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DISSERTATION

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Socioeconomic empowerment through transformative reparations in transitional societies: a promise for women

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INTRODUCTION

Transitional justice (TJ) has been defined as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”.¹ Its main pillars are justice, truth, reparations, and guarantees of non-repetition or non-recurrence (GNR), which assist each other in the pursuit of two mediate goals, providing recognition to victims and fostering trust between individuals and from individuals towards state institutions. They also assist each other in the pursuit of two final goals, contributing to reconciliation and strengthening the rule of law.²

In their attempt to address the abuses of past authoritarian rule or violent conflict, TJ’s mechanisms – Prosecution initiatives, Truth Commissions (TC), Reparations Programs and Institutional Reform- have tended to focus on direct acts of violence, such as killings, torture, and forced disappearances, while neglecting the underlying conditions that allow violence to happen in the first place. Disregard for the socioeconomic dimensions of conflict -like poverty and inequality³- affects women⁴ particularly, given the gendered nature of poverty that renders them vulnerable to specific harms during conflict and further socioeconomic consequences in the aftermath of violence.

Women’s socioeconomic disadvantage is part of the structural context that maintains and reinforces their subordination to men. This disadvantage not only predates the conflict but also plays a decisive role in the type of damages inflicted to women and how they face the conflict/repression. Therefore, by addressing socioeconomic disadvantages, TJ’s mechanisms have a great potential to transform women’s lives, not only by providing them with meaningful reparations but also by subverting the gender hierarchies that keep them subordinated to men. However, TJ’s mechanisms have not considered

¹ United Nations, ‘Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice’ (2010).

² United Nations, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff. First Report’ (2012) A/HRC/21/46., para.21

³ Socioeconomic dimensions of conflict are understood as the structural violence –mainly expressed through poverty- that create, perpetuate and reinforce patterns of discrimination and violence.

⁴ References to women should be understood in an intersectional way. Although we acknowledge the impact of conflict/repression differs from women to girls or indigenous women, in terms of gendered harms, the socioeconomic subordination of women results equally important for women as a group.

women's experiences of conflict/repression in a comprehensive manner; instead, they have focused mainly on sexual violence (SV)⁵, ignoring women's socioeconomic losses.

We propose that socioeconomic harms⁶ and consequences of conflict/repression should be considered by TJ's mechanisms, particularly by reparations programs, aiming to repair such harms and to seize the window of opportunity opened up by transitions to lay the foundations for a more inclusive and egalitarian society. To this end, reparations not only should provide redress but also should aim to subvert the pre-existing gender hierarchies that render women vulnerable during and after conflict/repression, in order to achieve social transformation.⁷ This double-aimed kind of reparations have been called "transformative reparations". Through complex transformative reparations programs emphasising compensation and rehabilitation measures, and with the collaboration of development actors, it is possible to achieve women's socioeconomic empowerment⁸ in a sustainable manner, leading to social transformation.

This proposal is displayed in three chapters. Chapter I argues that socioeconomic harms inflicted to women could and should be addressed through TJ's mechanisms not only because such harms are linked to the usually ignored root causes of conflict –poverty and inequality-, but mainly because transitions offer the opportunity to put under the spotlight the gendered nature of women's poverty and trigger transformation by promoting women's socioeconomic empowerment. It also argues that, among TJ's pillars, transformative reparations are particularly well suited to address properly the complex

⁵ United Nations, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo' (2010) A/HRC/14/22., para.44

⁶ These are understood as those harms that place victims in a situation of poverty, or greater poverty, putting at risk not only their means of survival but also their chances of getting out of poverty.

⁷ References to "transformation" or "social transformation" in this paper refer to those changes aimed at providing people in a state with opportunities to live in a world free of poverty, marginalization, and discrimination and where they are able to exercise their rights and live with dignity. See Clara Sandoval-Villalba, 'Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition' in R Duthie and P Seils (eds), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (ICTJ 2017)., p.3

⁸ Socioeconomic empowerment is defined as those interventions aimed to enhance women's agency, to increase their access to material resources, and to eliminate patterns of stigma and prejudice, structural barriers and exclusion, in order to widen women's choices. See Sylvia Chant, 'The "feminisation of Poverty" and the "Feminisation" of Anti-Poverty Programmes: Room for Revision?' (2008) 44 *Journal of Development Studies* 165., p.186; Sandra Fredman, 'Engendering Social Welfare Rights' in Lucie Lamarche and Beth Goldblatt (eds), *Women's Rights to Social Security and Social Protection* (Hart Publishing 2014)., p.32

nature of women's harms, which are inextricably linked to their pre-existing socioeconomic disadvantage.

Chapter II analyses the practice of reparations, particularly whether and how socioeconomic consequences of conflict upon women have been addressed by reparations programs. To this end, a conceptual normative analysis of reparations programs and recommendations is carried out by using as a yardstick the taxonomy of reparations developed by Pablo de Greiff and complemented by Ruth Rubio-Marin, to assess the virtues and limitations of those programs to accomplish social transformation for women.

Chapter III, acknowledging the limitations of reparations programs alone to empower women socioeconomically and trigger social transformation, proposes that the transformative potential of reparations could be further enhanced by engaging development assistance in the reparation process. It argues that the joint work of reparations and development increases the chances to provide empowering and transformational reparation benefits for women in a sustainable manner, particularly through compensation and rehabilitation measures, to improve their living conditions and, ultimately, make some progress towards gender equality.

I. THE PROMISE OF TRANSFORMATIVE REPARATIONS

The chapter describes how women's poverty is a manifestation of persistent discrimination against them that predates, determines the types of harms inflicted to them, and persist after conflict/repression; yet, redress of women's socioeconomic harms is generally left out from reparations programs. It argues that such harms can and should be considered by TJ's mechanisms -particularly by reparations- not only because they relate to the root causes of conflict but also because they have the potential to make visible the gendered nature of women's poverty and lay the foundations to subvert the structures that keep women socioeconomically subordinated. It also argues that transformative reparations could seize the opportunity opened up by transitions to build a more inclusive and egalitarian society through the implementation of empowering reparations measures to the benefit of women.

1. Women's experiences of violence

Violence against women (VAW) during conflict/repression is intimately linked to cultures that limit women's rights in peacetime; therefore, understanding the causes and consequences of such violence requires addressing the structural and everyday violence that underlies and enables it.⁹ Ruth Rubio-Marín asserts that an analysis of the most common rationales and modalities of VAW in times of conflict/repression shows that "such violence harms women as women because it rests on and exacerbates social meanings that fed the construction of gender relations as a system of dominance" under which women are socially, economically and politically excluded.¹⁰ Margarete Walker further explains the nature of VAW in times of conflict/repression as a "violence continuum", "stretching from the gender violence of everyday life, through the structural violence of economic systems that sustain inequalities and the repressive policing of dictatorial regimes, to the armed conflict of open warfare".¹¹

Therefore, a comprehensive approach to socio-economic harms caused to women in times of conflict/repression requires considering the pre-existing gender hierarchies that subordinate women, rendering them vulnerable to such harms just because they are women. As Christine Chinkin has argued, "the social, economic, and political position of women before and during conflict" is "highly relevant to a gendered analysis of the conflict".¹²

Regarding the position of women before conflict, it is necessary to start by highlighting the fact that women are disproportionately represented among the world's poorest. This fact was first asserted in 1995,¹³ however, 25 years later the situation remains the same. As reported by the United Nations Development Programme (UNDP), much of the gap is due to women's lower income and educational attainment in many countries,¹⁴ nevertheless, feminist research has consistently stressed that a more

⁹ Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 IJTJ 339., p.353-354

¹⁰ Ruth Rubio-Marín, 'Gender and Collective Reparations in the Aftermath of Conflict and Political Repression' in Ruth Rubio-Marín (ed), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2009)., p.389

¹¹ Margaret Urban Walker, 'Gender and Violence in Focus: A Background for Gender Justice in Reparations' in Rubio-Marín, *The Gender of Reparations, supra n 10*., p.29

¹² Christine Chinkin, 'Gender, Human Rights and Peace Agreements' (2003) 18 Ohio State Journal of Dispute Resolution 867., p.875

¹³ Fourth World Conference on Women, 'Beijing Declaration and Platform for Action' (1995).

¹⁴ UNDP, 'Human Development Indices and Indicators: 2018 Statistical Update' (2018)., p.6

holistic conceptual framework to encapsulate gendered privation is required.¹⁵ Thus, women's poverty must be considered as 'a central manifestation, and a direct result of women's lesser social, economic and political power'.¹⁶ As Chant has argued:

women's poverty is an issue of inequality that extends to the very basis of women's position in economic relations, in access to power and decision-making, and in the domestic sphere. It is emphatically not addressed in a sustainable manner solely by measures to improve the material conditions of women.¹⁷

Then, bearing in mind that gender inequality specifically shapes women's experience of poverty, attention must be paid to other factors that contribute to women's poverty beyond the mere lack of access to income. Such factors include the social assignment to women of the unpaid work of caregiver and nurturer for children, men and old people; the continuing discrimination in relation to property, succession, and family law; the relegation of women to underpaid, unsafe and informal work; the lack of decision-making power both in the public and private sphere; the lack of participation in public life; reproductive rights and age of marriage, and the higher exposure to gender-based violence.¹⁸

Women's poverty is closely linked to their role in the family, especially their caring roles,¹⁹ creating self-sustaining patterns of poverty. Because of structural discrimination, the work women do at home remains invisible, being seen as unskilled and less valuable to society than the paid work usually performed by men²⁰. Also, the demands of unpaid work and the resulting scarcity of time often force women into precarious and informal jobs not covered by social insurances schemes linked to employment. Such conditions render women socially and economically dependent on men, restricting their agency and autonomy.²¹ Moreover, girls caring responsibilities also limit the time and energy they have to invest in education, training and skills, which negatively impacts their ability to secure a job with

¹⁵ Chant (n 8)., p.166

¹⁶ Montreal Principles on Women's Economic, Social and Cultural Rights, 2

¹⁷ Chant (n 8)., p.86

¹⁸ *ibid.*, p.174; Fredman, 'Welfare' (n 8)., p.21; Gwen Brodsky and Shelagh Day, 'Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty' (2002) 14 *Can. J. Women & L.* 185., p.193

¹⁹ Fredman, 'Welfare' (n 8)., p.20

²⁰ UNDP, 'Gender and Human Development' (1995)., p.93

²¹ United Nations, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona. Unpaid Work' (2013) A/68/293., paras.12,49

just and decent working conditions or to access the financial resources needed to be economically independent and empowered.²²

Women's socioeconomic subordination is also reinforced by law. Many laws seriously curtail the ability of women to access paid work or property rights, therefore being a direct cause of women's poverty. This is particularly true of laws on marriage, property, and inheritance²³. In many countries, women are deprived of full legal status on marriage and promote childhood marriage, even though it has long been recognised that childhood marriage undermines girl's opportunities for education, income, and independence.²⁴ It is also commonplace for inheritance laws to discriminate against women providing for patrilineal succession, excluding women²⁵. Similarly, women's access to property rights is curtailed by law; even though women may benefit from the use of land and property owned by men, lack of personal ownership can impact in various ways on women's poverty and vulnerability, such as inhibiting the use of property for income-generating activities, restricting their access to credit, and ultimately, being precipitated into destitution on widowhood or divorce²⁶.

This context of structural socioeconomic discrimination against women play a crucial role in the way they experience conflict/repression. Peace and women's equality are inextricably linked, ²⁷ consequently, women are particularly vulnerable to deepen socioeconomic deprivation in conflict and post-conflict situations.²⁸ Although women might be subjected to the same violations as men in contexts of conflict/repression –such as murder, torture, illegal detention, among others-, their “pre-existing socioeconomic and legal status and the cultural meaning surrounding the construction of the male and the female in patriarchal societies may cause different harms for men and women”.²⁹, including the impact of conflict/repression itself. For instance, torture of women is usually inflicted with sexual

²² Meghan Campbell and others, 'A Better Future for Women at Work' (2018) 1 Oxford Hum. Rts. Hub J. 1., p.7

²³ Sandra Fredman, 'Women and Poverty – A Human Rights Approach' (2016) 24 Afr. J. Int'L & Comp. L. 494., p.496

²⁴ UNDP (n 14)., p.7

²⁵ Fredman, 'Poverty' (n 23).

²⁶ Sylvia Chant, 'Re-thinking the "Feminization of Poverty" in Relation to Aggregate Gender Indices' (2006) 7 Journal of Human Development 201., p.212

²⁷ United Nations Security Council Resolution 1325 on Women, Peace and Security, UN Doc. S/RES/1325 (2000).

²⁸ Montreal Principles (n 16)., 2

²⁹ Manjoo (n 5)., para.33

connotations; also, the murder of a women's husband affects her means of survival, while for men the murder of their wives does not necessarily entail economic hardships.

