence, it is important to address power relations and socioeconomic and political inequality between men and women (Ní Aoláin 2006; Sigsworth and Valji 2012; Buckley-Zistel and Zolkos 2012).

The crime of sexual violence has traditionally been defined and understood only as rape, including penetration of the victim. Nonetheless, this definition has been expanding over time. The Rome Statute of the International Criminal Court includes other forms of sexual violence such as sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and any other form of violence with similar severity (De Brouwer 2009).

This list still does not reflect all of the forms of violence women face. In this sense, General Recommendation 30 from the CEDAW committee recognizes other gender-based violations, “including sexual and reproductive rights violations, domestic and sexual enslavement, forced marriage and forced displacement, in addition to sexual violence, as well as violations of economic, social, and cultural rights” (2013). CEDAW also urges transitional justice mechanisms that “take into account the interdependence and interrelatedness of all human rights violations which have occurred during conflict.”

This recognition is important to understanding that sexual violence does not occur in a vacuum; it is generally accompanied by other crimes such as torture, collective violence, or socioeconomic violence that also bear an impact on women’s lives (Ní Aoláin, O’Rourke, and Swaine 2015). Addressing sexual violence in isolation tends to reduce the lives and experiences of women victims only to the sexual dimension, which can reinforce patriarchal norms rather than diminish them (Rubio-Marín 2012). CEDAW General Recommendation No. 30 also explicitly recognizes that it is not enough simply to end the crimes, which was the core focus of Resolution 1325. The economic, social, and cultural rights of women survivors must also be addressed, through reparations among other measures.

Harm caused by sexual violence

Sexual violence has multiple effects. It may affect women's physical health, including their reproductive and sexual wellbeing, through sexually-transmitted diseases, fistulas, or the destruction of their reproductive capacity. This violence also brings intense emotional effects, including depression or suicidal thoughts. The impacts on an individual are often transferred to her family or community, as traditional gender relations as well as cultural and social norms often consider the virginity and "honor" of "their" women as a sacrosanct marker of the honor of the broader group. Given these dynamics, sexual violence generates effects that transcend the individual sphere, and influence families and communities. The harm may be culturally defined as "the milk of sorrow," in reference to women's transmission of their painful memories through pregnancy or breastfeeding their babies (Theidon 2013), as well as harm to spiritual balance. Lastly, there can be particular effects related to age, disability, ethnicity, etc. For example, the destruction of a young woman's reproductive capacity carries a different weight than it would for older women.

Sexual violence also has socioeconomic impacts on women's lives; their children frequently grow up in poverty as a result of lost income and access to land and assets (Duggan and Jacobsen 2009; Ní Aoláin, O'Rourke, and Swaine 2015). Moreover, gender inequalities mean that women face more obstacles than men do to find work, and are paid lower wages. Remaking their lives is even more difficult for women heads of households. Many of these women find themselves forced to resort to sex work to ensure their own survival and that of their families.

Social stigma

One of the most difficult effects of sexual violence is the strong social stigma against victims, which often prevents them from speaking out about the events, or demanding justice and reparations (Hayner 2001; Pankhurst 2008a; Borer 2009). Often, victims are seen as impure or promiscuous women, blamed for having provoked the event, or as bringing shame to their husbands or families by talking publicly about the crime (Olujic 1995; Duggan and Abusharaf 2006; Ross 2010). This frequently triggers prolonged stigma that can limit survivors' ability to remarry, and even elicits rejection from their own children, relatives, and communities.

In many cases, the victims of sexual violence do not dare to seek justice, out of fear that such an action would exacerbate their problems rather than provide any relief. In that regard, for many women, their silence is an

attempt to protect themselves and their families (Olujic 1995; Theidon 2007; Eastmond and Mannergren Selimovic 2012; Kent 2014). Publicly exposing survivors to a judicial process can mean re-victimizing the women (Ní Aoláin, O'Rourke, and Swaine 2015). Given this risk, addressing sexual violence demands a careful methodology to care for victims, and broader strategies to change social stigma.

If the stigma around this crime is challenging for women victims, it can be even more crippling for men who have suffered sexual violence. Although “gender” is often considered as synonymous with “women,” it actually refers to the social and cultural constructions of men’s and women’s gender roles. Speaking only about women, therefore, offers, only a partial perspective that hides the possibility that men may also be victims of sexual violence. Sexual violence against men has been studied much less, as men are not commonly imagined as victims. Given this deficit, there are few judicial cases of sexual violence against men, and fewer interventions for reparations for this crime. Similarly, men do not always have the right to reparations in cases of violence through administrative programs (Simić 2015; Ní Aoláin, O'Rourke, and Swaine 2015). Sexual violence against men is used to emasculate them, as it is associated with homosexuality. This violence is also an instrument to signal victorious masculinity over representations of masculinity that are subordinate, and thus feminized, even including destruction of their reproductive capacity (Jones 2006; Simić 2015). It is as difficult to break the silence in this crime as it is for women survivors of sexual violence, due to the stigma associated with it as well as the hegemonic expectations of masculinity that men must be strong and stay silent in the face of suffering (Zarkov 2001; Buckley-Zistel, and Zolkos 2012; Clark 2014; Simić 2015).

Lastly, it should be noted that sexual violence is also committed against homosexual, bisexual, and transgender individuals, which may implicate additional complications such as the widespread homophobia in many countries (Rubio-Marín 2012; Bueno-Hansen 2018). These characterizations demonstrate that sexual violence is not only a crime of sexuality and power against women, but rather a crime that brands the identity of women and men as victims, rooted in rigid gender norms (Clark 2014; Sjoberg 2016). It is thus important to clarify that while these guidelines refer to “victims of sexual violence,” the design is rooted in the understanding that this group may include men as well.



Trial of Khmer Rouge, Cambodia. Photo: Tang Chhin Soth

2. Transformative reparations

This chapter examines the concept of reparations and its historical evolution, as well as the notion of transformative reparations, which has been gaining international acceptance as a format that addresses the deeper causes of sexual violence and gender inequality. The last section presents some cases of political and legal progress on transformative reparations in the international arena.

Reparations under international law

Reparations are not exclusive to human rights. They originally emerged in the field of private law, based on principles of corrective justice. Nonetheless, these modes have progressively permeated pervaded work on international and human rights (Teitel 2003). International human rights instruments such as the International Covenant on Civil and Political Rights, the Convention against Torture, and the Geneva Convention all include provisions on victims' right to reparations. The Inter-American Human Rights Court in particular has been acknowledged for developing progressive case law around reparations for victims of human rights violations. The Rome Statute that created the International Criminal Court also considers procedures to guarantee participation and reparations for victims as part of the proceedings, including the creation of a Trust Fund for Victims. Some authors have described this normative development as the “restorative turn” in international criminal law (Manjoo 2017; Moffett et al. 2019).

Without a doubt, reparations are a means to recognize the abuse and harm caused for victims; one of their main principles is to reinstate victims into



society on equal footing and as rights-holders. In this sense, reparations cannot be seen only as a judicial objective, rather they are a political goal, too, as they represent a tool to reestablish trust between the victims – as citizens – and the state (De Greiff 2009; Roht-Arriaza and Orlovsky 2009). This fashions reparations into a tool that is at once ambitious and necessary. Reparations must be forward-looking to restore and rehabilitate survivors (Teitel 2001; Roht-Arriaza 2004; Lambourne 2009).