Regarding violence targeting women, the spotlight has usually been placed on SV. It has been recognised that women's pre-conflict economic status is a contributing factor to their vulnerability to sexual and reproductive violence during conflict.³⁰ However, gender-motivated harms of a socioeconomic nature also take place during conflict. Such is the case of forced domestic labour, often taking the form of forced conscription or forced marriages; likewise, forced displacement also targets women, representing the majority of the forcefully displaced due to conflict.³¹

In turn, violence directed to women leads to further socioeconomic consequences. SV has devastating, lifelong and intergenerational economic consequences for survivors, better understood as ripple effects, which include not only damages but also lost opportunities over the course of a lifetime.³² SV causes women health problems –including sexually transmitted diseases–, forces them to quit their wage-earning activities and/or leads them to drop school, thus creating self-sustaining patterns of poverty.³³ Further obstacles to women's economic opportunities stem from girl's unwanted pregnancies, as they are particularly vulnerable to economic destitution.³⁴ Likewise, survivors of SV are usually stigmatized, isolated, abandoned, and blamed for their victimization by their families and communities³⁵; as well as their chances of marriage are lowered, reducing their income-generating capacity.³⁶ Furthermore, family and community's ostracism hinder women's access to channels of economic productivity - such as markets, communal farms, financial support, and resources - curtailing their ability to earn a livelihood.³⁷

³⁰Colleen Duggan and Ruth Jacobson, 'Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation' in Rubio-Marín, *The Gender of Reparations*, *supra n 10.*, p.144; Sahla Aroussi, 'Perceptions of Justice and Hierarchies of Rape: Rethinking Approaches to Sexual Violence in Eastern Congo from the Ground Up' (2018) 12 IJTJ 277., p.284

³¹ Manjoo (n 5)., paras.44,33

³² Colleen Duggan, Claudia Paz y Paz Bailey and Julie Guillerot, 'Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru' (2008) 2 IJTJ 192., p.209

³³ Aroussi (n 30)., p.285

³⁴ Duggan/Jacobson (n 30)., p.130

³⁵ Claudia Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations' in Ruth Rubio-Marín (ed), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (ICTJ 2006)., p.100

³⁶ Jamesina King, 'Gender and Reparations in Sierra Leone: The Wounds of War Remain Open' in Rubio-Marín, *What Happened?* *supra n 35.*, p.262

³⁷ Duggan et al (n 32)., p.196

Women are not only affected by the consequences of violence directed at them but also by consequences of violence directed to their families. Dependency on men brings particular economic consequences upon women. Violations committed under conflict/repression “not only destabilize the person(s) toward whom the acts are directly intended” but affects all of those people in a relationship of codependency with them.³⁸ Thus, even though widespread violence targets primarily men, its effect has profound consequences for women, putting them in conditions of extreme vulnerability after their male support is lost. Widows are left in isolation and extreme poverty due to discriminatory laws and ostracism. Many women who are poorly skilled, trained and educated are faced with the challenge of finding a livelihood on their own for the first time.³⁹ In addition to the already disproportionate burden of care work, widespread violence also increases the amount and intensity of such work, placing upon women alone the responsibility of raising and taking care of their own children as well as of a large number of dependants (the orphans, the sick, the wounded, and the mutilated).⁴⁰

This way, after mass crimes, women end up not only with the physical and emotional consequences of the violence inflicted upon them but also with the increased burden of caring for and supporting families. Such plight is further exacerbated by the difficulties in accessing resources due to the gender hierarchies that had economically subordinated women prior to conflict, such as discriminatory laws and gender roles that curtail their means to cope with the consequences of conflict/repression. Consequently, the precarious nature of women’s living conditions -especially for victims of SV and displacement, as well as of women who are head of families- can push them into prostitution and other exploitative economic activities that put their health and lives at even greater risk.⁴¹

2. Women’s poverty and TJ

³⁸ Fionnuala Ni Aolain, ‘Sex-Based Violence during the Holocaust– A Reevaluation of Harms and Rights in International Law’ (2000) 12 *Yale Journal of Law and Feminism* 43.

³⁹ Ruth Rubio-Marin, Clara Sandoval-Villalba and Catalina Diaz, ‘Repairing Family Members: Gross Human Rights Violations and Communities of Harm’ in Rubio-Marín, *The Gender of Reparations, supra n 10.*, p.216

⁴⁰ *ibid.*

⁴¹ Duggan et al (n 32)., p.196

TJ should take seriously the socioeconomic dimensions of conflict – particularly poverty - to the benefit of women for two main reasons: first, addressing poverty as a root cause of conflict or means of repression is necessary to guarantee non-recurrence, which ultimately benefit women by preventing future victimisation, and; second, it would allow the visibilisation of the gendered nature of poverty, opening a window to transform women's lives through reparations.

2.1 TJ and Poverty

Poverty is anchored in the structures of society, which means it is a manifestation of structural violence. As such, poverty becomes relevant for TJ in two particular ways. On one hand, poverty “can be a powerful weapon of political, military and social repression”.⁴² Effectively, depriving individuals or populations of subsistence needs through attacks on homes, livelihoods and basic resources, as well as forced displacement, can be deliberately used as a tool of oppression and violence under authoritarian regimes, therefore, TJ's mechanisms should acknowledge this to adequately assess the suffering of victims of structural violence and their entitlement to equal realization of socioeconomic rights.⁴³ On the other hand, poverty is often regarded as a root cause of conflict. Research suggests that armed conflict results from a combination of factors that include inequality, poverty, exclusion, and marginalisation.⁴⁴ Therefore, considering that poverty remains central to conflict dynamics in many countries, TJ's mechanisms and processes should address it.

Increasing attention to the relation of poverty and conflict has led to calls for the extension of TJ's mechanisms to address the socioeconomic conditions of conflict. The former UN Secretary-General, Kofi Annan, proposed moving toward a ‘culture of prevention’ that requires ‘the deep-rooted socioeconomic, cultural, environmental, institutional and other structural causes that often underlie the immediate political symptoms of conflicts’ to be addressed.⁴⁵ In 2006, Louise Arbour, then high commissioner for human rights, advocated for more attention to economic and social justice for

⁴² Diana Sankey, ‘Towards Recognition of Subsistence Harms: Reassessing Approaches to Socioeconomic Forms of Violence in Transitional Justice’ (2014) 8 IJTJ 121., p.121

⁴³ Lisa Hecht and Sabine Michalowski, ‘The Economic and Social Dimensions of Transitional Justice’ [2012] ETJN Concept Paper., p.5

⁴⁴ Gready/Robins (n 9)., p.347

⁴⁵ UN Secretary-General, ‘Prevention of Armed Conflict’ (2001) UN Doc.A/55/985-S/2001/574

societies in transition.⁴⁶ In 2010, the Secretary-General asserted that United Nations should “strive to ensure transitional processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights”, including those dealing with discrimination, exclusion, poverty, and violations of economic, social and cultural rights, if applicable.⁴⁷ Scholars have also joined this trend, calling for TJ to consider the impact of socioeconomic structures and be sensitive to these.⁴⁸ Some have advocated particularly for the enlargement of the field to deal with violations of economic, social and cultural rights (ESCR).⁴⁹

An argument supporting the expansion of TJ to address the socioeconomic dimensions of conflict/repression is that it enhances the effectivity of each pillar of TJ. Regarding TCs, they have the potential to accomplish a more complete narrative that responds not only what happened but also why it happened at all; It also has the potential to acknowledge all the victims and their suffering as well as to point out all the perpetrators; it may also help to paint a more accurate picture of the complex nature of the causes, functions, and consequences of conflict, authoritarianism, and serious human rights abuses.⁵⁰ As Ruben Carranza argues, by holding hearings on economic rights violations, the Commission for Reception, Truth and Reconciliation (CAVR) in Timor-Leste established a far more truthful account of the Indonesian occupation than it would have had it limited itself to physical integrity violations tied to civil and political rights (CPR).⁵¹ In turn, with a broader diagnostic approach to truth-telling processes, that address the underlying socioeconomic conditions of conflict/repression, more accurate and effective recommendations for reparations can be formulated, further accomplishing non-recurrence. Regarding GNR, addressing the socioeconomic sources of grievances that fuel conflict/repression is vital to prevent the resurgence of conflict, one of the main objectives of TJ.

⁴⁶ Evelyne Schmid and Aoife Nolany, “Do No Harm”? Exploring the Scope of Economic and Social Rights in Transitional Justice’ (2014) 8 IJTJ 362., p.368

⁴⁷ Guidance Note (n 1)., p.7

⁴⁸ Roger Duthie, ‘Toward a Development-Sensitive Approach to Transitional Justice’ (2008) 2 IJTJ 292., p.292-309

⁴⁹ UN OHCHR, ‘Transitional Justice and Economic, Social and Cultural Rights’ (2014).; Schmid /Nolany (n 46).

⁵⁰ Duthie (n 48)., p.305

⁵¹ Ruben Carranza, ‘Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?’ (2008) 2 IJTJ 310., p.320

Contrarily, to neglect the underlying causes of conflict, particularly matters of socioeconomic oppression, 'ends up presenting a diagnosis of human rights violations 'abstracted' from 'the dynamics of social power and conflict',⁵² presenting a distorted reality that does not recognise victims' suffering and does not allow them to move on, further risking conflict to return. Research suggests that TJ's failure in addressing deep-rooted inequalities has led to the recurrence of conflict, since violent street protest and riots have been witnessed in countries like Chile, South Africa, and Guatemala, arising out of the same types of socioeconomic grievances that caused periods of violence before on those same countries.⁵³

There have also been voices calling caution regarding the expansion of TJ to address socioeconomic conditions of conflict/repression. Lars Waldorf argues that "the extent to which poverty, inequality and economic and social wrongs drive armed conflict is highly debated among social scientists".⁵⁴ However, the practice seems to suggest otherwise. The TC's reports of Peru and Guatemala provide evidence that poverty and exclusion can trigger armed conflict and political violence; in Guatemala, the root causes of conflict can be traced to economic policies that marginalised the impoverished indigenous population, especially by restricting their access to land.⁵⁵ In Peru, although the Truth and Reconciliation Commission (CVR) did not say that poverty caused the conflict, it pointed out an 'evident relation' between poverty and social exclusion and political violence that 'ignited' and then became the backdrop of the war.⁵⁶ The political conflict in Nepal, known as the People's war, was also underpinned by poverty, discrimination, and inequality.⁵⁷ Poverty-related violations of the rights to health, education and to an adequate standard of living were identified by the CAVR in Timor-Leste as the root causes of the conflict. Finally, in Sierra Leone, the Truth and Reconciliation Commission (SLTRC) pointed out the greed and corruption that reduced the population to poverty as the underlying cause of the conflict.⁵⁸

⁵² Lisa J Laplante, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence Through a Human Rights Framework' (2008) 2 IJTJ 331., p.337

⁵³ *ibid.*, p.331

⁵⁴ Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs' (2012) 21 *Social & Legal Studies* 171., p.185

⁵⁵ Bailey (n 35)., p.93

⁵⁶ Laplante (n 52)., p.336

⁵⁷ Tafadzwa Pasipanodya, 'A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal' (2008) 2 IJTJ 378., p.382

⁵⁸ United Nations, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabian Salvioli' (2018) A /73/336., para.55

Further critiques have arisen regarding the inclusion of socioeconomic rights, which are related to the classic split between CPR and ESCR. As Miller has argued, TJ's discourse and practice have imported the biases of its parent field, human rights.⁵⁹ Thus, violations of CPR are considered justiciable and susceptible to reparations, while violations of ESCR are considered non-justiciable and better addressed by development programmes.⁶⁰ Similarly, it is frequently understood that redress of ESCR violations require expensive long-term projects⁶¹ and are less straightforward than CPR violations; also, it is assumed that ESCR do not entail legally binding obligations but are merely aspirational goals whose fulfilment depend on available resources and priorities established by states⁶².

However, it has long been accepted that human rights are indivisible and interdependent,⁶³ therefore, the split is no longer tenable. Moreover, ESCR violations can be addressed in a summary and corrective way through targeted measures that are limited in time; they can be relatively straightforward⁶⁴; and, they require the same type of immediate action and redress as CPR violations⁶⁵. It is true that redress of some ESCR violations would indeed require long-term projects, but the same can be said of CPR violations. For instance, to implement a new judicial system may not be achieved in the short run, and, moreover, it would not be cost-free. Similarly, all human rights violations may occur in a context of structural discrimination and poverty, so correcting such structures may include addressing CPR, not only ESCR; this understanding overcomes the common association of longstanding inequality with ESCR violations, which is followed by an assumption that redressing them will be extremely complex.⁶⁶

Although attention to poverty as a root cause of conflict/repression has increased, most TJ's mechanisms applied so far have relegated socioeconomic factors to the sections on historical background "where they could be more easily ignored"⁶⁷, as it occurred in Peru, Guatemala, Sierra

⁵⁹ Zinaida Miller, 'Effects of Invisibility: In Search of the "Economic" in Transitional Justice' (2008) 2 IJTJ 266.

⁶⁰ Carranza (n 51)., p.315

⁶¹ Waldorf (n 54)., p.179

⁶² Louise Arbour, 'Economic and Social Justice for Societies in Transition' (2007) 40 N.Y.U. J. Int'l L. & Pol. 1., p.11

⁶³ World Conference on Human Rights in Vienna, 'Vienna Declaration and Programme of Action' (1993)., para.5

⁶⁴ Schmid/Nolany (n 46).,p.374-375

⁶⁵ Arbour (n 62).

⁶⁶ Schmid/Nolany (n 46)., p.375

⁶⁷ Waldorf (n 54)., p.176

Leone and South Africa.⁶⁸ It is inaccurate to reduce ESCR abuses to issues of contextual background and/or daily needs while presenting CPR as violations and hence as the result of adverse human agency, considering that CPR violations are precipitated by the same conditions which also precipitated socioeconomic abuses⁶⁹; besides, impunity for violations across these categories of rights can clearly be mutually reinforcing.⁷⁰ Consequently, when applicable, socioeconomic abuses must be considered in the same weight CPR are to truly achieve non-repetition. As Lisa Laplante argues, “if economic and social inequalities go unaddressed and the grievances of the poor and marginalised go unheard, we are left with only uncertain guarantees of non-repetition. It is like treating the symptoms while leaving the underlying illness to fester”.⁷¹

2.2 TJ and Women’s Poverty

Feminist scholars have supported the expansion of TJ to consider the socioeconomic dimensions of conflict/repression. They argue that an essentialist approach to women as victims, reducing their experiences of conflict/repression to SV, tends to bring an ‘incomplete gender equality focus’,⁷² thus failing to recognise the full range of abuses committed against them in situations of violence. Therefore, considering that the most frequent violations experienced by women during conflict are those of a socioeconomic nature⁷³, is necessary to place the socioeconomic status of women squarely in the frame of TJ’s mechanisms and processes to approach women’s experiences in a comprehensive gendered way.

Considering that “the major forms of oppression of women operate within the economic, social and cultural realms”,⁷⁴ disregard for socioeconomic rights is particularly prejudicial for women because it hides the most typical harms inflicted to them. Emphasis on CPR violations, usually taken as

⁶⁸ *ibid.*; Laplante (n 52)., p.335; Dustin N Sharp, ‘Addressing Economic Violence in Times of Transition: Towards a Positive-Peace Paradigm for Transitional Justice’ (2012) 35 *Fordham Int’l L.J.* 780., p.793

⁶⁹ Schmid/Nolany (n 46)., p.377

⁷⁰ Gready/Robins (n 9)., p.346

⁷¹ Laplante (n 52)., p.333

⁷² Duggan et al (n 32)., p.197

⁷³ Nahla Valji, ‘A Window of Opportunity: Making Transitional Justice Work for Women’ (2012) UN Women., p.2

⁷⁴ Hilary Charlesworth, Christine Chinkin and Shelley Wright, ‘Feminist Approaches to International Law’ (1991) 85 *AJIL* 613., p.635

paradigmatic expressions of political violence –targeting men disproportionately– to the expense of socioeconomic injuries suffered predominantly by women as internally displaced persons, heads of households and refugees, resonates with the feminist discourse that has long held that the distinction between the public and the private depoliticizes the domestic space.⁷⁵ Socioeconomic harms leave women in a precarious position, with the responsibility for children and other dependants, without income-generating skills and subjected to stigma and poverty⁷⁶; yet the spotlight is often placed on a limited understanding of SV. Thus, prioritization of CPR violations over socioeconomic “rights can distort reality in terms of the harms women actually suffer in conflict and post-conflict periods”⁷⁷; therefore, to comprehensively assess women’ experiences of conflict violations of socioeconomic rights must be considered.

The artificial divide of rights comes further problematic in TJ’s contexts, as both CPR and ESCR abuses are committed against overlapping sets of victims by an invariable set of perpetrators.⁷⁸ The indivisibility of rights renders even more difficult to draw the line between CPR and ESR abuses. For instance, VAW not only undermines basic rights such as the right to life and physical integrity but also violates some other substantive socioeconomic rights given the economic consequences of such violence. Likewise, as recognised by the CAVR in Timor-Leste, in context of displacement, the “deprivation of women’s civil and political rights [are] intricately tied [...] to the denial of their social and economic rights”.⁷⁹ Thus, disregard for socioeconomic rights not only renders women’s harms invisible but also undermines a comprehensive assessment of CPR violations.

Furthermore, poverty should be considered by TJ’s mechanisms because socioeconomic needs are often prioritised by women. Considering the dire conditions of poverty women are left as a consequence of conflict, the strongest demands of female victims are usually related to socioeconomic needs, such as the provision of food and shelter, medical facilities for themselves and their children, skills training

⁷⁵ Gready/Robins (n 9)., p.353

⁷⁶ Manjoo (n 5)., para.43

⁷⁷ Ruth Rubio-Marín, ‘The Gender of Reparations in Transitional Societies’ in Rubio-Marín, *The Gender of Reparations, supra n 10.*, p.96

⁷⁸ Carranza (n 51)., p.329

⁷⁹ CAVR, ‘Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste’ (2005)., Ch.7.7, para.104

for themselves, and education facilities for their children.⁸⁰ Therefore, even though women as victims are entitled to justice and reparation for the harms inflicted, their pursuit for justice and reparation becomes a luxury when their basic needs are not met.⁸¹ Thus, considering the socioeconomic dimensions of conflict could enable the prioritization of those victims whose situation of poverty hinders them to meet their basic needs, bearing in mind that the fulfilment of those needs does not replace the duty to provide reparations for the harms inflicted. Under no circumstance, the victims' lack of consciousness of right entitlement to reparation given their overall level of poverty and destitution should be taken to replace their right to reparation with the provision of emergency aid and services to cover their basic needs.⁸²

For women, addressing the underlying socioeconomic conditions of conflict is imperative, not only because poverty, in some contexts, constitutes a root cause of conflict or mean of repression but also because the gender hierarchies that predate conflict/repression play a decisive role in the types of harms are inflicted to them, as well as their means to deal with the consequences of such harms.

3. Window of opportunity

Transitions open up the opportunity to acknowledge structural deficiencies like socioeconomic inequality and systemic discrimination based on race, gender or class, to build a more inclusive and just society. As Clara Sandoval has argued, the deployment of TJ's mechanisms takes place in contexts where, 'as a general rule, a political rupture in the continuum of violent conflict/repression has occurred'.⁸³ Therefore, these periods of rupture offer a unique opportunity to lay the foundations that are to be established in the new state to achieve social transformation. Although potential social transformation may vary from country to country and from countries transitioning from a repressive regime and those transitioning from conflict, both situations offer the opportunity to reconstitute the new state as more democratic, legitimate and inclusive.⁸⁴ Sandoval further argues that transitions constitute

⁸⁰ King (n 36)., p.257; Aroussi (n 30)., p.286; D Aguirre and I Pietropaoli, 'Gender Equality, Development and Transitional Justice: The Case of Nepal' (2008) 2 IJTJ 356., p.358,363

⁸¹ Christine Chinkin, 'The Protection of Economic, Social and Cultural Rights Post-Conflict' (2007)., p.4

⁸² Ruth Rubio-Marín, 'Introduction: A Gender and Reparations Taxonomy' in Rubio-Marín, *The Gender of Reparations, supra n 10.*, p.30

⁸³ Sandoval-Villalba (n 7)., p.15

⁸⁴ *ibid.*, p.30

'a unique window of opportunity, even if small, to contribute to the transformation of that old ideology that permitted or consented the atrocities' to occur.⁸⁵

Thus, by considering poverty as a root cause of conflict or means of repression and heeding the ways gender hierarchies influenced the types of harms and their consequences upon women, transitions entail an opportunity to make visible the gendered nature of poverty and promote women's socioeconomic empowerment, which in turn would trigger social transformation. To this end, each TJ's mechanism could and should include a cross-cutting gender approach to its work, to adequately recognize women's harms, promote just and adequate reparation, and ultimately, accomplish the non-repetition of such damages. Although it is acknowledged that the overall effectivity of TJ and, consequently, its potential to generate transformation, depends upon "paying heed to the tight and bidirectional relations between the [four pillars] when designing the relevant programmes",⁸⁶ we consider that reparations are a promising channel to seize the opportunity to achieve social transformation for women.

Reparations are the most victim-centred transitional mechanism; as such, they have the potential to respond more directly to victims' needs and priorities.⁸⁷ In transitional periods, reparations seek to contribute to the reconstitution of a new political community; in this sense, they are best thought of as part of a political project.⁸⁸ Thus, when it comes to massive human rights violations, the reparation's aim goes beyond the satisfaction of individual claims, also involving recognition, civic trust, and social solidarity.⁸⁹ Consequently, discussions among TJ's actors about reparations "tend to coincide with broader structural political, legal, and institutional reforms seen as foundational to a new 'democratic order'".⁹⁰ Therefore, bearing in mind that VAW is still normative, that is, that men's aspiration to control

⁸⁵ Clara Sandoval-Villalba, 'Transitional Justice and Social Change' (2014) 11 SUR - IJHR 181., p.184

⁸⁶ Greiff's first report (n 2)., para.24

⁸⁷ Waldorf (n 54)., p.177

⁸⁸ Pablo de Greiff, 'Justice and Reparations' in de Greiff, *The Handbook, supra 38.*, p.454

⁸⁹ *ibid.*, p.455-464. According to Pablo de Greiff, a reparation program must aim to recognise victims as citizens entitled to rights; to this end, is necessary to recognise them not only as individuals and members of groups but also as irreplaceable and unsubstitutable human beings (recognition). Also, reparations should aim to the formation or restoration of trust among citizens and towards the state (civic trust). Lastly, reparations must aim to encourage the interest of the traditionally most advantaged in the interests of the least favoured (social solidarity).

⁹⁰ Rubio-Marín, 'Collective' (n 10)., p.383

women's lives remains a rather undisputed fact in human societies,⁹¹ women's socioeconomic harms and the very structures that facilitated such harms to happen shall be brought to these discussions, not only to be repaired but also to be challenged, de-normalised and transformed. This is the window of opportunity for women that can and should be seized through reparations.

Thus, discussions about the reconstitution of a new democratic order -that considers the socioeconomic conditions that fueled or enabled the violence to take place- open an opportunity to put the gendered nature of poverty under the spotlight, not only as part and parcel of the underlying socioeconomic conditions of the conflict but also as critical factor in the way women experienced conflict. As Fionnuala Ni Aolain asserts, "attention to material inequality and redistribution seems particularly apt in the transitional setting, where the abject poverty, economic disenfranchisement and dependency experienced by women are the overwhelming and dominant certainty".⁹² Thus, in transitional societies where the legislative, policy and budgetary decisions that have had the effect of maintaining women's secondary status and their unequal economic conditions can be questioned, challenged and transformed.

The traditional legal understanding of reparations entails a corrective justice approach, under which reparations are a singular act of restitution or proportionate compensation for wrongful harm that restores the victim to the status quo ante within a given order. However, this approach does not address pre-existing inequalities and injustices, since it aims at bringing women back to their previous situation of subordination. Consequently, a new understanding of reparations that not only provide redress but also transformation has been taking place, better known as "transformative reparations".

The concept of transformative reparations first appeared in the 2007 Nairobi Declaration on Women's and Girls' right to a remedy and reparation, which claims that 'reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women's and girls' lives'.⁹³ In 2010, Rashida

⁹¹ Margaret Urban Walker, 'Gender and Violence in Focus: A Background for Gender Justice in Reparations' in Rubio-Marín, *The Gender of Reparations, supra n 10*.

⁹² Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 IJTJ 205., p.224

⁹³ 'Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation', para.3H

Manjoo asserted that reparations for women should subvert rather than reinforce pre-existing structural inequalities that may be at the root causes of the violence women experience before, during and after the conflict'.⁹⁴ Building upon Manjoo's report, Pablo de Greiff argued that "the main objective of reparations programs is to tackle and, to the extent possible, subvert pre-existing patterns of structural discrimination against and inequalities experienced by women", therefore, reparations must not contribute to the entrenchment of these patterns.⁹⁵ Similarly, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) pointed out that, 'rather than re-establishing the situation that existed before the violations of women's rights, reparations 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'; thus, the committee argues that, by providing redress to women for gender-based violations suffered during conflict, TJ's mechanisms have the potential to secure a transformative change in women's lives.⁹⁶

Academics have also supported transformative reparations. Rubio-Marin argues that the transformative potential of reparations lies in efforts to subvert, rather than reinforce, pre-existing structural gender inequalities and thereby contribute, however minimally, to the consolidation of more inclusive democratic regimes.⁹⁷ Valerie Couillard praised the Nairobi Declaration approach to reparations, going beyond 'reintegration and restitution' to encompass transformation of society as a whole with a view to eliminating the pre-existing inequalities that have led to or encouraged VAW.⁹⁸ Likewise, Rodrigo Uprimny argues that:

the purpose of reparations in unequal societies should not be to restore poor victims to their previous situations of poverty and discrimination, but to change or 'transform' their circumstances in which they lived. And that could have been one of the roots of conflict and that anyway are in themselves unjust.⁹⁹

⁹⁴ Manjoo (n 5)., paras.31,54

⁹⁵ United Nations, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff. Reparations' (2014) A /69/518., para.72

⁹⁶ Committee CEDAW, 'General Recommendation No 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations' (2013) UN Doc. CEDAW/C/GC/30., paras.77,79

⁹⁷ Rubio-Marín, 'Reparations' (n 77)., p.66

⁹⁸ Valérie Couillard, 'The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence' (2007) 1 IJTJ 444., p.450,452

⁹⁹ Rodrigo Uprimny Yepes, 'Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice' (2009) 27 Neth. Q. Hum. Rts. 625., p.638

There are also voices calling for precaution regarding transformative reparations. Margarete Walker argues that broader structural agenda threatens to displace “reparative justice as a distinct and distinctly victim-centred imperative”. She claims that transformation, “however necessary or valuable to society or to disadvantaged populations as a whole and however appropriate to the broader transitional agenda, do not necessarily provide direct relief or satisfaction to victims”.¹⁰⁰ Nonetheless, it seems that Walker is not considering that transformative reparations do not aim to replace redress of actual harms for a broader structural change agenda; in fact, as Rubio-Marín clearly states, ‘a reparation program can embody a future-looking vision of what kind of structural transformations would need to take place for women to enjoy equal opportunities in a reconstructed society’, however, ‘the program should never neglect that its most immediate goal is to help victims to cope with the effects of violence in their present lives’.¹⁰¹

Concluding remarks

Transformative reparations can look back at the structural inequalities that enabled violence to occur and rendered women vulnerable to victimisation, as well as can look forward to design better and more empowering measures not only to redress socioeconomic harms but also to correct –however modestly– the structures that impede women’s socioeconomic equality. This is the added value of transformative reparations.

II. TRANSFORMATIVE REPARATIONS IN PRACTICE

This chapter analyses reparations practice of South Africa, Timor-Leste, Sierra Leone, Peru, Guatemala, and Colombia¹⁰² from a normative perspective, in order to assess the virtues and limitations of these programs to achieve social transformation for women through socioeconomic empowering measures. The analysis is carried out using the taxonomy of reparations developed by Pablo de Greiff

¹⁰⁰ Margaret Urban Walker, ‘Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations’ (2016) 10 IJTJ 108., p.109,120

¹⁰¹ Rubio-Marín, ‘Reparations’ (n 77)., p.107

¹⁰² Although reparations programmes implemented in Morocco, Nepal and Liberia -among others- also fall within the scope of this paper, due to matters of extension they will not be included.

and complemented by Ruth Rubio-Marin as a yardstick. Based on the practice of reparations programs that have been undertaken, de Greiff proposes a categorization organised around the main challenges faced by those programs, being such categories: scope, completeness, comprehensiveness, complexity, internal and external integrity, finality and munificence.¹⁰³ In turn, from a gender perspective, Rubio-Marin adds two categories, namely, openness and transformative potential.¹⁰⁴

1. Transformative potential

According to the Van Boven/Bassiouni Principles ('Reparations principles'), victims should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation through diverse forms of reparations, which include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁰⁵ However, this "proportional" approach established in the reparation's principles is not able to look forward transformation of the underlying discriminatory structures of conflict/repression. To this end, a transformative approach is needed.

Rubio-Marin explains that the *transformative potential* of a reparation program lies in its capacity to subvert, rather than reinforce, pre-existing structural inequalities.¹⁰⁶ We consider that the first step to achieve this transformative goal would be to provide redress through administrative reparations programs instead of individualised judicial reparations; this for two main reasons: first, access to administrative reparations programs entails less obstacles for women than a juridical reparation process, and; second, such programs could aspire to greater goals –recognition, civic trust and social solidarity- that, ultimately, can lead to social transformation.