The growing acceptance of reparations as a central component of responses to serious international crimes can be seen in the unanimous adoption of 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 (2005). These will be referred to as the “Basic Principles” hereinafter in this document (Buyse 2009; Moffett 2017). These principles do not create new legal obligations, (but) instead systematize mechanisms and procedures that already exist in international conventions. As a result, the Principles are seen as general guidelines for the implementation of reparations measures (Ní Aoláin, O’Rourke, and Swaine 2015).

In keeping with the Principles, reparations must be proportionate to the severity of the harm and circumstances of the event. Reparations cover five types of measures: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

| Reparation measures | |
|------------------------------|--|
| Restitution | These measures seek to restore the victim to their status prior to the violation. This includes restoring freedoms, identity, family life, and citizenship. Return to the place of residence, reinstatement at a job, and return of assets. Restitution of housing, land, or properties, or compensation at an equivalent value if this is not possible. |
| Compensation | Victims must receive economic compensation for physical, emotional, moral, or economic harm caused, for the loss of job opportunities, education, expenses in legal aid, medical care, and psychological and social services. |
| Rehabilitation | This includes measures and services to help the victim and other persons affected by the violation to recover a state of well-being, through medical and psychological attention, as well as legal and social services. |
| Satisfaction | These measures seek to restore victims' dignity and recognize the harm done. They include the cessation of human rights violations and search for missing victims, official statements acknowledging the facts and victim's reputation, public apologies, commemorations, etc. |
| Guarantees of non-repetition | These guarantees are state reforms ensuring the prevention of future abuses, including legal and public policy reforms such as strengthening judicial independence, educating public officials on human rights, dissolving armed bodies, etc. |

Reparations may be implemented through administrative proceedings or as a result of judicial rulings. Administrative proceedings are non-judicial state policies that offer reparations to a large number of victims of human rights violations. The state thus defines a reparations policy, defines the type of violations it will cover, the eligible victims, procedures, requirements, and specific measures. Examples of administrative formats include the reparations program in Peru, the Victims Law in Colombia, and the National Compensation Program in Guatemala.

Judicial reparations are of a more specific nature in that they correspond to a concrete case. In judicial processes, the individual perpetrator must be responsible for reparations. Nonetheless, international norms on reparations highlight that if the individual perpetrators are not able to uphold their obligations to make the victims whole, the state must make efforts to provide assistance (United Nations General Assembly 2005; Secretary-General 2014).

The International Criminal Court has provided reparations for victims through the Trust Fund for Victims, funded through international donations, when defendants are unable to do so. Additionally, international jurisprudence on human rights has demonstrated on numerous occasions that even in cases of human rights violations by individual perpetrators, the state may be seen as responsible for the crime by failing to prevent the violations.² Another possibility, one adopted by the Extraordinary Chambers in the Court of Cambodia, is to make request funding from national and international authorities, non-governmental organizations, and other donors to implement projects in favor of the victims as a show of solidarity.

A transformative approach

Traditionally the objective of reparations has been *restitutio in integrum*, or returning the survivors to their original condition prior to the violation. That is, this principle attempts to reconstruct the initial situation and return everything that the victim has lost as a result of the violation of his or her rights (Moffett 2017). This is not always possible, such as in cases of death or disappearance. Moreover, in conflicts that were rooted in grave conditions of social and economic inequality, it is not desirable to return the victims to a condition of poverty, discrimination, or violence (Roht-Arriaza 2004; Lambourne 2009).

²See for example the case of Velázquez Rodríguez v. Honduras: http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_esp.pdf.

Generally, the most common reparations have been in the form of individual compensation, as it is one of the easiest measures to implement and monitor. Compensation fails to transform deep and structurally-bound situations for the victims, however (Viaene 2010; O'Rourke 2013; Manjoo 2017). As a result, restitution alone as a guiding principle for reparations is increasingly seen as insufficient; a more transformative approach is needed.

Transformative reparations seek to change the structural causes of conflict, addressing the social, economic, cultural, or political conditions that enabled or facilitated the rights violations. This sort of reparation offers a new future for survivors, free from the conditions that precipitated the violations they suffered (Lambourne 2009; Brett and Malagon 2013). These structural conditions include deep-seated problems such as gender discrimination, racism, poverty, homophobia, and others. Repairing the harm must go hand-in-hand with the construction of a more just and inclusive society (Uprimny and Saffon 2009). This view sets a transformative approach apart from the traditional vision of reparations. By their nature, transformative reparations must be developed by interdisciplinary teams to ensure a broader and more holistic vision that goes beyond only judicial aspects, to analyze the socioeconomic, cultural, and gender context as well.

Transformative reparations have a central focus on guarantees of non-repetition, one of the five core elements identified in the United Nations Basic Principles (Manjoo 2017). To transform the inequality that caused the violations, reparations must go beyond corrective justice and include measures for redistributive justice, such as social services and development initiatives (Uprimny Yepes 2009).

The concept of transformative reparations has been gaining acceptance in recent years and has been adopted in administrative reparations programs such as the Victims Law in Colombia, as well as in rulings by judicial bodies such as the Inter-American Human Rights Court. The International Criminal Court and the Extraordinary Chambers of the Court of Cambodia have also ordered measures that could generate transformative impacts.

A gender lens for reparations

Reparations must contribute to a transformation of the structures of inequality and discrimination that affect women, as established in the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. This declaration, which emerged from a gathering of gender experts and survivors of sexual violence held in 2017, highlights the need for reparations to go beyond economic compensation, and address the

structural inequalities that negatively affect women's lives. The Declaration emphasizes that reparations must not only tackle harm from the past; they must work to eliminate fear and insecurity for the future. In this way, the Declaration was a first attempt at this broader understanding of reparations as a driver for social change through social and legal reforms, healthcare services, education, etc. (Couillard 2007).

Another important step along these lines is the Inter-American Human Rights Court ruling in the “Campo Algodonero” case, on a series of feminicides in Ciudad Juárez, Mexico. The Court indicated that if the violations had occurred in the context of structural discrimination, that reparations needed to transform this pre-existing situation to prevent future violations. In other words, in cases of severe inequality, the principle of restitution that normally guides the application of reparations would itself violate the principle of non-discrimination that is essential in the field of human rights. Reparations should help to subvert the conditions of discrimination. The Campo Algodonero ruling ordered guarantees of non-repetition, including the design of public policies as reparations measures to transform discrimination against women (Rubio-Marín and Sandoval 2011).

Resolution 1325 and the subsequent resolutions on women, peace, and security do not contain clear suggestions or recommendations. Some other resolutions, nonetheless, such as Resolution 2467 most recently, mention the need for reparations for sexual violence. CEDAW General Recommendation 30 is clearer, ordering “adequate, effective and prompt reparations for violations suffered during conflict, notwithstanding whether remedies are ordered by national or international courts or by administrative reparation programs.”

The recommendation espouses a transformative approach, mentioning that “Rather than re-establishing the situation that existed before the violations of women's rights, reparation measures should seek to transform the structural inequalities which led to the violations of women's rights, respond to women's specific needs, and prevent their re-occurrence” (Committee for the Elimination of Discrimination Against Women 2013). The Guidance Note of the United Nations Secretary-General on reparations for conflict-related sexual violence (2014) also recognizes that reparations should be transformative. While the note clarifies that reparations on their own cannot transform the deep causes of violence, they can trigger important changes.