An administrative reparation program is an out-of-court process used by states to provide reparations to massive numbers of victims of gross violations of international human rights law and/or serious

¹⁰³ Pablo de Greiff, 'Introduction. Repairing the Past: Compensation for Victims of Human Rights Violations' in de Greiff, *The Handbook*, *supra* 38., p.6-13

¹⁰⁴ Rubio-Marin, 'Introduction' (n 82)., p.16-17

¹⁰⁵ UN General Assembly, 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: (2006), A/RES/60/147, Principle 18 [Hereafter 'reparation principles']

¹⁰⁶ Rubio-Marin, 'Introduction' (n 82)., p.17

violations of international humanitarian law.¹⁰⁷ A case-by-case basis (a juridical approach) to provide remedies, as mandated by the 'reparations principles', cannot be applied to reparations of large-scale violations, as the enormous range of violations and victims, as well as the institutional breakdown of the state, renders extremely difficult providing reparations to individuals in strict proportion to the harm inflicted; therefore, given the wide pool of victims resulting from widespread and systematic violence, administrative programs may be better suited to this task.¹⁰⁸ Moreover, such programs can spare victims of the difficulties and costs associated with litigation, offering "lower costs, relaxed standards of evidence, non-adversarial procedures and a higher likelihood of receiving benefits".¹⁰⁹

De Greiff argues that considering reparations as part of a broader political agenda (administrative approach) instead of framing them in terms of "a narrowly conceived juridical approach" is justified for two main reasons; first, because legal systems are not devised for dealing with massive violations, where norm-breaking behaviour is the norm, rather than the exception, and; second, because reparations conceived as political project open up the possibility to pursue broader ends beyond the sole aim of providing redress to victims, including recognition, civic trust and social solidarity.¹¹⁰

Nonetheless, administrative programs should not be understood as precluding victims of violence from obtaining reparations through courts when they are not considered in administrative reparations programs. According to de Greiff's taxonomy of reparations, the *finality* of a reparations program refers to whether the programme stipulates that receiving its benefits forecloses other avenues of civil redress or not.¹¹¹ While it should be avoided that no one receives benefits twice for the same violation, is also important that for those victims whose rights violations are not contemplated to trigger reparations, the judicial path remains open.¹¹² This is highly important for women, considering that reparations programs systematically "fail to include the worst forms of violence and abuse perpetrated and tolerated against women".¹¹³

¹⁰⁷ United Nations Secretary-General, 'Guidance Note on Reparations for Victims of Conflict-Related Sexual Violence' (2014)., p.6

¹⁰⁸ Ruth Rubio-Marín and Pablo de Greiff, 'Women and Reparations' (2007) 1 IJTJ 318., p.321

¹⁰⁹ Greiff, 'Reparations' (n 96)., para.4

¹¹⁰ Greiff (n 88)., p.455

¹¹¹ Greiff, 'Introduction'(n 103)., p.12

¹¹² UN Committee Against Torture, General Comment No. 3, (2012), CAT/C/GC/3, para.20

¹¹³ Rubio-Marín, 'Introduction' (n 82)., p.15

However, we consider administrative reparations programs have not exploited their transformative potential, given that most of them have not even considered women's socioeconomic harms as triggering reparation. Moreover, procedural and substantive¹¹⁴ obstacles have further impeded women's access to empowering reparations, although some progress has been made.

2. Completeness and comprehensiveness

Women's access to meaningful reparation may depend more on the procedural hurdles they may encounter than on the substantive content of reparations measures. Rubio-Marin argues that much of the difference that a gender perspective can make when thinking about reparations has to do with the categories of *completeness and comprehensiveness*¹¹⁵ of the taxonomy of reparations.¹¹⁶ The former refers to the ability of a program to cover, as the limit, the whole universe of potential beneficiaries; the latter refers to the distinct types of crimes or harms reparation tries to redress.¹¹⁷ Among the factors that diminish *completeness* for women are high evidentiary standards, insufficient outreach efforts to publicise the existence of the program, and hurdles associated with accessing it, such as narrow application deadlines, closed lists of beneficiaries, territorially centralized procedures, lack of confidentiality and inadequate distribution systems. Another obstacle for women is to condition the access to reparations to come forward TC to qualify as victims.¹¹⁸

For instance, the South African reparations programs left many potential beneficiaries out of the Truth and Reconciliation Commission's (SATRC) list of victims entitled to reparations, as only those who were able or prepared to approach the SATRC qualified as victims.¹¹⁹ Such kind of conditions affects particularly poor women in rural areas, as they usually lack information and education about these

¹¹⁴ Procedural obstacles are those that impede reparations reach women; substantive obstacles refer to the content of reparations that do not incorporate –or does it insufficiently- a gender approach, consequently, they do not adequately repair women's harms

¹¹⁵ Greiff, 'Introduction' (n 103)., p.6. The *scope* of a programme refers to the total number of beneficiaries it covers. There is no inherent merit in a program having greater scope., therefore, no further analysis of this category will be done.

¹¹⁶ Rubio-Marín, 'Introduction' (n 82)., p.12

¹¹⁷ Greiff, 'Introduction' (n 103)., p.6

¹¹⁸ Rubio-Marín, 'Introduction' (n 82)., p.12; Greiff, 'Introduction' (n 103)., p.6

¹¹⁹ Beth Goldblatt, 'Evaluating the Gender Content of Reparations: Lessons from South Africa' in Rubio-Marín, *What Happened?* supra n 35., p.74

issues due to limited and territorially centralised outreach efforts to publicise the existence of these programs. Likewise, narrow deadlines to come before TC or reparations programs procedures impede women's access to reparations, especially victims of SV who are not ready yet to talk about their victimisation and, therefore, are left out from reparations programs. Acknowledging these obstacles, in Sierra Leone the SLTRC recommended that the list of potential beneficiaries of the reparation program be left open¹²⁰; in Peru, the CVR stated that, while previous testimony before the commission facilitates the victim qualification process, this should not be considered as a prerequisite to qualify as beneficiary¹²¹; in Colombia, the Victims and Land Restitution Law¹²² (Victim's Law) established that victims of conflict can solicit their registration in the victims' unit to receive reparation within a period of two or four years, depending when the violation took place. Stronger efforts to reach women were made by the CAVR in Timor-Leste; first, it recommended that the reparation program consider victims "who have come before the commission", but it also recommended a two-year period to identify other potential beneficiaries outside of the CAVR's processes'; second, it dedicated 50 percent of the funds allocated for reparations to women, hoping to boost the creation of stronger gender policies, and; third, considering the responsibility placed upon women for childcare and time-constraints due to unpaid work, it linked the distribution of benefits to qualifying children to the provision of services and training skills to their mothers as a way to encourage them to think about themselves too.¹²³

Costly and territorially centralised proceedings also hinder access of rural women to reparations, since they find difficult to move to the main cities where these procedures usually take place. Aiming to facilitate beneficiaries' access to the National Reparations Program's (PNR) offices in Guatemala, five additional offices were opened throughout the country¹²⁴; In Timor-Leste and Sierra Leone, both TCs included "accessibility" as guiding principle of their reparations programs, mandating their decentralisation and ordering to make them accessible to 'victims who are disadvantaged' as

¹²⁰ SLTRC, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Graphic Packaging Limited GCL 2004)., Vol.2, Ch.4, para.7

¹²¹ CVR, *Final Report of the Truth and Reconciliation Commission* (CVR 2003)., Vol IX, para.157

¹²² Ley 1448 "por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones" approved on 10 June 2011, Article 155 [Hereafter Victim's Law]

¹²³ CAVR (n 79)., part.11, sections 12.6, 12.9, 12.12

¹²⁴ Bailey (n 35)., p.117

consequence of “their isolation, lack of information and means of transport, particularly those in remote rural areas”.¹²⁵

Procedural and evidentiary rules also constitute sources of exclusion for women.¹²⁶ An advantage of administrative programs over judiciary reparations is that it could overcome such obstacles by ensuring that “both rules of evidence and publicity/confidentiality rules are primarily victim-centred”¹²⁷; however, typical gender bias encountered in judicial proceedings can also leak into administrative procedures if evidentiary standards are not adequate to the nature of crimes against women and confidentiality of victims is not protected. Thus, instead of requesting unattainable evidentiary standards as condition to be recognised as victims, a system of presumption based on patterns of criminal conduct could be relied on as sufficient sources of evidence, as was done by the Guatemalan’s Commission for Historical Clarification (CEH).¹²⁸ Likewise, aiming to help women opening up about their victimisation, confidential and gender-sensitive procedures must be implemented. Good practice in this regard can be attested in the CAVR’s procedures, which included “single mothers” as beneficiaries of reparations, covering victims of SV who bore children out of rape, thus allowing them to access reparations without forcing them to come forward as victims of SV.¹²⁹

An essential step towards making visible women’s subordination and recognise them as equal citizens is to consider harms inflicted to them as triggering reparations. TJ’s mechanisms have concentrated on a limited catalog of CPR, which means that violations of socioeconomic rights are left out from reparations programs. Focus has been placed on reparation of SV, as probed by the fact that all the reparations programs studied here have explicitly included it among the list of violations triggering reparations¹³⁰. However, this exclusive approach to SV has overshadowed other forms of violence women are subjected to; thus, forced marital unions, forced impregnations and abortions, forced sterilisations, forced domestic labor and forced displacement, have been left out from reparations programs.¹³¹

¹²⁵ CAVR (n 79)., part.11, section 12.6; SLTRC (n 120)., para.84

¹²⁶ Greiff, ‘Reparations’ (n 96)., para.71

¹²⁷ Rubio-Marín/Greiff (n 108)., p.323

¹²⁸ Bailey (n 35)., p.98

¹²⁹ CAVR (n 79)., part 11, section 12.9

¹³⁰ Rubio-Marín, ‘Reparations’ (n 77)., p.78

¹³¹ Manjoo (n 5)., para.44

At least forced displacement has gained attention. Guatemala and Peru's TCs, as well as the Victim's Law in Colombia, included forced displacement among the crimes that merit reparations¹³²; Conversely, in Timor-Leste, although the CAVR recognised forced displacement to be a strategy of collective punishment and the direct cause of famine, it also considered it as too widespread to be included within the reparations program, reducing the scope of beneficiaries to those victims of CPR violations, such as rape, imprisonment, torture, abduction, disappearance or killings¹³³; even worst, although displacement and other socioeconomic rights' violations were widely studied by the CAVR, women's experiences were largely reported in terms of vulnerability to SV following forced displacement, meaning that the CAVR failed to reflect the gendered nature of women's exacerbated poverty due to displacement.¹³⁴

A rights-based assessment to identify the beneficiaries of reparations is another main obstacle for women to access reparations, given the prevalence of CPR over socioeconomic rights. Rubio-Marin rightly argues that, in order to meaningfully consider women in reparations programs, a harm-based assessment to identify beneficiaries of reparations should be implemented. She argues that such assessment benefits woman in two ways: first, it recognises that a violation generates a community of harm beyond the direct victim, and; second, it allows prioritization according to the severity of the harm endured.¹³⁵

In one hand, the harm-based extension of the notion of victim turns victim's family members and dependants -who are affected or harmed as consequences of the violation– potential beneficiaries of reparations; this is significative because it recognises the consequences upon women whose husbands were executed or disappeared and who find themselves facing increased caring responsibilities while finding a livelihood on their own for themselves and their dependants for the first time.¹³⁶ All the reparations programs studied here have recognised family members as beneficiaries of various

¹³² Bailey (n 35)., p.106; Julie Guillerot, 'Linking Gender and Reparations in Peru: A Failed Opportunity' in Rubio-Marín, *What Happened?* supra n 35., p.164; Victim's Law, Chapter III

¹³³ CAVR (n 79)., part 10, para.175

¹³⁴ Sankey (n 42)., p.138

¹³⁵ Rubio-Marín, 'Reparations' (n 77)., p.91-101

¹³⁶ *ibid.*, p.91

reparations measures in the cases of extrajudicial killings and enforced disappearance¹³⁷; however, the limitation to dead and disappearance fail to recognise the increased responsibility placed upon women to take care of the wounded, amputees or children born out of rape. Only the SLTRC in Sierra Leone included family members of the amputees, other war wounded and the victims of SV among the beneficiaries to some reparations.¹³⁸ Also, the Peruvian CVR, the SLTRC in Sierra Leone and the CAVR in Timor-Leste entitled children born out of rape to reparations benefits, which further benefits women greatly, as it considers the long-term economic consequences of SV.¹³⁹

On the other hand, prioritization of victims based on need and vulnerability is highly important for women, since their pre-existing socioeconomic subordination usually leads to greater poverty after conflict/repression, leaving them in an extreme vulnerable condition. This prioritization approach has been taken by the reparations programs of Sierra Leone and Timor-Leste, which prioritised -among others- children, war widows and survivors of SV.¹⁴⁰ Similarly, aiming to help victims to achieve a level of basic subsistence so that they can benefit more fully from the reparations benefits, South Africa, Colombia and Timor-Leste implemented an interim/urgent reparations scheme for victims in greater need.¹⁴¹

3. Openness

To guarantee the full participation of women in every stage of the reparation process, as established by the Nairobi Declaration, is an essential requirement to detect and overcome the obstacles women face when accessing reparations, as well as to choose reparation benefits that are meaningful for them. Moreover, the participation of female victims since the early stages of debates on the design of reparations programs is fundamental not only to ensure that gender-related violations are not excluded

¹³⁷ Rubio-Marin et al (n 39)., p.274

¹³⁸ SLTRC (n 120)., paras.110,150

¹³⁹ Duggan/Jacobson (n 30)., p.137; SLTRC (n 120)., para.97; CAVR (n 79)., part 11, section 12.9

¹⁴⁰ SLTRC (n 120)., paras.56,57; CAVR (n 79)., part 11, section 12.6

¹⁴¹ Goldblatt (n 119)., p.50; Peter J Dixon, 'Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo' (2016) 10 IJTJ 88., p.103; Galuh Wandita, Karen Campbell-Nelson and Manuela Leong Pereira, 'Learning to Engender Reparations in Timor-Leste: Reaching out to Female Victims' in Rubio-Marín, *What Happened? supra* n 35., p.302-307

from reparations and to improve the overall effectiveness of the program but also to enhance women's agency during the process.