The Victims Law in Colombia is another example of transformative reparations. While this law creates an administrative program for reparations and thus does not proceed through the judicial track, the experience

does offer a view of the challenges for a transformative approach. The law includes restitution of land, humanitarian aid, individual and collective reparations, and attempts to repair the victims in an “appropriate, pertinent, transformative and effective” manner (Ministry of the Interior and Justice 2011). The transformative approach in this law seeks to “contribute to the elimination of formats of discrimination and exclusion that contributed to the victimization, understanding that transforming these conditions offers a guarantee of non-repetition of the events and lays a groundwork for reconciliation in the country” (Ministry of Justice and Law 2011). Nonetheless, the enforcement of the Victims law reveals that putting the transformative approach into practice is complicated, and it requires coordination among state institutions with the capacity to transform the conditions of inequality, such as the Ministries of Health, Education, and Agriculture. Without effective coordination, reparations through the Victims law have focused mainly on compensation payments. The gender lens has essentially been a focus on women, without addressing gender inequality in any depth (Weber 2018a, 2019).

Reparations should combine different types of individual and collective measures to transform the inequality and discrimination that women face. In addition to individual reparations through economic compensation for the harm suffered and costs associated with the process of rehabilitation and search for justice, collective reparations are also important, including the reconstruction of damaged infrastructure, roads, community centers, or schools. Unique measures such as reconstruction of properties or returning land can be demanded of the perpetrator, while healthcare services and development efforts require participation by the state, as the duty-bearer responsible for transforming the conditions that caused the violations.

The Nairobi Declaration explicitly recognizes the need for affirmative actions for women and girls, who often face specific obstacles that prevent them from benefiting from development opportunities. Healthcare services, education, productive skills training, and access to credit or land can be especially important for women. Processes to build women’s leadership and other measures to enhance women’s economic and political autonomy can also be considered (Rubio-Marín 2009b; Durbach and Chappell 2014; Lemaitre and Sandvik 2014). These measures can contribute to the promotion of gender equality and thus go beyond simply repairing the harm suffered, to help prevent violence in the future (Cahn, Haynes, and Ní Aoláin 2010).

To maintain the restorative impact of the collective measures that benefit a broader group than just the direct victims, transformative reparations may be assigned some sort of symbolic significance (Uprimny Yepes 2009).

For example, in the case of the construction of a school, the infrastructure may be handed over in a public ceremony that recognizes that the school is a measure of reparation in response to a specific harm caused for a particular group of people. Naming the school after the victims might also be considered, or combining school construction with affirmative actions for the victims in terms of their access to education.

In synthesis, reparations for the victims of sexual violence must consider certain key aspects. Sexual violence, similar to other international crimes, has not only individual impacts but collective and intergenerational implications. These impacts must be addressed in a holistic way, including individual and collective measures that benefit the direct victims and their communities.

The concept of transformative reparations recognizes that reparations can only truly repair harm if they bring about a structural change in the victims' situation. This means tackling the deep-seated structures at the root of gender-based violence to prevent the victims from facing similar violence again. Transformative reparations fit with the United Nations Basic Principles that include guarantees of non-repetition as an essential part of reparations. Material measures that structurally change the victims' situation of vulnerability - in a socioeconomic sense as well as in terms of gender inequality - are needed to bring about this transformation. It is important to establish a clear recognition that the crimes of sexual violence were unforgivable, and that the blame lies not with the victims, but with the perpetrators and the social, political, and cultural system that allowed these crimes to occur. The next chapter describes some concrete examples of reparations based on international practice and experiences.



Case of the Agodonero Field, México. Photo: Periódico El Heraldo de Saltillo

3. Reparation measures for victims of sexual violence

From a transformative approach, reparations must benefit the direct and indirect victims, as well as society overall. This is a divergence from the traditional view of individual reparations. In some cases, survivors of human rights violations have felt guilty about receiving compensation for the death of their loved ones, or for receiving individual compensations within a collective culture (Viaene 2010). Providing individual compensation can cause resentment, envy, and social tensions in communities that have suffered violence (Moffett et al. 2019). In the case of the compensation provided by the Dutch government to widows whose husbands had been killed in the colonial war, this measure even led to forced redistribution of the compensation by community leaders (Immler 2018).

In many countries, human rights violations are frequently committed en masse, affecting entire families, communities, and regions (Immler 2018). Beyond the individual experience, these violations tend to have collective impacts on a household or community level. For these reasons, it is important for reparations to address this sort of collective harm that is common in international crimes (Moffett et al. 2019). This approach is especially important in collective cultures, where there is often a high level of solidarity and a sense of community (Viaene 2010; Immler 2018). Collective reparations can also be a way to avoid identifying individual victims and the specific harm they have suffered, and thus preventing further stigmatization of survivors of sexual violence (Secretary-General 2014).



From a transformative standpoint, reparations should combine different formats, including individual and collective measures. To maintain their restorative impact, collective measures may be assigned some symbolic significance, with an explicit recognition that they were provided in response to a specific harm caused against a particular group of people, or combined with affirmative actions toward the victims involved (Uprimny Yepes 2009). The Nairobi Declaration explicitly recognizes the need for affirmative actions for women and girls, who often face specific obstacles that prevent them from benefiting from development opportunities.

This chapter presents examples of reparations with a transformative approach, based on the experience of reparations ordered by international courts and facilitated through administrative proceedings. The chapter is divided into individual and collective reparations, which include measures for compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition. It is important to clarify there that the reparations have not been implemented fully in all of the cases. Full enforcement continues to be one of the great challenges for the governments and agencies responsible for compliance with the reparations.

Individual measures

The objective of individual compensation is to repair the harm caused and cover the victims' expenses, including the cost of mental and physical healthcare, legal services, lost revenue, pregnancy costs, and moral damages such as obstacles to marriage or loss of job opportunities (Ní Aoláin, O'Rourke, and Swaine 2015). In *Castro Castro v. Peru*, the Inter-American Court has decided to recognize the gravity of sexual violence by granting a higher amount of compensation for the victims. In this case, in addition to satisfaction measures and guarantees of non-repetition, the court assigned amounts ranging from \$10,000 to \$25,000 for material damages to the victims, depending on their partial or total status of disability, and amounts of \$12,000 to \$20,000 for intangible damages. Additionally, the Court ordered a payment of \$30,000 for the victim that had suffered a rape, and an additional \$10,000 for victims of forced nudity (Rubio-Marín and Sandoval 2011).³ This constitutes some progress. In previous cases, despite having identified the commission of sexual violence, the Court did not differentiate in its ruling granting reparations (Guillerot 2009; Rubio-Marín and Sandoval 2011).

³See for example the case of Penal Miguel Castro Castro v. Peru: http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_esp.pdf.

In another case, the War Crimes Chambers created in 2005 within the Bosnian Court also began to include reparations in their rulings. In 2015, these chambers ordered that two ex-military officers pay reparations to the victims of sexual violence, assigning €15,000 in compensation for damages (Durbach and Geddes 2017; TRIAL 2017).

The International Criminal Court has ordered reparations in three cases thus far. Although these three cases did not include accusations of sexual violence, the reparations ordered in the Katanga and Lubanga cases constitute examples of reparation for violations committed against individuals and communities. In the Katanga case,⁴ which included killings and persecution of civilian population, and property destruction and looting, the Court ordered Katanga to provide a total of \$1,000,000 in reparations. According to International Criminal Court norms, reparations must be provided by the defendant. In this case, due to Katanga's financial limitations, the Court invited the Trust Fund for Victims to seek other resources, such as international donations, to finance the reparations, and instructed the Fund to coordinate with the authorities of the Democratic Republic of the Congo to implement these measures. The victims rejected collective and symbolic reparations, alleging that these measures were not useful or caused discomfort (Moffett et al. 2019). This decision highlights the importance of victims' participation in defining what reparations might be. This element will be discussed further in the next chapter. In place of collective reparations, an individual compensation amount of \$250 was approved for 297 victims, as an essentially symbolic amount. Despite the reservations against assigning collective reparations in this case, four such collective measures were in fact ordered, but the focus was on individual victims as much as possible (International Criminal Court 2017). One way this difference was reconciled with a focus on individual victims was to ensure priority treatment for victims within the collective reparations.