According to Rubio-Marin, the *openness* of a reparation program refers to the level of participation of victims, victim's groups, and other relevant actors in civil society in the design of a reparations program.¹⁴² More importantly, women's participation in the design and implementation of a reparation program can, in itself, offer women a 'reparative sense of recognition both as victims and as valuable agents of political and social transformation', helping to reconceptualize them as citizens.¹⁴³ As Rodrigo Uprimny and Clara Sandoval assert, the mechanisms for the adoption of the program and its implementation should focus on empowering victims and those most vulnerable by providing adequate participatory decision-making processes.¹⁴⁴

In South Africa, women's participation in reparations discussions was mostly conducted through their involvement in victim's groups¹⁴⁵; in Guatemala, women's involvement was conducted through widows and displaced women's associations¹⁴⁶; in Sierra Leone, women participated in reparations discussions through women's groups as such, and widows associations¹⁴⁷; more recently, in Colombia, women's groups have been the most active in the peace, reconciliation, and reparations discussions.¹⁴⁸ In Timor-Leste, women's participation in the articulation of reparations was limited, yet their recommendations to the CAVR formed the basis for recommendations regarding reparations policy, which led to the inclusion of empowerment, gender and prioritization based on need as guiding principles of the proposed reparations program; besides, the CAVR also proposed that methods for delivery of the benefits be developed in consultation with victims and victim's groups.¹⁴⁹ In Peru, victim's participation was mainly conducted through human rights Non-Governmental Organisations (NGOs), as a process of open dialogue was encouraged with such organisations in preparing the reparations proposals; however, this consultation process had a limited gender approach, considering as such organising

¹⁴² Rubio-Marín, 'Introduction' (n 82), p.16

¹⁴³ *ibid.*, p.17

¹⁴⁴ Sandoval-Villalba (n 7), p.28; Uprimny (n 99), p.645

¹⁴⁵ Goldblatt (n 119), p.57

¹⁴⁶ Bailey (n 35), p.104

¹⁴⁷ King (n 36), p.254-255

¹⁴⁸ Rubio-Marín, 'Reparations' (n 77), p.75

¹⁴⁹ Wandita et al (n 141), p.296-298,309-310

workshops aimed at women only, as opposed to others that were open to both, man and women.¹⁵⁰ Regardless of the level of women's participation, evidence from Peru, South Africa, and Guatemala suggests that women involved in reparations discussions tend to articulate their needs rather than strategic interests as social group facing deep-rooted discrimination, which limits the transformative potential of the resulting reparations program.¹⁵¹

4. Complexity

The substantive content of reparations programs brings some challenges regarding redress of women's harms, but it also entails the transformative potential to improve women's lives if benefits are intended to subvert gender hierarchies. *Complex* reparations programmes best accomplish their goals by crafting benefits of more distinct types in more distinct ways, which brings with it the possibility to respond to victim's needs more closely.¹⁵² Besides -according to the *transformative potential* category- benefits should be crafted in a way that are gender-specific as well as gender-transformative; this requires choosing reparations benefits that are adequate to redress the specific harms and to improve the starting position of victims by addressing the structural conditions that enabled the violations to take place.¹⁵³ Thus, the more empowering measures to redress women's socioeconomic harms and improve their starting position should be preferred.

4.1 Restitution

The purpose of material restitution measures is to re-establish the material situation of the victims prior to the violations or to compensate for the loss resulting from the violations.¹⁵⁴ However, when pre-conflict situations are defined by conditions of poverty, discrimination or violence, restoration is highly unfair; therefore, measures that also address those conditions of subordination are required. Practice in this regard has fallen short to address women's socioeconomic harms, since restitution measures

¹⁵⁰ Guillerot (n 132)., p.149

¹⁵¹ *ibid.*, p.146; Goldblatt (n 119)., p.57; Bailey (n 35)., p.104-105

¹⁵² Greiff, 'Introduction' (n 103)., p.10

¹⁵³ Anne Saris and Katherine Lofts, 'Reparation Programmes: A Gendered Perspective' in Carla Ferstam, Alan Stephens and Mariana Goetz (eds), *Reparations for victims of genocide, war crimes and crimes against humanity* (2009).

¹⁵⁴ Reparation principles (n 105), 19

have tended to focus on land or housing restitution, leaving out victims of SV, who may also suffer the loss of their productive opportunities as a result of stigmatization, the loss of productive health caused by rape, or the obligation to bring up children resulting from rape.¹⁵⁵ Moreover, in some countries women cannot own land, therefore, property restitution turns out meaningless for them, even though property ownership is especially important for them given their increased responsibilities worsened by their livelihoods severely diminished as a consequence of conflict/repression

In South Africa and Guatemala reparations included housing and property restitution programs, coupled with land reform programs.¹⁵⁶ In Peru, restitution sought victim's legal rehabilitation through the restitution of civil rights.¹⁵⁷ Better restitution measures for women were incorporated in Guatemala and Colombia's reparations programs; both included housing and land restitution, prioritising women. In Guatemala, the restitution and legalisation of land explicitly indicated that "affirmative action will take place in order to guarantee the right to property of women in case their husbands died as consequence of the armed conflict".¹⁵⁸ In Colombia, joint land titles to men and women, as well as prioritization of women heads of household were included too¹⁵⁹; such land policy has been considered one of the most promising aspects of the victim's law gendered provisions in Colombia.¹⁶⁰

4.2 Monetary compensations

Compensations consists on economic benefits provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.¹⁶¹ Compensation payments may be essential to enhance women's economic independence, especially if the way of distribution ensure that they reach women and economic benefits are empowering. In this sense, it has been argued that, instead of lump-sum or one-off benefits, providing periodic benefits – such as pensions or the undertaking of autonomy-enhancing projects-, may have a more sustainable

¹⁵⁵ Bailey (n 35)., p.110

¹⁵⁶ Arbour (n 62)., p.18

¹⁵⁷ Guillerot (n 132)., p.157

¹⁵⁸ Bailey (n 35)., p.111

¹⁵⁹ Victim's Law, articles 114-115

¹⁶⁰ Sanne Weber, 'From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions' (2018) 12 IJTJ 88., p.98

¹⁶¹ Reparation Principles (n 105), 20

effect.¹⁶² Besides, addressing the socioeconomic consequences of conflict/repression may require less individualised economic tools (such as one-time payments) to enhance economic independence, and, consequently, sustainable economies. This is particularly true regarding women, as they face further obstacles in accessing and keeping money for themselves, which most of the times ends up in men's hands, therefore, economic projects might be more likely to empower women than one-time cash payments.

Following this path, the reparations programs of Sierra Leone and Timor-Leste, aiming to empower victims and survivors in a sustainable manner, moved away from individual monetary compensations and opted for the provision of social and economic rehabilitation services, such as skills training, entrepreneurship and microcredit for beneficiaries.¹⁶³ Diversely, The reparations programs of South Africa, Guatemala, Peru and Colombia implemented a one-time cash payment as compensations.¹⁶⁴

4.3 Rehabilitation

Rehabilitation measures include “medical and psychological care as well as legal and social services”.¹⁶⁵ These measures have been included in most reparations programs, although emphasis has been placed in health care and social services, ignoring measures that could empower women, such as the provision of childcare services, which would allow them to access paid work. In South Africa and Peru, the TCs recommended health and social services, education, housing and employment programs.¹⁶⁶ In Guatemala, the PNR included medical attention and community mental health care, as well as legal and social services.¹⁶⁷ In Colombia, the Victim's law ordered the creation of a comprehensive psychosocial and healthcare program for the provision of legal, medical, psychological, and social services.¹⁶⁸ Intended empowering measures were included in the reparations programs of

¹⁶² Greiff, 'Reparations' (n 96)., para.73

¹⁶³ SLTRC (n 120)., para.78; CAVR (n 79)., part 11, section 12,2

¹⁶⁴ Goldblatt (n 119)., p.66; Bailey (n 35)., p.111; Cristián Correa, 'Reparations in Peru: From Recommendations to Implementation' [2013] ICTJ Justice, Truth, Dignity., p.8; Cristián Correa, 'From Principles to Practice: Challenges of Implementing Reparations for Massive Violations in Colombia' [2015] ICTJ Justice, Truth, Dignity., p.12-13

¹⁶⁵ Reparation principles, 21

¹⁶⁶ Truth and Reconciliation Commission, *Report of the Truth and Reconciliation Commission of South Africa* (Juta 1998)., Vol. 5, Ch. 5, paras.180-181; Guillerot (n 132)., p.158

¹⁶⁷ Impunity watch, 'Reparations for Gross Human Rights Violations in Guatemala' (2018)., p.4

¹⁶⁸ Victim's Law, article 135

Timor-Leste and Sierra Leone, since the TCs recommended -besides medical, physical and mental healthcare– the provision of economic rehabilitation services, such as skills training and access to microcredit/microprojects for livelihood activities.¹⁶⁹

4.4 Collective reparations

The provision of rehabilitation as collective measures is not uncommon. Although there is no exact definition of what collective reparations are about, it is considered that “when the violence inflicted to individuals is tied to their group membership, this results in harms that are collective in nature and therefore need collective forms of redress.¹⁷⁰ Thus, it could be argued that the multifaceted group-based harms done to women during conflict/repression can give rise to claims for collective reparations, mainly because of their generalized socioeconomic subordination as a group. As Brodsky and Day argue:

Poverty is both an overt sign, and a result, of women’s subordination. Economic inequality and disproportionate vulnerability to poverty are characteristics of women as a group, just as being vulnerable to becoming pregnant or being vulnerable to sexual harassment are characteristics of women as a group.¹⁷¹

Therefore, collective reparations are particularly well suited to repair socioeconomic harms, which are linked to the gendered nature of poverty that affects women as a group. In this sense, collective rehabilitation measures directed to the worst affected regions of a country are significant for women because their livelihood will improve if schools, hospitals, and other basic elements of infrastructure are rebuilt.¹⁷² Moreover, collective reparations programs require communities to get involved to decide what forms of reparations they would like the government to provide; such participation process could also enhance women’s agency.

Most reparations programs have included collective reparations. In Sierra Leone, the SLTRC recommended collective reconstruction and rehabilitation measures.¹⁷³ In Guatemala, these

¹⁶⁹ SLTRC (n 120)., para 78; CAVR (n 79)., part 11, section 12.2

¹⁷⁰ Rubio-Marín, ‘Collective’ (n 10)., p.385

¹⁷¹ Brodsky/Day (n 18)., p.216

¹⁷² King (n 36)., p.269

¹⁷³ SLTRC (n 120)., para.206

reparations took the form of psychosocial measures, such as counseling or services for physical and/or mental health rehabilitation.¹⁷⁴ In Colombia, in general terms, the Victim's Law also incorporated a collective reparations program that includes harms caused by violations of collective rights, gross violations of the rights of members of collectivities, and the collective impact of violations of individual rights.¹⁷⁵ In Peru, measures for the reconstruction and consolidation of communities and settlements were recommended by the CVR, which included promoting institutional consolidation, recovering and rebuilding production infrastructure, and recovering and expanding basic services and income-generation capacities¹⁷⁶; however, the consultation process undertaken to decide what forms of collective reparations were to be implemented left women out, given that men are usually the ones who hold formal power within the communities. As consequence, the "infrastructure that would drastically improve women's lives, such as schools and hospitals, was not necessarily prioritised".¹⁷⁷ Diversely, in Timor-Leste, the CAVR included gender balance of beneficiaries as a condition for supporting programs of collective reparations for communities.¹⁷⁸

The provision of rehabilitation and collective measures as reparation has prompted some criticism. It has been argued that the emphasis on service packages as a form of reparations runs the risk of diluting the recognition dimension of reparations programs by turning them into general development or assistance programmes, since it blurs the conceptual distinction between services that people are entitled to as citizens and reparations for victims of violations of human rights as victims.¹⁷⁹ For instance, in Peru, the reparations program was criticised because the collective reparations were not explicitly tied to the nature of the harms, which caused that victims viewed the reparations as insufficiently responsive to the violations and "interpret them as pre-existing obligations of the state to promote development".¹⁸⁰ Similar observations came from South Africa and Guatemala.¹⁸¹

¹⁷⁴ Duggan et al (n 32)., p.200

¹⁷⁵ Victim's Law, articles 151-152

¹⁷⁶ Guillerot (n 132)., p.158

¹⁷⁷ Kelli Muddell, 'Limitations and Opportunities of Reparations for Women's Empowerment Reparations' [2009] ICTJ Briefing 1., p.2

¹⁷⁸ CAVR (n 79)., part 11, section 12.2

¹⁷⁹ Greiff (n 88)., p.470-471

¹⁸⁰ Lisa Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development' (2007) 10 Yale Human Rights and Development Law Journal 146., p.169

¹⁸¹ See Goldblatt (n 119). and Bailey (n 35).

Nonetheless, a combination of smaller individual and periodic payments, as forms of compensations, together with rehabilitation measures could help to overcome this problem. This way, the recognition dimension of reparations would be covered through the provision of economic compensations. This has been proven successful in Chile, where a combination of small pensions plus medical services and educational opportunities were provided.¹⁸² Besides, according to Rodrigo Uprimny, it is possible to give a reparatory meaning to social services in itself by linking social services with profound symbolic gestures of acknowledgement of gross human rights violations, or by justifying affirmative action for victims in relation to some social services as a way to give some reparation to those victims.¹⁸³ Therefore, a reparation program that includes both individual and collective reparations -and fulfils the recognition dimension of reparations- is more likely to be sensitive to the needs of women given its heightened level of complexity.¹⁸⁴

4.5 GNR

GNR could maximise the transformative potential of reparations as they are meant to address the root causes of conflict/repression, aiming to prevent its recurrence. These measures could target the structures of discrimination and violence that gave rise to the conflict, in order to correct them. Thus, GNR should target the laws, institutions and practices that create and perpetuate gender hierarchies; besides, giving women a qualified voice in the process of defining GNR could enhance their agency and give them the satisfaction that their experience and participation shaped social transformation.¹⁸⁵

Practice regarding GNR has been minimal, especially about women's interests. In South Africa, the recommended institutional reforms to prevent the recurrence of abuses included the need to address poverty and crime.¹⁸⁶ Targeting women specifically, in Morocco, the Equity and Reconciliation Commission called for a legislative reform that set "a clear and precise definition of [VAW], in conformity

¹⁸² Rubio-Marín, 'Reparations' (n 77)., p.111

¹⁸³ Uprimny (n 99)., p.645

¹⁸⁴ Rubio-Marín/Greiff (n 108)., p.336

¹⁸⁵ *ibid.*, p.337

¹⁸⁶ TRC Report (n 166)., Vol.5, Ch.8

with international norms¹⁸⁷; similarly, in Sierra Leone, recommendations included legislative reforms and the creation of a 30 percent quota for women's representation in politics.¹⁸⁸

Education campaigns have also been included in reparations programmes as GNR. These campaigns are critical to raise awareness of the links between past gender-based violence and the high incidence of VAW that characterises the aftermath of conflict/repression.¹⁸⁹ Peru, Guatemala and Sierra Leone have included educational reforms in their reparation programs, intending to redress the loss of educational opportunities caused by the conflict and improve access to and adequacy of education.¹⁹⁰ The CAVR in Timor-Leste went one step further, recommending the implementation of education campaigns targeting at the general population, to raise awareness of the link between past abuses and current violent behaviour, including at the workplace and in the home.¹⁹¹ Such awareness-raising campaigns are essential to tackle VAW in a more structural way.

4.6 Symbolic measures

Symbolic measures can also potentiate social transformation. To recognise and value women's diverse roles during conflict/repression could be a first step towards changing gender roles.¹⁹² That is, instead of focusing on women as victims of SV, their roles in the survival of their families during displacement or as heads of household should be acknowledged and praised. Moreover, symbolic measures could also be intended to embrace and reinforce changes in gender roles caused by conflict/repression, which subverted women's roles in the family and the community, becoming active outside the home and increasing their agency;¹⁹³ thus, symbolic measures, coupled with other benefits, should "understand fully the new status gained by women and help families and communities in defining their new roles".¹⁹⁴

¹⁸⁷ Kingdom of Morocco, The Moroccan Equity and Reconciliation Commission Three-part Summary of the Final Report (2005), p.37 available online at <http://www.ictj.org/static/MENA/Morocco/IERreport.findingssummary.eng.pdf>

¹⁸⁸ Valji (n 73)., p.14

¹⁸⁹ Wandita et al (n 141)., p.313

¹⁹⁰ Duthie (n 48)., p.301-302; Arbour (n 62)., p.18

¹⁹¹ CAVR (n 79)., part 11, section 12.12

¹⁹² Weber (n 160)., p.102

¹⁹³ Manjoo (n 5)., para.57

¹⁹⁴ Aguirre/Pietropaoli (n 80)., p.362

Unfortunately, symbolic measures have not considered comprehensively women's roles during conflict/repression. Still, specific symbolic measures recognising women's suffering have been included in some reparation programs. Acknowledgment –however minimally– of women's role in the struggle in South Africa was done through the restoration of the women's jail in Johannesburg and the renaming of streets and towns after famous women.¹⁹⁵ In Sierra Leone, the SLTRC highlighted the need for the president of the country to acknowledge the harm suffered by women and girls during the conflict and to offer an unequivocal apology to them on behalf of preceding governments of Sierra Leone.¹⁹⁶

5. Coherence

The *integrity or coherence* of a reparation programme could also improve its overall effectivity and transformative potential. This category has both an internal and an external dimension. Internal coherence refers to the relationship between the different types of benefits a reparation program distributes¹⁹⁷, which must support each other to accomplish the aims of recognition, civic trust and social solidarity. Regarding women, this would mean that all distributed benefits should aim to the same goal: to subvert gender hierarchies through the socioeconomic empowerment of women.

External coherence requires that the reparations efforts be designed in such a way as to bear a close relationship with other TJ's mechanisms, such as criminal justice, truth-telling, and institutional reform measures.¹⁹⁸ Fulfilling this category increases the likelihood that the different transitional efforts will satisfy the expectations of citizens, while also increases the overall effectivity of the programme given the relations of complementarity between the different TJ's mechanisms.¹⁹⁹ Thus, besides reparation programs, truth telling process and GNR are also essential to advance women's rights in post-conflict societies. If reparations aim to achieve social transformation, broader structural and legal reforms should also be undertaken "to eradicate practices and transform institutions expressing women's subordinate status as second-class citizens".²⁰⁰ Likewise, TCs' work is essential to make visible

¹⁹⁵ Goldblatt (n 119)., p.70

¹⁹⁶ King (n 36)., p.268-269

¹⁹⁷ Greiff, 'Introduction' (n 103)., p.11

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ Rubio-Marín, 'Introduction' (n 82)., p.15

gendered harms inflicted to women during conflict/repression; their final reports help to, at least, acknowledge a reality that is too commonly denied.²⁰¹ Without such visibilisation, is even more difficult to advocate for the consideration of women's harms as triggering reparations. For instance, in Sierra Leone, statement-taking' proceedings conducted by the SLTRC were the first to make the links between pre-conflict gender inequalities and the gendered nature of violations during conflict.²⁰² The SLTRC noted that:

the impact of the conflict had been exacerbated by [...]exclusion and inequality, and that the ability of women to recover from past violence had been hampered by a 'lack [of] adequate access to productive assets including land, credit, training and technology"²⁰³

The gender approach to the SLTRC's work led to focus on the socioeconomic conditions of women, therefore, it recommended income-generation and skills-building initiatives as part of the reparation programme, having gender and empowerment as guiding principles for reparations.²⁰⁴ Similarly, the Peruvian CVR noted in its final report that there were 'important gender dimensions to the economic causes and consequences of human rights violations, such as the widespread displacement of women and children and a phenomenal rise in female-headed households in many communities affected by violence'; consequently, the Peruvian commission created a separate gender unit to ensure the inclusion of gender considerations in its daily work, while also reframed the reparation benefits from a gendered perspective to include access to health, housing and education, as well as symbolic reparations.²⁰⁵

Concluding remarks

The transformative potential to trigger social transformation for women is enhanced if reparations programs are complex, take into account the obstacles women face when accessing reparations, choose the more empowering benefits, promote and allow women's participation and are coherent both

²⁰¹ Bailey (n 35)., p.113

²⁰² Valji (n 73)., p.11

²⁰³ SLTRC (n 120)., Ch. 2, para.100

²⁰⁴ *ibid.*, Vol. 2, Ch. 4, para.78

²⁰⁵ Valji (n 73)., p.9,14,19

internally and externally. Consequently, the *munificence*²⁰⁶ of the programs is also improved, since from women's perspective as the individual beneficiaries, "reparations policies that are relevant and meaningful must challenge and change the gender status quo".²⁰⁷

Nonetheless, reparations programs –even if they fulfilled the criteria abovementioned– have limited potential to tackle the root causes of conflict/repression and to eliminate the structures of discrimination that render women vulnerable to poverty and gendered harms. This is why TJ's mechanisms, and reparations in particular, should seek alliances with development actors to improve the likelihood of reparations programs to make progress towards those objectives.

III. ENHANCING THE TRANSFORMATIVE POTENTIAL OF REPARATIONS

This chapter describes the relation of development with reparations, and how they can work together to improve the transformative potential of reparations programs to accomplish social transformation for women. It proposes that likelihood to achieve such a goal could be increased through the implementation of complex reparations programs that emphasise the provision of empowering compensations payments and rehabilitation services, with the cooperation of development actors, along with a cross-cutting gender approach.

1. The need for development

Although transformative reparations' potential to close the gender socioeconomic gap is promising, it is not possible for a single reparation programme to answer all the needs of all victims of conflict/repression -especially when the vast majority of them live in poverty-; also, it cannot pretend to overcome poverty and gender inequality alone. For such broad goals, broader initiatives outside TJ's realm should be paired with reparations. Therefore, as Uprimny argues, an "enlarged external coherence" of reparation programs may be more meaningful for women, harmonising reparation efforts

²⁰⁶ The munificence of reparation programs relates to the magnitude of their benefits from the individual beneficiary's perspective. However, as de Greiff argues, "there is no absolutely reliable way to measure the absolute worth of the benefits". Greiff, 'Introduction' (n 103)., p.12

²⁰⁷ Saris/Lofts (n 153)., p.95

not only among reparation benefits and TJ's mechanisms but also with poverty reduction policies and development strategies.²⁰⁸

A not surprising consequence of widespread violence is the lack of resources to implement reparations programs, therefore, "support from the international community is an important factor to implement reparations in poor countries".²⁰⁹ It is of paramount importance that national resources fund reparations as a mean to recognise victim's suffering and state's commitment with them; however, this does not impede that international resources complement -not substitute- state's funds and efforts to implement reparation programs.

The combined work of reparations and development is possible because they share common goals, which leads to their mutual reinforcement. Development has been defined as:

a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom²¹⁰.

Amartya Sen's ground-breaking capabilities approach to development establishes as ultimate objective to enhance the 'capabilities a person has, that is, the substantive freedoms he or she enjoys to lead the kind of life he or she has reasons to value'.²¹¹ He argues that what people can positively achieve is influenced by economic opportunities, political liberties, social powers, and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives.²¹² Consequently, disparities between women and men in realizing their full potential stand as a great barrier to human development progress, holding back half of the world's population. Women have a lower Human Development Index value than men across regions and face particular barriers to empowerment all

²⁰⁸ Uprimny (n 99)., p.643

²⁰⁹ Duthie (n 48)., p.297

²¹⁰ Declaration on the Right to Development, adopted 4 December 1986, General Assembly Resolution 41/128, preamble. [Hereafter DRD]

²¹¹ Amartya Sen, *Development as Freedom* (1999)., p.86

²¹² *ibid.*, p.5

through life.²¹³ Hence, to achieve development objectives is necessary to close the gaps between women and men.

Women's socioeconomic disadvantage can be understood as a deprivation of genuine opportunities to pursue their own valued choices.²¹⁴ Considering that transformative reparation of socioeconomic harms requires addressing the pre-existing inequalities that negatively shape women's lives, it is possible to argue that development and transformative reparations share a common goal: enhancing women's capabilities to pursue the kind of life they have reasons to value, free from poverty and discrimination.

As they share common objectives, development and reparations complement and reinforce each other.²¹⁵ For its part, development initiatives further reparation's impact and sustainability. Reparation programs can have a political, social, medical, and economic impact on the lives of victims if they are rooted in a long-term vision for society as a whole²¹⁶. However, although reparation could contribute to achieving social change by laying the foundations of a more inclusive society, it cannot deliver such change on its own, as this takes a great deal of time to happen²¹⁷; moreover, to address poverty and inequality require utilising longer-term and less individualised economic tools than those typically employed in TJ. Therefore, transformative reparations need to connect with development to make a more lasting impact; their joint work could put in place the legal and institutional reforms that ultimately could deliver the enduring social and economic shifts that establish the long-term conditions conducive to transforming women's lives.²¹⁸

Development efforts could also facilitate the construction or improvement of infrastructure needed to provide the services that will most likely be used by reparations beneficiaries, expanding the range of benefits that reparations programs could provide, such as pensions, education, and health systems.²¹⁹ Similarly, development cooperation could enhance outreach and quality of services provided by the

²¹³ UNDP (n 14)., p.12

²¹⁴ Sandra Fredman, 'Substantive Equality Revisited' (2016) 14 Int'l J. Const. L. 712., p.729

²¹⁵ Salvioli (n 58)., para.79

²¹⁶ Hans Dieter Seibel and Andrea Armstrong, 'Reparations and Microfinance Schemes' in de Greiff, *The Handbook*, supra 38., p.676

²¹⁷ Sandoval-Villalba (n 7)., p.23

²¹⁸ See Ní Aoláin (n 92)., p.224

²¹⁹ Roht-Arraiza/Orlovsky (n 219)., p.181

state, which in turn could help to rebuild civic trust from citizens to state's institutions. By recovering civic trust and improving victim's well-being, development programs are not only helping reparations programs to achieve their goals but are also benefiting themselves, as enhancing people's agency and well-being are developmental goals.

Reparations programs may, in turn, play a small role in strengthening certain state functions. While TJ cannot directly tackle socioeconomic inequality, it may benefit development indirectly by promoting inclusive and participatory citizenship for victims.²²⁰ Salvioli further argues that TJ can contribute to the fulfilment of the Sustainable Development Goals related to socioeconomic rights, such as achieving gender equality and empowering all women and girls.²²¹ Moreover, the reparations' goals -recognition, civic trust and social solidarity- are "preconditions for the (re)emergence of victims as actors with initiative, motivation, and belief in the future that drive sustainable economic activity".²²²

Both reparations and development value the process to reach the goal as much the goal itself; consequently, widespread participation of victims is essential for both initiatives. For development, "the agency, self-organization, and empowerment of those at the bottom of the economic pyramid are at the same time the means of reaching success and the goal itself".²²³ For reparations, the design and implementation process must be as agency-enhancing and empowering as the resulting benefits of the program. Thus, engagement of development with reparations would help "to ensure women's participation and lead to sustained empowerment".²²⁴

Academics have also called for creating synergies and linkages between development and TJ to have a transformational impact on women's lives. Some have highlighted their joint potential to "improve the socioeconomic conditions of people".²²⁵ Also, others have advocated against their joint work, arguing that by widening reparation programmes to include development goals, reparations could lose their normative distinctiveness. Some argue that reparation may become a substitute for development,

²²⁰ Waldorf (n 54), p.180

²²¹ Salvioli' (n 58), para.61

²²² Roht-Arraiza/Orlovsky (n 219), p.173

²²³ *ibid.*, p.178

²²⁴ DRD, article 8

²²⁵ Salvioli (n 58), para.72 Salvioli (n 59), para.72

aiming to solve structural problems of poverty and inequality;²²⁶ others consider that development programs could be presented as reparations, especially by those poor states facing reparations claims.²²⁷ Detractors argue that the provision of reparations as development programs is problematic for two main reasons: first, victims may rightly perceive the distribution of benefits as something they have right as citizens, and not necessarily as victims. This is so because development measures are too inclusive (which may include non-victims as well) and they are normally focused on basic and urgent needs, and not as a response to the victim's situation,²²⁸ and; second, development-as-reparation undermines the ability of reparation to function as state acknowledgement of wrongdoing²²⁹, which further lowers its reparative capacity.