Material and monetary reparations are important to help victims to rebuild their lives. Nonetheless, the question has been raised of whether a single payment is the best way to compensate victims, especially women, who frequently receive pressure from their husbands, children, or other family members to share some or all of the compensation. Women also tend to spend the money on family needs rather than their own individual wellbeing. Women often have less access to bank accounts, which may be a requirement for receiving reparations (Borer 2009; Ní Aoláin, O'Rourke, and Swaine 2015). Additionally, receiving money for having suffered sexual violence can be a sensitive issue and generate stigmatization and

⁴See the order for reparations in the case of "The Prosecutor v. Germain Katanga": https://www.icc-cpi.int/CourtRecords/CR2017_05121.PDF.

accusations of being “prostitutes” (Rubio-Marín 2009b, 2012; Secretary-General 2014). To alleviate these pressures and ensure more sustained support, it may be preferable for reparations rulings to determine that compensation should be disbursed in the form of a lifetime pension payable monthly.

Collective measures

In the Lubanga case in the International Criminal Court, the Trust Fund for Victims implemented several forms of collective reparations, including the provision of physical and psychological rehabilitation services, professional training, and income-generating activities. Similar services were ordered in the Katanga case, along with educational support (The Trust Fund for Victims n.d.). Even before the rulings for reparations were issued, the Trust Fund for Victims had begun to work in Uganda and the Democratic Republic of the Congo to benefit the victims of sexual violence through collective measures, with a focus on psychological and socioeconomic support. These measures included medical support such as correction of fistulas, HIV testing, and reproductive health services, as well as job training programs, and community awareness-raising programs on sexual violence to reduce stigma and reintegrate men and boys who had been raped. This reflects the Trust Fund’s mandate to provide reparations and humanitarian assistance or care.

Regrettably, the ICC reparations rulings do not reflect this particular focus on victims of sexual violence. In fact, some of the cases heard by the court did not include sexual violence among the accusations, despite evidence of their occurrence. This gap reveals the need to have gender experts at the highest levels of decision-making in criminal strategy (De Brouwer 2009). Additionally, it is important to incorporate mechanisms for cultural sensitivity, including the availability of rehabilitation services as described in the next chapter. Lastly, the collective character of these reparations is essential. The emotional impact of international crimes is not individual; these crimes constitute a social reality that must be addressed collectively (Rombouts and Parmentier 2009). However, in the case of sexual violence, it may also be important to create safe spaces for women victims to talk about their experiences and generate mutual recognition and solidarity, in parallel with more community-based strategies.

In the Campo Algodonero case, the Inter-American Court ordered mental and physical rehabilitation measures for victims - the families of the women who were killed - through free medical and psychological services and the medicine required for as long as needed. The Court also ordered Mexico to employ personnel qualified to offer these services, with specific

training to treat the consequences of gender-based violence (Rubio-Marín and Sandoval 2011). In this sense, the Court recognized that not only the content of the services was important, but the process and format in which the services were provided was also significant. Sadly, subsequent cases heard by the Inter-American Court that included gender-based and sexual violence did not include a transformative approach (Rubio-Marín and Sandoval 2011).

The Extraordinary Chambers of the Court of Cambodia, which heard crimes involving the Khmer Rouge, is the only hybrid court with the mandate of ordering reparations. The Chambers do not provide compensation, rather they limit their rulings to collective and moral measures such as psychological therapy and self-help groups, made up of spaces for dialogue between victims and perpetrators in their communities. These rulings also incorporate educational materials and commemorative activities as part of reparations measures, including cultural expressions such as dance and photography exhibits. While the prosecution in some of these cases did ask for support to cover the living expenses of some older victims, the Chamber turned down these requests citing lack of funds (Jeffery 2014; Williams and Palmer 2016; Moffett et al. 2019). Prioritizing symbolic measures thus may also be driven by budgetary concerns, as these measures tend to be less costly. The International Criminal Court, however, does not prioritize symbolic measures – and measures such as the admission of guilt or offering public apologies even less – rather it tends to focus more on monetary and material reparations (Mégret 2009). In practice, the Court has included symbolic measures such as community healing activities (Chappell 2017). The complementary dynamics between material and symbolic measures, explained in detail in the section on collective measures, can be seen in a survey of Cambodian victims. These respondents indicated that they would only be interested in building a monument once their socioeconomic needs had been met (Jeffery 2014).

The court rulings - with the exception of the Sepur Zarco ruling in Guatemala that ordered the state to reopen land claims - thus far have not dealt with issues of access to land, which is significant for rural women. Estimates suggest that women account for a maximum of 25% of the landowners in Latin America (Leon 2011). This complicates land claims after displacement and generates situations of vulnerability for women in cases of separation or the death of their husbands (Hovil 2012). The Victims Law in Colombia is one of the few examples of administrative reparations programs that address land restitution with a gender lens, by giving land deeds to men and women. Nonetheless, having a deed is not enough, if the collective mindset and social norms around land ownership do not change. This requires a process of changing conceptions on land

ownership, recognizing women's work in agriculture as having equal value, rather than the still common view of women as helpers for their husbands. Land access should thus combine formal granting of land deeds with awareness-raising and agrarian support processes focused on uplifting women's agrarian activity (León 2011; Weber 2018a).

In addition to these services, health and education efforts as rehabilitation measures - both professional education as well as literacy - could include training, leadership, and empowerment processes for women (Ní Aoláin, O'Rourke, and Swaine 2015). These measures might also include support for women's political participation, for example through funding women's organizations or associations, political parties, or the inclusion of minimum quotas for women's political participation (Rubio-Marín 2009b). The United Kingdom's Principles for Global Action on Tackling the Stigma of Sexual Violence in Conflict consider the need for support through networks of survivors of sexual violence, which can operate on local, regional, and global levels (Foreign and Commonwealth Office 2017). Research with male victims of sexual violence has also demonstrated the importance of victims' support groups to give survivors a space to talk about their experiences, build solidarity, renegotiate their gender identities, and look for socioeconomic strategies (Shulz 2019). Reparations can contribute financially or logistically to creating and maintaining these mutual support spaces for victims.

While rehabilitation services can be more difficult to implement through a suit for reparations brought against an individual perpetrator, the total monetary amount requested from the perpetrator can be considered for the creation of a social fund for victims. Such a fund could be used for social services, micro-credit, or training processes to benefit victims. Other alternatives could also be considered, such as input for income-generating projects, small loans for production activities, scholarships for victims or their children to go to school, or women serving as shareholders in microfinance institutions (Rubio-Marín 2012). The state can also pitch-in to this social fund, in accordance with its responsibility to combat inequality and discrimination against the victims. The social fund should be distributed in dialog with the victims, using the guidelines described in the following chapter.

Public policies

Public policies and programs can play an important role in ensuring non-repetition of the violations. As part of the reparations ordered by the International Criminal Court in the Lubanga case, a program was approved with roving activities to combat the stigma and discrimination associated

with former child soldiers in the communities where they live. This program is being implemented by the Trust Fund for Victims, given Lubanga's poverty. As part of Case 002/02 against former Khmer Rouge leaders Nuon Chea and Khieu Samphan, the Extraordinary Chambers of the Court of Cambodia ordered educational materials to be developed. Although the defendants were declared to be in poverty and the Chambers do not have the jurisdiction to order the State of Cambodia to pay reparations directly, the internal rules of the court allow requests for funding from national and international authorities, non-governmental organizations, and other donors to implement projects in favor of the victims as a show of solidarity.⁵ The order to develop educational materials was implemented by a Cambodian NGO with international support, using a creative format and developing a mobile app for that purpose. The application, called the "History of the Khmer Rouge," can be downloaded for free to educate Cambodian youth on the country's recent past and values such as justice, peace, and human rights. The application also seeks to promote dialogue between youth and survivors from the Khmer Rouge era (Jeffery 2019). The app has been used for educational purposes in schools, reaching 60,000 students, with an additional 45,000 downloads. A similar program could be imagined for topics related to gender-based and sexual violence. Although there are few international experiences with this, collaboration with local and national media outlets might also be a strategy to produce changes in social norms and gender stereotypes that maintain taboos and stigma around sexual violence (Rubio-Marín 2012).

In the Campo Algodonero case,⁶ the Inter-American Court ordered Mexico to improve and standardize its protocol to investigate cases of sexual violence, to rise to the standards set by the Istanbul and Minnesota international protocols, and to improve the speed of state response in cases of missing women or girls. The Court also ordered the creation and maintenance of a database on missing women, and training for personnel working in the prevention, investigation, and criminal prosecution of violence against women, with a women's rights approach and a focus on overcoming social stereotypes (Rubio-Marín and Sandoval 2011). These reparations clearly show the stance toward non-repetition that the Court considers essential for the transformation of the conditions that produce gender-based violence.

⁵See the ruling in Case 002/02 of the Extraordinary Chambers of the Court of Cambodia: https://drive.google.com/file/d/1lhBZcKxUIbjjGsyCjpaxGY_NQSIIdWgxQ/view?ts=5c-9c9cb3.

⁶See the ruling in the case of González and Others ("Campo Algodonero") v. Mexico: http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf.



National day against forced disappearance in Guatemala. Photo: Impunity Watch

Symbolic measures

Symbolic reparations measures fall under the category of satisfaction measures described previously. The reparations ordered by the Extraordinary Chambers of the Court of Cambodia have had a predominantly symbolic approach: publication of apology statements and recognizing fault, publication of statements recognizing the harm suffered by the victims, and publication of victims' names on the Chambers' website. One measure that was not approved, but which falls under the symbolic reparations included in the Victims Law in Colombia, is the declaration of a national day of commemoration for the victims. Declarations of responsibility and forgiveness can be more significant for the victims if they are able to participate in drafting the apologies, after a dialog and negotiation process (Moffett et al. 2019). The Inter-American Court has been recognized for developing non-monetary reparations measures. For example, the Court has ordered the construction of monuments, the search for the disappeared and investigation of the crimes, development of human rights education programs for police forces, and public statements accepting responsibility and asking for forgiveness. Nonetheless, prior to the Campo Algodonero case, the Court had not ordered specific reparations for cases of sexual violence, even when these events had been clearly demonstrated (Rubio-Marín and Sandoval 2011).

Case 002/02 against the Khmer leaders also covered the crime of forced marriage. This crime was addressed in the reparations through the production of a dance performance on forced marriage (Moffett et al. 2019). These examples underscore the importance of considering cultural expressions as a form of reparations, given their capacity to reach a broader audience, including the younger generations. This sort of reparation can contribute to the transformation of social norms and stigma

around violence and gender inequality, and combat the taboo around crimes such as sexual violence (Williams and Palmer 2016). Reparations should contribute to a transformation of the meaning of sexual violence in the community, changing the rigid norms that focus on the honor of female sexuality, and help to shift the shame associated with the crime from the victim back toward the perpetrator (Duggan and Abusharaf 2006; Rubio-Marín 2012).

Some courts and other transitional justice mechanisms have used traditional practices such as ceremonies as reparations for victims. For example, the Truth Commission and Major Crimes Unit of East Timor have used a community reconciliation process based on the practice of “nahe biti bo’ot’ (which means “stretching the mat,” referring to the area where perpetrators, victims, and elders come together). This process concludes in a day-long ceremony based on traditional rituals called “lisan.” The ceremony itself is the culmination of a process that could last several months of negotiation and participation with the victims to reach an agreement to restore the spiritual and physical balance of the community affected by the violations. The result of the ceremony was often a public apology and symbolic reparations by the perpetrator toward the victim. These reparations could be jewels or community service. Non-compliance with the ruling is punished with jail time (Moffett et al. 2019).

The administrative program for reparations under the Victims Law in Colombia provides safe spaces for women victims of sexual violence to design their own symbolic reparations measures, such as ceremonies or creative acts, and then offers the resources needed to put these measures in place (Unidad para la Atención y Reparación Integral a las Víctimas 2016). The law also recognizes historical memory as a component of collective and holistic reparations. The National Historical Memory Commission has published various reports on gender-based violence - topic-focused as well as experiences from specific sites - and reports that describe women’s leadership in the search for truth and the fight for land. This Commission has also published a document on the specific forms of violence that homosexual, bisexual and transgender persons face in the country, describing an aspect of gender that has been less studied in the field of transitional justice (Bueno-Hansen 2018).

Examples of collective reparations may include the reconstruction of damaged infrastructure such as roads, community centers, or schools. These reparations may include measures or services of particular importance for women, such as healthcare, productive skill-building, and access to loans or land. Other possible measures may take the form of processes to build women’s leadership and other measures to enhance

women's economic and political autonomy (Rubio-Marín 2009b; Durbach and Chappell 2014; Lemaitre and Sandvik 2014). These measures can contribute to the promotion of gender equality and thus go beyond simply repairing the harm done, to help prevent violence in the future (Cahn, Haynes, and Ní Aoláin 2010). Collective reparations can thus be a more efficient and meaningful instrument; building a school or health clinic may have a greater and longer-lasting impact than an individual compensation payment, which is often spent on urgent needs without extending to more strategic and long-term investments (Women's Initiatives for Gender Justice 2014).

Nonetheless, implementing collective reparations does come with certain disadvantages. The collective approach can blur the distinctions of the different crimes committed, and thus obscure women's particular experiences (Ní Aoláin, O'Rourke, and Swaine 2015). While this approach does help to circumvent the stigma that women victims of sexual violence may suffer, it comes with a missed opportunity to recognize specific gender-based violence, and the gender inequality that provoked it. One frequently-cited objection is that collective reparations are not always seen as reparation (Moffett et al. 2019). This assertion is because collective reparations such as reconstruction of buildings or infrastructure, or health and education services often seem like development initiatives. Providing development services is a basic obligation of the state, and thus these interventions are simply a measure of the state upholding its basic obligations, disguised as reparations. Detractors of these measures argue that the services benefit victims and non-victims alike, and thus reparations tend to lose their restorative element and their normative character of seeking to make victims whole after specific harm (Hamber 2000; Roht-Arriaza and Orlovsky 2009; Waldorf 2012; Urban Walker 2016).



*National day against forced disappearance in Guatemala. San Juan Comalapa, Guatemala.
Photo: Impunity Watch*

4. Guidelines for Transformative Reparations

As was described above, reparations measures should be defined through a participatory process with the victims in order to ensure their restorative effects and promote healing (Brandon, Hamber, and Palmary 2009). Given this focus, it is important to examine certain considerations for the development and implementation of effective transformative reparations. This chapter presents some guidelines that should be taken into account in the reparations design and implementation process.