Although those arguments have enough merit to be considered, they do not justify why is not possible to keep the normative distinctiveness of reparations and development, in order to complement and reinforce rather than substitute each other. As Duggan and Jacobson rightly assert, "there is no convincing reason why, with the careful consultation of victims and the genuine good will of state authorities and international actors, the juridical and ethical power of reparations needs to be lost".²³⁰ Women's socioeconomic subordination is deeply embedded in the structures of society worldwide, therefore, redress require a complex intervention to properly acknowledge the often-invisible women's harms and pursue their empowerment. Thus, as argued before, reparations programs must be complemented and reinforced by development programs to improve its potential to achieve social transformation; substitution is not an option.

2. Reparations and development

Rubio-Marín rightly asserts:

If women, as a group, tend to be overrepresented among the poor, the illiterate, the ill, and those performing low-skill jobs in the informal sector of the economy or providing unpaid labor in the household, it is easy to predict that the disruption of normalcy by large-scale violence or

²²⁶ Gready/Robins (n 9)., p.347

²²⁷ UN OHCHR, 'Rule of Law Tools for Post-Conflict States: Reparations Programmes' (2008), p.26

²²⁸ Greiff (n 88)., p.470

²²⁹ Waldorf (n 54)., p.177

²³⁰ Duggan/Jacobson (n 30)., p.161

repression will have especially deleterious effects on women's material well-being and that the reconstruction challenge in the aftermath will entail special economic hardship for them. This raises the question of what forms of material reparations would serve female victims best and help them restore their broken lives.²³¹

Thus, when it comes to women's socioeconomic harms, economic compensations and rehabilitation²³² measures, distributed individually and collectively, might be the best suited to promote women's socioeconomic empowerment, not only because such measures are essential to address poverty directly as an underlying cause of conflict/repression²³³ but also because –if crafted with gender-aware forethought and care- they could tackle the gendered nature of poverty and, consequently, enhancing women's capabilities to find their way out of poverty.

Material compensations are significant because they facilitate the recognition of female victim's common humanity and equal status citizenship –a main objective of reparations- and also because they can, "if rightly done, be 'transformative' in helping women pursue 'autonomy-enhancing-life-projects'".²³⁴ In turn, rehabilitation measures are significant for women for many reasons: first, in general, physical and mental health recovery and well-being are needed for victims to exercise other rights; second, female victims tend to prioritise their basic needs and those of their family members, such as housing, physical and mental health services, employment and education.²³⁵; third, given the centrality of unpaid care work to women's poverty, the provision of public and social services, such as facilities for children and dependents that enable caregivers to undertake paid work is necessary if socioeconomic empowerment of women is intended.²³⁶

Both compensation and rehabilitation should be implemented simultaneously if the overall transformative potential of the reparation program is to be enhanced, otherwise, relying exclusively on

²³¹ Rubio-Marín, 'Reparations' (n 77)., p.103

²³² Although emphasis is placed on compensation and rehabilitation, we recognise that restitution, satisfaction and guarantees of non-recurrence are equally important to enhance the transformative potential of reparations programs.

²³³ Uprimny (n 99)., p.645

²³⁴ Manjoo (n 5)., paras.31,54

²³⁵ *ibid.*, para.15

²³⁶ Sepúlveda (n 21)., paras.31,33

one or another would be insufficient for many reasons. First, a complex reparation programme, that considers all forms of reparation available at individual and community level, is more likely to empower women and, consequently, trigger social transformation. Second, women face obstacles in accessing and keeping money for themselves, which renders highly possible that money and resources end up in men's hands; such obstacles include difficulties in having a bank account and formal and informal pressure including security threats, reprisal or ostracism by the family and the community²³⁷; therefore, benefits and means of distribution with greater possibilities of reaching and benefiting women should be explored. Third, given the situation of dire poverty women face in the aftermath of conflict, is not uncommon that compensations are used to cover basic immediate needs, rendering compensations not empowering at all; thus, the provision of rehabilitation measures could improve the effectivity of compensations by helping to generate productive investments that could have longer-term impact for women. Fourth, although women are reliant on social services, compensations as an act of recognition of women as citizens is needed; the consideration that engendering reparations would mean to provide them only with social services send the symbolic message that women are "passive recipients of assistance measures rather than active citizens who require recognition and compensation for the fact that their rights have been violated".²³⁸

A combination of individual and collective reparations measures is also required. In conditions of resources scarcity and a large number of victims, is not uncommon for states to choose the provision of collective reparations -such as rehabilitation services- rather than individual material reparations.²³⁹ We sustain that is not about choosing one or another, but about creatively combining them to enhance the overall transformative potential of reparations. Nonetheless, collective reparations entail some advantages for women in the context of longer-term development, as long as they are complemented with individual reparations. Through collective reparations, much-needed resources and social services are put into the hands of women, making public the state's recognition that they, as a group, have suffered disproportionately by the conflict/repression; such recognition is fundamental to deconstruct the normalcy of discrimination and VAW. Likewise, by targeting victims as beneficiaries of rehabilitation services, from which everyone can benefit -such as medical and social services- they are seen as the

²³⁷ Manjoo (n 5)., para.53

²³⁸ Rubio-Marín/Greiff (n 108)., p.333

²³⁹ Roht-Arraiza/Orlovsky (n 219)., p.193

reason why such services are provided (or improved), which in turn may raise their status from victims to benefactors within their communities.²⁴⁰ Thus, collective measures targeting women as a group may help to address power imbalance, leading to transformation.

2.1 Development and women

There is a trend towards greater complexity of reparations programs, providing health and education – among other benefits- in addition to monetary compensations, in an individualised and collective manner. These measures are of the competence of development, as they involve the direct distribution to victims of a set of goods, including economic transfers.²⁴¹ Furthermore, after the assertion in 1995 of women overrepresentation among the poor, the importance of integrating poverty, gender and development has been progressively acknowledged within United Nations Agencies.²⁴² Consequently, development agencies have increasingly invested resources aimed at “increasing women’s literacy and education, facilitating their access to micro-credit, enhancing their vocational skills, and/or providing economic or infrastructural support to female-headed households”²⁴³; all relevant measures for reparation programs as well.

Development resources have been invested on women under the assumption that they -rather than men- can be relied on to spend their money on their children and household; consequently, is considered that investing in women is likely to generate payoffs for the well-being of children, the household, and the economy as a whole”.²⁴⁴ Thus, development policies have shifted towards regarding women as the main vehicle for poverty alleviation. Such shifting has been represented by the implementation of Conditional Cash Transfer Payments (CCTPs) and microfinancing schemes targeting women.²⁴⁵

²⁴⁰ *ibid.*, p.194

²⁴¹ United Nations, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff. Development’ (2013) A/68/345., paras.48,50

²⁴² Chant (n 8)., p.171

²⁴³ *ibid.*, p.173

²⁴⁴ Kerry Rittich, ‘Engendering Development/Marketing Equality’ (2003) 67 Albany Law Review., p.575,580

²⁴⁵ Fredman, ‘Poverty’ (n 23)., p.507

Microfinance refers to loans, savings, insurance, transfer services, microcredit loans and other financial products targeted at low-income clients.²⁴⁶ CCTPs are non-contributory benefits in the form of cash payments intended to contribute to the improvement of the beneficiaries' living conditions, whose transfer is conditional on the beneficiary fulfilling certain criteria, such as sending children to school or regular medical check-ups.²⁴⁷ Both measures have been praised by the World Bank for increasing women's bargaining power and agency and reinforcing women's independence within the family.²⁴⁸ However, if the role played by gender roles in women's socioeconomic subordination remains unacknowledged, far from transformative, these measures might actually entrench existing gender roles. By targeting women, these measures reinforce women's personal deprivation through their socially constructed altruism, instead of challenging man's behaviour;²⁴⁹ moreover, these measures put women in 'the frontline of dealing with poverty', reinforcing gender stereotypes about women's role and responsibility for children, while also increasing their burdens by making them responsible for coping with poverty²⁵⁰. This way, as Chant brilliantly asserts, instead of development working for women, they are being made to work for development.²⁵¹

Development efforts will not address women socioeconomic subordination unless specific attention is paid to gender;²⁵² likewise, reparation programs will deliver less than nothing to women unless they incorporate a gender approach. Therefore, we consider that reparation benefits -specifically compensations and rehabilitation-, reinforced by development cooperation, should be engendered. By engendering we mean that benefits should be adequate to address gender-specific harms -including socioeconomic harms- and the structural conditions that enabled the violations to take place, improving the starting position of women instead of returning them to their previous subordinated position. At the very least, engendering reparations would entail not to replicate discriminatory patterns in the post-conflict/repressive society.

²⁴⁶ Anita Bernstein, 'Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary Reparations' in Rubio-Marín (ed), *The Gender of Reparations, supra n 10.*, p.304

²⁴⁷ United Nations, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona. CTPs' (2009) A/HRC/11/9., para.21

²⁴⁸ *ibid.*, para.68

²⁴⁹ Sarah Bradshaw, 'From Structural Adjustment to Social Adjustment: A Gendered Analysis of Conditional Cash Transfer Programmes in Mexico and Nicaragua' (2008) 8 *Global Social Policy* 188., p.201

²⁵⁰ Chant (n 8)., p.177

²⁵¹ *ibid.*, p.183

²⁵² Fredman, 'Welfare' (n 8)., p.22

3. Engendering compensation and rehabilitation

Based on our previous arguments, we consider that gender-sensitive compensations and rehabilitation should fulfil two requirements: addressing the obstacles women face when accessing reparation and choosing the more empowering benefits for women.

3.1 Reaching women

Engendering reparations requires considering and overcoming all forms of procedural and substantive obstacles when designing reparation benefits. Women's access to reparations is hampered by family and community ostracism, lack of confidentiality and narrow deadlines that impede women -especially victims of SV- to come forward; also, insufficient outreach efforts and territorially centralized procedures affect rural, illiterate and poor women mainly. In this sense, the lists of potential beneficiaries should be left open for a comprehensive amount of time, otherwise, women would be the most affected considering the nature of harms they are subjected to. Likewise, recognition as victims should not be conditioned to come forward before TCs, especially when ostracism, territorial centralized procedures and lack of confidentiality impedes women to talk; contrarily, gender-sensitive procedures must be implemented to facilitate women opening up.

Efforts should be made to guarantee women's access -especially rural women- to reparations benefits. Development cooperation could be particularly helpful to augment the state's outreach by creating or strengthening the infrastructure needed to design and implement reparations programs. Likewise, Governments could establish partnerships with NGOs to enhance outreach and quality of the benefits provided. NGOs are flexible in providing a range of services, namely, finance, microenterprise training and consultancy, education, health care, counselling, exhumations/forensics, participatory budgeting, among others; moreover, they are also oriented to poor target groups, which renders them able to communicate with victims and understand their needs.²⁵³ Therefore, partnership with NGOs could help

²⁵³ Seibel/Armstrong (n 216)., p.689

Governments in the design and implementation of reparation programs tailored to the actual victim's needs and desires, as well as it can collaborate in the provision of reparation benefits.

The delivery process of benefits must be engendered too. The choice of the form of distribution should acknowledge women's role within the family as the main caretaker -and the resulting time constraints- to facilitate their access to them. For instance, distribution of benefits for women could be linked to the distribution of benefits for their qualifying relatives, or they could be provided in one time; the option of a delivery transport system should also be explored to reach remote areas.

Obstacles coming from the law must also be addressed. In many societies discrimination against women in the inheritance system, property and family law increases significantly the difficulty for women of receiving reparations.²⁵⁴ Hence, a transformative project of reparations must be complemented with GNR directed towards eliminating legal discrimination, especially in matters of land property, inheritance, and family law. Furthermore, the transitional moment and awareness about poverty and inequalities as root causes of conflict could also be used as a "springboard" for the embedding of socioeconomic rights in the new democracy²⁵⁵; legal recognition of these rights would provide women with a platform to legitimise their claims for socioeconomic justice, which not only could challenge power imbalances but also could foster a lasting effect in the post-crisis society, preventing conflict to happen again.

Obstacles coming from the private sphere should be addressed too. Even if reparation benefits reach women, the transformational goal will never be accomplished if constraints imposed by domestic violence and power divisions in households and communities are not considered.²⁵⁶ It is essential to address the rise of violence rates against women in post-crisis societies, especially when gender roles are challenged. As Chant argues, pursuing women economic empowerment "can expose them to greater violence both because of their access to desired assets and the threat to traditional women's roles".²⁵⁷ Consequently, education campaigns should be implemented to raise awareness about the

²⁵⁴ Manjoo (n 5)., para.54

²⁵⁵ Gready/Robins (n 9)., p.346

²⁵⁶ M Linda Scott, 'Thinking Critically About Women's Entrepreneurship in Developing Countries' (2014)., p.14-16

²⁵⁷ Fredman, 'Poverty' (n 23)., p.515

relation of gender, poverty and VAW, as well as to promote equal gender relations in the home and communities. Such campaigns, and the rest of empowerment-intended benefits, should include men if changes in gender relations and role divisions in a more structural way are to be accomplished. Likewise, legal and institutional reforms should be implemented to guarantee the prevention, prosecution and penalisation of VAW.

Engendering reparations also requires, essentially, implementing a harm-based assessment to identify beneficiaries of reparations; this way, women's access to compensations and rehabilitation services would be prioritised and the socioeconomic consequences upon them due to abuses committed against their relatives could merit reparation.

Regarding substantive obstacles, engendering reparations -particularly compensations- requires bringing to the fore the economic dimension that most violations perpetrated against women and their men have.²⁵⁸ To this end, first of all, socioeconomic harms must trigger reparations. Forced marital unions, impregnations, abortions, sterilisations, domestic labour and displacement should be considered violations that merit reparation; likewise, the costs of pregnancy and raising a child out of rape; the costs of medical treatments and lost opportunities due to sexual transmitted diseases; the material destitution due to family and community ostracism, the abandonment by spouses and parents, and becoming unmarriageable due to SV; and the costs incurred by a women who lost her partner and suddenly become a breadwinner while also has to face increased caring responsibilities, are all economic consequences of abuses that must be considered in reparation programs.