Identifying the victims

A key theme in defining reparations is to identify the victim. Traditionally, in reparations ordered through criminal processes as well as administrative proceedings, the reparation is provided to the direct victim, that is, the person who has suffered the violation. For example, in the Lubanga case at the International Criminal Court, the claim for community reparations was rejected initially, under the argument that reparations should be oriented only toward the victims. Subsequently, however, the Trust Fund for Victims decided to implement a community program in this same case that included broader measures (Moffett et al. 2019). This example reveals an inherent tension in the debate around reparations for serious crimes, and whether they should be focused on the direct victims or expanded to cover a broader group. Even though it may seem clear in the case of sexual violence that the victim is the person who directly suffered the crime, the reality of these cases can be more complex. Under existing honor norms around gender, victimization is often passed along from the



direct victim to her partner and even the entire community, which feels that their community honor has been affected by not being able to protect “its” women. Reparations should also address this collective social aspect, transforming the meaning of sexual violence in the community by shifting the rigid norms that extol honor as a central element in female sexuality (Rubio-Marín 2012).

As was described earlier, sexual violence can also have severe socioeconomic impacts on women. As a result, survivors’ children often grow up in situations of poverty and are thus indirect victims, too. In this sense, it is important for reparations to benefit both direct and indirect victims (Rombouts and Parmentier 2009). Lastly, children and adolescents born as a result of sexual violence are often an overlooked group. While they are mentioned as indirect victims in certain discussions about sexual violence, they have not been broadly considered as a victimized group that deserves reparations (Sanchez Parra 2018). The Nairobi Declaration recognizes the need for a broader notion around the concept of victims.

It is clear from this discussion that the concept of a victim of sexual violence is broader than simply the idea of a direct victim. Some authors have suggested a different way of analyzing who deserves reparations that is based on the harm produced rather than an analysis of the violation that occurred. Looking at harm as a central part of the assessment allows reparations to address the effects of a violation in the family or community space, recognizing the importance of social, community, and family relationships through “communities of harm” that include people with emotional links to the victims (Guillerot 2009; Manjoo 2017). This perspective recognizes that the same act of violence can affect men and women differently (Rubio-Marín 2009b; Rombouts and Parmentier 2009). In fact, a “network of harm” can even be analyzed, looking at private and public spaces together. This approach recognizes that political violence in the public sphere can provoke harm in the private space, such as domestic violence or deeper poverty that can drive women to forced prostitution. These outcomes are a domino effect of sexual violence (Duggan and Jacobsen 2009; O’Rourke 2015). The impact of violations tends to extend beyond the direct victim, and a broader understanding of harm must be built to include direct and indirect victims. This understanding can include victims who have not been identified because they have not wanted to or been able to do so publicly (Women’s Initiatives for Gender Justice 2012). A transformative approach to reparations means transforming the structures that allowed the violations to occur. Under this concept, it is clear that reparations measures must go beyond the direct and indirect victims to address their social environment as well.

Recognizing the harm

To be able to design appropriate reparations mechanisms that meet victims' needs, we first must establish the harm that the sexual violence has caused. This can be done through a harm assessment conducted in a participatory process with the victims. As described in Chapter 1, possible harm includes aspects such as physical health - including reproductive health - and mental health, with impacts on a social, individual, family, and community level. There may also be direct and indirect socioeconomic damages on an individual, family, and community level. Understanding harm cannot be limited to preconceived notions from international human rights standards; this assessment must also consider culturally-defined harm and particular impacts that may have to do with age, disability, ethnicity, etc. Once the harm has been identified, a plan must be put in place to collect evidence that can be incorporated into the investigation and files. This evidence should be included in discovery. At the same time, this process can serve to deduce possible responsibilities and identify the economic capacity that may be available for reparations.

It is important to identify the broader context in which the events occurred, and the patterns of inequality and gender-related violations. In the case of the armed conflict in Guatemala, for example, the Historical Memory Recovery Project (REMHI 1998) and the Historical Clarification Commission (CEH 1999) have documented systematic patterns of sexual violence during the conflict that can serve as a basis to identify the harm and damages.

International experience - based on the practice in the Inter-American Court and the Guidance Note of the Secretary-General on reparations for conflict-related sexual violence (2014) - suggests adopting a lower burden of proof for reparations in cases of sexual violence. The International Criminal Court has declared that a "balance of probability" is sufficient to demonstrate reparations claims in cases of sexual violence, while the Inter-American Court has shifted the burden of proof from the victims to the state. Defining the general context helps to strengthen the evidence submitted on the sexual violence that occurred (Rubio-Marín and Sandoval 2011; Secretary-General 2014). Identifying the acts is a step toward identifying the harm for which the reparations are requested.

It is important to identify and calculate the material damages. For example, it is possible to calculate the value of lost income based on the average wages for the region and time. Expert opinions may be sought from different fields to substantiate this calculation, or case law from other courts may be considered. The International Criminal Court, for example, has asked for information from NGOs working in the area where the crimes

occurred to calculate damage amounts. In the Katanga case, the Court consulted with various NGOs and eventually calculated an average value of the homes destroyed at \$600. Compensation for physical harm in this case was calculated based on a standard of medical costs, producing an amount of \$250 in cases of gunshot wounds. To calculate compensation for psychological damages, the International Criminal Court examined the jurisprudence from the Inter-American Court, assigning amounts from \$4,000 to \$8,000 for family members of mortal victims, depending on the degree of kinship between the victim and the family member. An amount of \$2,000 was decided for victims who experienced an attack on their community.⁷ The Inter-American Court has generated some best practices in regard to evidence to underpin the reparations requests. In the case of *Campo Algodonero v. Mexico*,⁸ the Court assumed that the victims worked and were paid a salary, even in the absence of specific evidence to document this (Rubio-Marín and Sandoval 2011). In this case, the Court calculated that a monthly salary for one of the victims who worked as an employee in a private home would be worth \$2,600.00 per month, and used this figure to work out the total future wages that the family members lost due to the death of the victim. Similar calculations were performed for other professions.

The Guidance Note from the U.N. Secretary General (2014) recommends using a methodology with a specific gender lens, as it can be difficult to calculate lost income for women whose household work tends to go unpaid. For example, a calculation can be made of half of the household income that the victim would have received had it not been for the act of sexual violence. It is also important to recognize the harm caused to the victim's life and aspirations, and calculate the wages she might have made if it had not been for the violations. This implies calculating the wages she may have accessed if she had finished her intended academic career and gained job experience without any interruption.

Victims' participation is essential in the process of identifying specific damages and calculating their economic costs. Only the victims can assess the appropriate measures. For restitution measures, for example, victims must decide if they prefer to recover their land and homes in their place of origin, or if they prefer land and housing elsewhere to protect their safety. Special care must also be taken in consulting with the victims about the type of rehabilitation services that they want. The services must be

⁷See the order for reparations in the case of "The Prosecutor v. Germain Katanga": https://www.icc-cpi.int/CourtRecords/CR2017_05121.PDF.

⁸See the ruling in the case of *González and Others ("Campo Algodonero") v. Mexico*: http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf.

high quality, provided by specialists, and located in areas accessible to the victims.

Reparations should include individual and collective material and symbolic measures (for more information on the debate on the tensions that these measures produce, see the section on collective measures). This shows the importance of implementing truly holistic reparation, although these formats continue to be an unmet challenge for many reparations programs and initiatives. Additionally, reparations must strike a delicate balance: they must be broad in terms of the crimes that they address, but sophisticated in terms of the benefits that they distribute. Ideally, these measures should be internally consistent with other reparations, and also externally consistent with other transitional justice mechanisms. The Basic Principles do not address how reparations should consider specific characteristics such as gender or ethnicity, which affect how victims experience the crimes and condition their opportunities for recovery from their effects.

The Inter-American Court has produced significant jurisprudence in terms of assigning reparations for individuals and groups beyond just the direct victims. In certain cases, such as *Cantoral Benavides v. Peru*, victims' family members were considered among the aggrieved parties. In other cases, such as *De la Cruz Flores v. Peru*, the family members of the direct victims were considered as victims themselves.⁹ Nonetheless, the amount assigned for reparations did not distinguish between family members as victims or aggrieved parties. The only variations came according to the particular relationships between the victims and their relatives, and the specific harm that had been caused. Amounts were higher in cases of close family relations, if the family member made particular efforts to seek justice for the victim, or if the family members were children. As was described earlier, sexual violence can also have severe socioeconomic impacts for women that affect their children as well, who often grow up in situations of poverty. At a minimum, reparations should thus also include the victims' children as victims themselves, receiving benefits through specific forms of reparations. To demonstrate the impact of sexual violence on victims' children and other family members, a specialized psychological screening is important to identify the harm produced for the direct and indirect victims.

According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, victims can also be collectives, when groups of people united through special bonds such as ethnicity, language, race,

⁹See the ruling in the case of *Cantoral Benavides v. Peru*: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_88_esp.pdf and the ruling from the *De la Cruz Flores v. Peru* Case: http://www.corteidh.or.cr/docs/casos/articulos/seriec_115_esp.pdf.

religion, or nationality are victimized (Rombouts and Parmentier 2009). Under this notion, the Inter-American Court has accepted cases against collectives, such as the example of the *Moiwana Community v. Suriname*, arguing that mass human rights violations can damage community livelihoods and ways of life. In this case, the Court ordered reparations for community socioeconomic recovery (Jeffery 2014).¹⁰ To demonstrate that sexual violence or crimes linked to forced displacement have had an impact on community life, it is important to have expert anthropologists who can demonstrate the harm caused to the community and its cultural life. The majority of the victims in the Guatemalan conflict belonged to indigenous groups, who could access the requested reparations. In the *Sepur Zarco* case in Guatemala, the use of expert witnesses from different fields was a crucial aspect that helped to substantiate and demonstrate the context in which the crimes took place and, importantly, the sustained impact of these crimes on the victims, their communities, and their culture (Burt 2019). This expert testimony - which may include historical, military, sociological, psychological, medical, anthropological, and gender experts - are essential to explain and underpin the reparation measures requested to compensate these damages and transform the structure that facilitated the crimes.

Process to build reparations measures

Reparations must be built within safe spaces in which victims can feel free to speak openly and express their needs and expectations. Men and women victims can work in separate groups to be able to discuss gender-specific impacts. It is important to recognize that men can also be victims of sexual violence, and work in parallel with the sons of women victims as a particularly affected group. It is also important to have multidisciplinary teams in place for the process of designing, implementing, and monitoring the reparations. This team includes lawyers, but also incorporates anthropologists and psychologists, who may also serve as expert witnesses further along in the process. All of the personnel working and interacting with victims must be appropriately trained on gender issues, with the capacity to perform a gender analysis on the violations and reparations, and consider the social, psycho-social, and physical effects of sexual violence, the risk of re-victimization, and prevention strategies. Lastly, women tend to have greater care responsibilities that limit their participation. Childcare services should be considered to enable women's participation under free and equal conditions.

¹⁰See the ruling in the case of *Moiwana Community v. Suriname*: http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_esp1.pdf.

Although the inclusion of anthropologists into the working team can be a strategy to improve cultural sensitivity in the process, it is also important to have individuals or intermediary organizations who can “translate” between the different conceptions, forms of wisdom, and world views held by justice system operators and the victims themselves (Merry 2006). Collaborating with local organizations can help build trust with the victims, improve understanding of the local context, and provide important contacts (Moffett et al. 2019). Nonetheless, it is important to make sure that these organizations serve as intermediaries rather than representatives for the victims, to ensure that the design of the reparations is shaped by the victims’ opinions, rather than others’ interpretations of those opinions. Another key aspect of cultural sensitivity is to respect the formats and timelines that victims’ decision-making processes take, rather than imposing preset agendas and schedules.

Communication with the victims and maintaining reasonable expectations is important throughout the criminal process. Research has demonstrated that to generate a perception of procedural justice - that is, the idea that the reparations process is fair - it is important to maintain ongoing communication and conversation with the victims (Atuahene 2014). This takes resources to travel periodically to the victims’ communities, or to establish other communication mechanisms such as videoconferencing, for example (Moffett et al. 2019). Victims should also have the opportunity to communicate with the justice system operators or intermediary individuals or organizations when they wish to do so. This may take resources, especially for the community leaders or victims most involved in this conversation. Some resources can be transferred in the form of telephone contracts to offset communication costs (Atuahene 2014). Documentation and systematization of each case must also be considered and planned carefully. Criminal processes can re-victimize by forcing victims to repeat their stories over and over. It is important to have clear documentation of the entire criminal process, to avoid repeating the same questions unnecessarily.

Communication is essential to generate realistic expectations around the objective and scope of the reparations. In the context of administrative reparations programs, such as the reparations ordered at the International Criminal Court in the Lubanga case, some victims have felt disappointed or even shared feeling tricked once they understood the reality of the reparations, or the pace at which they were given (De Waardt 2013; Crosby, Lykes, and Caxaj 2016; Chappell 2017; Weber 2019). This effect can be magnified if the reparations are billed as transformative, but the results fall far short of the mark. Given these risks, it is fundamentally important to

clearly establish the budget parameters for reparations from the start, to avoid raising unrealistic expectations. It is also critical to keep the victims apprised of the process from the start, making it clear that the judges in the end are responsible for defining reparations, and as a result the measures may end up looking quite different from what the claimants have requested. In fact, reparations may even be modified after a defense appeal, such as the experience in the Lubanga case (Chappell 2017). Lastly, on a local level it is important to have a broader communication strategy for the communities, to begin to address the stigma around sexual violence from the start of the process, using focus groups or local media strategies. Public prosecutors' communications departments can collaborate in the design of such a strategy, in coordination with the claimant organizations, local organizations, psychologists, and anthropologists involved in the case.

Victims' participation

Victims' participation in designing reparations is critical. Victims' voices must be heard, under equal conditions, to ensure that reparations respond to their real needs. It is important that women and men are considered as victims and as equal citizens, whose perspectives are considered honestly, their voices truly heard, and can be seen as stakeholders worthy of dialog and negotiation. One political objective of reparations must be to reestablish civic trust and inclusive relationships between the state and its citizens (Hamber and Wilson 2002; Duggan and Abusharaf 2006; Mégret 2009; MacLachlan 2013). This can be a form of rehabilitation itself, and may lead to a process in which victims are empowered through their active participation in policy design (Rubio-Marín 2009a; Williams and Palmer 2016; Manjoo 2017).

Sadly, there are few specific guidelines on how to shape this practice of participation. Often, this participation is limited to talking about consulting victims on transitional justice. However, consultation does not necessarily mean that the opinions of the people consulted will be taken into account. On many occasions, participation is used to generate the impression that victims' opinions are valued, while in reality the decision has already been made. This dynamic can intensify feelings of frustration and powerlessness for victims, and undermine the process of rebuilding trust in the state. This is especially sensitive given that participation takes time, and victims are spending this time that could otherwise be used for paid work (Cooke and Kothari 2001; Gaventa 2004; Hickey and Mohan 2004; Kapoor 2004). In the case of transformative reparations, victims' participation must go beyond consultation.



Victims reunion in Burundi, Photo: Impunity Watch

Frequently, dialog spaces with victims are defined by state agencies and non-governmental organizations based in cities, with little time to dedicate to reparations design. These entities generally use formats and methodologies that are difficult to understand for the victims, who often have little formal education. These methods do not offer real consideration for victims’ socioeconomic and cultural reality. To prevent these risks, it is important to carefully consider the methodology that will be used to ensure victims’ participation. There is a wide range of participatory methods that do not require literacy skills, such as creating timelines with drawings and images, producing problem and solution trees or rivers, and using other creative methodologies such as photography, drawing, or drama.

The procedure can be divided into different phases. An initial group phase discusses the working objectives and generates a key discussion question. Questions might include: “what things are necessary to make a structural improvement in your life and your children’s lives?” or “what do you think of as a life with dignity, and what are your main needs to live a decent life?” In a second phase, each participant has time to work individually to create a visual or creative product (a drawing, photograph, collage, etc.) that helps to answer that question. Next, discussions are organized in small groups or as a single larger group, and each participant presents their work. These presentations guide the group discussion and provide insight for possible reparation measures. To define a series of feasible reparations within the budget parameters, a joint exercise can be done to classify and prioritize the victims’ needs and define the reparation measures that might best meet these needs. These measures can be complemented by other symbolic actions such as ceremonies or commemorations that do not need an extensive budget but can have a restorative effect. The reparations plan can be developed and consensus built in subsequent meetings.

There are various benefits to these creative and participatory methodologies. In more traditional interviews or focus groups, some individuals tend to speak more than others. This is especially common among women, as men wield leadership and public roles in the communities. Participatory and creative methodologies tend to bring down the barriers to public speaking, as women feel more confident presenting their own photographs and drawings. The use of participatory and creative methods can also be a way to avoid re-victimization by giving victims greater control in defining their priorities and deciding which experiences they want to share (Weber 2018b). Group discussions around shared experiences and needs can generate greater understanding and solidarity (Molloy 2007). This can be a step toward empowering a group of victims, and also lead to a more protagonist role by these groups in monitoring and demanding implementation of eventual reparations (Sikkink et al. 2015). These formats enable the process itself to be part of rehabilitation and empowerment. In a practical sense, these dynamics take time, resources to cover food and travel costs, creative input, appropriate spaces where participants feel safe and free to express themselves, and facilitators with keen awareness of gender and sexual violence issues to work with the victims in a truly participatory way.

It is essential for the justice system operators and victims' lawyers to keep an open mind and consider a broad range of possible reparations, to avoid pre-defining the possible measures based on the traditional concepts and perspectives of transitional justice rooted in Western culture. These views restrict consideration of more meaningful or healing reparations from the victim's standpoint and worldview (Ní Aoláin, O'Rourke, and Swaine 2015; Rudling 2019). As described in the previous section, it is also important to consider the need for cultural sensibility within rehabilitation services (Secretary-General 2014; Duggan and Jacobsen 2009). For example, phenomena such as trauma and post-traumatic stress tend to come from Western psychology, which focuses on talking as a therapeutic strategy. This form of healing can be foreign to the indigenous cultures of Latin America, which have their own forms of understanding the impact of violations, and culturally-specific ways of treating and alleviating these impacts, including natural medicine and healing, and body techniques such as massage and dance. The use of rituals and ceremonies can be important to reestablish the spiritual balance damaged by the violations (Viaene 2013). It is important to open these spaces to discuss these possibilities.

As described in Chapter 1, social stigma can weigh heavily on the victims of sexual violence. Reparations can help to lift this weight by addressing the stereotypes, stigma, and taboos around the crime and transforming ideas about gender norms and relations. Nonetheless, reparations can

also identify the victims of sexual violence, which may produce stigma if the victims have kept silent about the crime. It is important to break the silence to transform the taboos around sexual violence, but this cannot come at the expense of the victims (Rubio-Marín 2012). It is thus important that reparations measures include education and communication actions about the seriousness of sexual violence.

Rulings for reparations and implementation monitoring

It is important to explain to the judges in detail how the reparations plan was established. This requires an explanation of the direct and indirect harm, for individuals as they pursue their life goals and social and community participation, as well as for household and community collectives. It is thus important to gather the input and information from the different experts. To build the judges' understanding on transformative reparations with a gender lens and cultural relevance, representatives of the victims could be invited to participate in the process hearings, and given the opportunity to explain the importance of reparations to the judges and describe the reasons that they are asking for these measures in particular.

Once the reparations ruling has been handed down, the order should be communicated clearly to the victims to create realistic expectations. The ruling should also be shared with the wider community to prevent social tensions. One of the largest problems for transformative reparations is their implementation. Even the Campo Algodonero ruling, widely considered as a groundbreaking case for transformative reparations, did not lead to the implementation of the desired programs by the Mexican government (Manjoo 2017). This demonstrates the need to incorporate a monitoring and implementation strategy. There is very little literature on this topic. In Colombia, the government hired a U.S. university to monitor the implementation of its administrative reparations program, using USAID funding (Sikkink et al. 2015). This evaluation identified the need to prioritize compliance with the different reparations measures and define clear deadlines. The implementation and monitoring plan must be built in consensus with all of the stakeholders, including the victims and organizations accompanying the process.

A committee can be convened regularly to follow-up on implementation and set priorities. This committee can also meet periodically with the criminal judge to report and conduct actions to ensure implementation. It is critical for victims to participate directly in this committee, accompanied by other claimants and organizations. The committee meetings should

be held near the victims' communities to facilitate their participation and enable them to directly verify how the measures are being implemented. Given that reparations measures will likely include development initiatives or the provision of basic services, the committee should also include representatives from the state agencies responsible for implementing these interventions, and outline the ways to hold these entities accountable for making progress. The victims, their organizations, and their accompanying claimants should have a mechanism to speak out if operations and monitoring are not effective.

Monitoring for reparations should go beyond assessing the implementation of the measures to also consider the impact of the reparations themselves. One lesson from the Dutch case mentioned in the previous chapter was that the implementation of reparations measures can generate community tensions and even produce negative effects or threats for victims (Immler 2018). These risks are even more prevalent in cases of sexual violence, due to the associated stigma. As a result the process of monitoring reparations should provide safe spaces for the victims to meet with justice system operators and claimants to freely discuss the impact of the reparations on their families and communities. New psychosocial or healing strategies may emerge from these spaces, as well as social and community awareness-raising strategies to deal with the impacts of the reparations.

Lastly, it is important to note that the transformative approach to reparations is relatively recent in the field of human rights. Some critics warn of the risk of overburdening transitional justice with objectives that can be too ambitious, and note that there is danger associated with mixing reparations with broader development programs (De Greiff 2009; Duthie 2011; Waldorf 2012). Nonetheless, if reparations do not address structural inequality, their impact on victims' real lives will be limited. Transformative reparations should connect corrective and distributive justice to produce a lasting and profound impact on victims' lives and bring about true social impacts (Uprimny Yepes 2009; Cahn, Haynes, and Ní Aoláin 2010).

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Impunity Watch is an international organization that analyzes, advocates and advise in the field of transitional justice and the rule of law. We promote accountability for gross human rights abuses in countries emerging from a violent past and partner up with local organisations, particularly with victims and women in working towards democracy and peace.

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In this publication international standards on reparations for survivors of sexual violence and gross human rights violations during the armed conflict are analyzed. It is aimed at justice operators and plaintiffs in criminal processes. It contributes key elements for cases of sexual violence in conflict contexts. The content of this document is the responsibility of Impunity Watch and does not reflect the opinion of the Kingdom of the Netherlands.

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