Also, considering that women's activities -especially caring roles- are deemed devoid of economic value, the economic consequences of harms inflicted to them or their men are invisible and difficult to document. Therefore, "standards of evidence must be adapted, and the burden of proof partly shifted on to the state or at least alleviated through the use of inferences or presumptions".²⁵⁹ Moreover, women's invisible and undervalued activities entail leaking gender bias in the assessment of harms for

²⁵⁸ Rubio-Marín, 'Reparations' (n 77)., p.104,108

²⁵⁹ Ruth Rubio-Marín and Clara Sandoval-Villalba, 'Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment' (2011) 33 HRQ 1062., p.1070

compensation purposes. Loss of income or loss of income potential are usually the yardstick to measure the harms and allocate compensations; however, women do not have equal access to paid and formal employment outside the home as men do, consequently, quantification of economic losses for women tend to be minimal. Therefore, in order to not reproduce sexual hierarchies, according to Rubio-Marín, two things are needed:

First, to compensate women not for what they lost but for what they would have lost under a nondiscriminatory system. Second, to measure lost opportunities or income potential also by taking into account the loss of functions that are necessary to do housework, the loss of reproductive capacity, the loss of a husband, and the loss of the possibility to marry (as in many societies), all of which are decisive for women's livelihood and opportunities.²⁶⁰

3.2 Empowering benefits

3.2.1 Compensation

As argued before, instead of one-time payments -which tend to be short-lived and unsustainable²⁶¹- periodic benefits and the undertaking of autonomy-enhancing projects may have a more sustainable effect. One proposed mechanism for potentially realising the prospect of achieving both reparation and development goals, that is, addressing victim's needs while also empowering them, is to provide them with compensation payments in the form of shares in microfinance institutions (MFIs). Microcredit - which is defined as a small amount of money loaned to a client who otherwise would be considered unbankable²⁶²- has also been proposed as a mechanism for achieving such goals; however, we consider microcredit is inherently incompatible with the right to reparations because it entails an obligation to return the money loaned, and victims cannot be conditioned to pay back the money they are entitled to as a matter of right.

²⁶⁰ Rubio-Marín, 'Reparations' (n 77)., p.101

²⁶¹ Seibel/Armstrong (n 216)., p.677

²⁶² Bernstein (n 246)., p.304

MFI is an entity that provides financial services to customers who would normally be considered too poor for a bank to profit from serving them.²⁶³ Seibel and Armstrong describe the functioning of MFIs as follows: an individual must contribute to the communal account, better known as “buying shares of the institution”, to belong to the MFI; this way, the contributors become owners of the institution and can participate in its management. The contributions are used to fund small-scale loans to individual members, with varying rates of interest that increase the overall cash holdings in the MFI. Its resources grow from interest payments and newly opened savings accounts, which enable it to award loans within the community, thereby supporting local entrepreneurship and development.²⁶⁴

To introduce MFI as reparations, Seibel and Armstrong propose that reparations programs could issue “collective grants to communities as the start-up capital for local MFIs, while also provide individual cash payments, which beneficiaries can use to buy shares or open accounts on the created MFI”.²⁶⁵ It is worth noting that MFIs are owned and managed by the community, therefore, they require some knowledge of accounting and banking procedures. So, in addition to compensation payments, reparation programs should also include education and training in budgeting and investing in order to maximise the long-term return.²⁶⁶

There are several benefits of MFIs as reparations for improving women’s socioeconomic status²⁶⁷. Through MFIs reparation payments are more likely to contribute to sustainable income-generating activities, initiating a process of sustainable growth from profits generated.²⁶⁸ Potential growth is unlimited if maintained over long periods of time, which is highly possible considering the likelihood of MFIs to be financed by international donors. Given the entrepreneurial approach to reparations provided by MFIs, foreign investors and development donors might be particularly attracted because of the connection between microfinance and sustainable economic development.²⁶⁹ In turn, economic growth

²⁶³ *ibid.*, p.305

²⁶⁴ Seibel/Armstrong (n 216)., p.678

²⁶⁵ Seibel/Armstrong (n 216)., p.688

²⁶⁶ Roht-Arraiza/Orlovsky (n 219)., p.106

²⁶⁷ We recognise that microfinance does not fit all cases, and MFIs need to be developed and adapted within given economic, social, cultural and political conditions.

²⁶⁸ Seibel/Armstrong (n 216)., p.678

²⁶⁹ Anita Bernstein and Hans Dieter Seibel, ‘Reparations, Microfinance, and Gender: A Plan, with Strategies for Implementation’ (2011) 44 *Cornell Int’L L.J.*, p.1.3

could lead to constitute the MFI as a new source of power, which could potentially impede future abuses by the government.²⁷⁰

MFIs also turn victims into owner-decisionmakers, thereby mobilising their capacity for self-help and self-management.²⁷¹ Moreover, placing women in decision-making positions that affect their communities, changes the perception of women as passive objects of the actions of others into subjects entitled to rights and able to generate positive change.²⁷² This way, reparation payments through MFIs benefit women not only by recognising the injustice of abuses committed against them, but also by taking a stand against the unjust effects of patriarchy that had usually left them out of economic matters.

MFIs can also upgrade women's social status. Their establishment and running creates a network of relationships based on positive and repeated interaction, which promotes social inclusion and participation²⁷³; for female victims subjected to subsequent ostracism this represents a way of social empowerment that would not be achieved by other means of compensation. Additionally, enhanced social inclusion and participation also promotes civic repair since "local and financial institutions owned by the community or community members are among the basic building blocks of society"²⁷⁴; that is, MFIs also contribute to achieving reparation's goals.

Also, compensation payments through shares in an MFI are more likely to stick to women's hands. MFI's shares have women's names on them, so they implicitly contain protection against theft and loss; also, shares state plainly that beneficiaries are individual women or men, therefore shares are not paid to households, families, or communities²⁷⁵, from where access to money would be more difficult for women.

3.2.2 Rehabilitation

²⁷⁰ Seibel/Armstrong (n 216)., p.679

²⁷¹ *ibid.*, p.678

²⁷² Bernstein/Seibel (n 269)., p.101,102

²⁷³ Seibel/Armstrong (n 221)., p.687

²⁷⁴ *ibid.*, p.679

²⁷⁵ Bernstein (n 246)., p.317

Rehabilitation measures are essential to help women meet their basic needs and recover a functional life after conflict/repression. They also have the potential to empower women if they are tailored to their needs and look to overcome pre-existing gender biases.²⁷⁶ In this sense, we consider that social services could exploit such empowering potential not only because women are reliant on them due to gender roles, but also because they are needed in unjust societies with deep inequalities and widespread poverty.²⁷⁷

Social services or assistance encompass public and private actions designed to transfer resources to groups deemed eligible due to vulnerability or deprivation.²⁷⁸ Such services, together with social insurance schemes, are the two subcategories of social security systems, which are an essential tool for poverty alleviation as they aim at responding to “levels of risk or deprivation that are deemed unacceptable within a given society”.²⁷⁹ Among the risks and contingencies that social security systems must cover are healthcare, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, survivors and orphans.²⁸⁰ Such contingencies are all relevant in post-violence contexts, that is why reparation and development efforts should draw attention upon creating or strengthening social security systems.

Gender-sensitive rehabilitation measures require that social services address rather than reflect gendered power structures, taking into account how these services can in fact be enjoyed in the context of actual gender relation in which women live.²⁸¹ Thus, the central role played by unpaid work in women’s poverty should be addressed by rehabilitation measures through the provision of childcare services to enable women to balance paid and unpaid work.²⁸² Furthermore, measures to redistribute unpaid work equally among men and women must be taken, such as the provision of maternity and

²⁷⁶ Manjoo (n 5)., para.56

²⁷⁷ Uprimny (n 99)., p.644

²⁷⁸ Sepúlveda, 'CTPs' (n 252)., paras.17-18

²⁷⁹ Report of the Secretary-General, 'Enhancing Social Protection and Reducing the Vulnerability in a Globalizing World' (2001) E/CN.5/2001/2., para.7

²⁸⁰ Mannisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (2nd edn, Hart Publishing 2016)., p.475

²⁸¹ Sandra Fredman, 'Engendering Socio Economic Rights' (2009) 25 SAJHR 410., p.417

²⁸² *ibid.*, p.416

paternity leave.²⁸³ Other social security services are also needed to promote women's empowerment; as argued by Magdalena Sepulveda:

Social security benefits such as old age pensions, child benefits and unemployment benefits, while not directly providing care, can play an important role in improving the living conditions of victims, by helping households purchase essential inputs (food, school materials, and health services) or to pay for care services where necessary.²⁸⁴

Efforts to recognise caring work as productive work for contribution criteria to social security systems could be explored. This measure entails great transformative potential because it promotes the recognition and value of caring work, which in turn allows the recognition of women's interrupted patterns of work due to full-time caregiving activities, impacting upon their pension benefits.²⁸⁵ It is also transformative because investment in caring work is an investment in future generations, which leads to sustainable development.

Although it is difficult for a state to implement a complex and functional social security system in the aftermath of violence, improving people's living conditions is a common goal of development and reparations programs, therefore, through their joint work is more likely such a system could be implemented. If infrastructure to provide these services is inexistent, with development cooperation, reparations programs may start building it from scratch, including a gender approach as guiding principle. Where infrastructure exists, in order to maximise reparations funds, instead of duplicating existing services, reparations programs could provide tailored and complementary services to victims - whose attention should be prioritised-, which could eventually merge into the regular provision of social services by the government, guaranteeing their sustainable provision. Such long-term provision of rehabilitation services is significative for women, first, because it is common for victims of violence to suffer both physical and mental relapses, and, second, because changing ideologies that keep women subordinated takes time. Thus, for instance, the provision of subsidized childcare services or paternity leaves for a few years will do little to challenge entrenched gender roles.

²⁸³ Fredman, 'Welfare' (n 8)., p.26

²⁸⁴ Sepúlveda (n 21)., para.48

²⁸⁵ *ibid.*, para.50

Development cooperation in the provision of social services is not uncommon. In fact, development agencies have engaged in one of the most recent innovations in social policies targeting women, Cash Transfer Payments (CTPs).²⁸⁶ Their objective is to increase the real income of beneficiaries to enable a minimum level of consumption within the household, including access to social services.²⁸⁷ CCTPs are a modality of CTPs, whose transfer is conditional on the fulfilment of prescribed behavioural conditions for women related with their 'family responsibilities'. As abovementioned, CCTPs have been criticised for entrenching gender roles through the imposition of conditions; besides, in terms of reparations, victims should not have to behave in a prescribed manner in order to 'earn' the right because they are entitled to reparations the moment they are recognised as victims; furthermore, research suggests that if empowerment of women is indeed the aim, it is far better achieved by giving resources to women without conditions.²⁸⁸ Hence, we consider that CTPs, instead of CCTPs, may promote better socioeconomic empowerment of women as long as they incorporate a gender approach.

CTPs should be intended to improve women's living conditions, not only their families'. In fact, considering the tendency of women to spend their money to meet their families' needs, measures to force them to think on themselves too should be considered; for instance, evidence of money spent on themselves may be requested each time cash is provided. Also, CTPs programs should take into account the intense unpaid care responsibilities of women living in poverty; thus, collecting payments must not significantly increase the already heavy workloads of women, and programs must not reinforce the maternal/caring roles of women without involving men.²⁸⁹

Distributed this way, CTPS may enhance women's economic independence and power in the household. With access to income, women acquire greater control over household expenditure and their opportunities to seek jobs and education also increase; this way, power imbalance within the home is challenged. Moreover, the distribution of CTPs as rehabilitation measure helps to recognise beneficiaries as right-holders, and not as subjects of charity or development aid, which in turn may challenge their disadvantaged social status. Lastly, although resources- related arguments may be put

²⁸⁶ Sepúlveda, 'CTPs' (n 252)., paras.11,90

²⁸⁷ *ibid.*, para.7

²⁸⁸ Fredman, 'Welfare' (n 8)., p.32

²⁸⁹ Sepúlveda (n 21)., para.86

forward, evidence suggests that CTPs are affordable and can be implemented where the necessary political will exists²⁹⁰; especially when international assistance is at hand.

Concluding remarks

MFIs and CTPs are examples of empowering reparation measures that may be included within reparations programs aiming at achieving social transformation for women. However, those measures will not achieve such an ambitious goal alone; they must be complemented by restitution, symbolic measures and GNR directed towards the same objective. Likewise, TCs' crucial work is needed to make visible the gendered damages and consequences of conflict/repression upon women.

Nonetheless, even if compliance with de Greiff's taxonomy of reparations is accomplished, reparations programs' potential to produce structural changes is limited, especially due to TJ's mechanisms' short lifespan. However, reparations programs still can set in motion a series of measures needed to achieve such a goal in the long-term with development programs' cooperation. Thus, while reparations could address women's immediate needs, it can also lay the foundations needed for socioeconomic empowerment of women, which further improve development programs; this way, social transformation, in the long-term, could be attainable.

CONCLUSION

Disregard for the socioeconomic conditions of conflict/repression has rendered invisible the harms inflicted upon women during such context, leading to reinforce gender hierarchies in the post-crisis society. Throughout this paper, we proposed that reparations programs -among the pillars of TJ- could stop this tendency and take steps towards making visible women's socioeconomic harms and subvert their socioeconomic subordination. Specifically, we argued that reparation programs should consider that women are, generally, in socioeconomic disadvantage before conflict/repression, which determines the types of harms inflicted to women, as well as their consequences. Therefore, reparations benefits should be crafted in a way that not only does not conform to or contribute to the entrenchment of pre-

²⁹⁰ Sepúlveda, 'CTPs' (n 252)., para.89

existing patterns of socioeconomic subordination but also aims to empower women to subvert such patterns. Such a model of reparations has been called “transformative reparations”.

We argued that the transformative potential of a reparation programme to empower women socioeconomically increases when is crafted with a high degree of complexity, combines individual and collective forms of redress, is coherent both internally and externally, and includes widespread women’s participation along the reparation’s processes. However, although reparations could contribute to triggering social transformation by laying the foundations of a more inclusive society, it cannot achieve such transformation on its own, therefore, we argued that engaging development assistance in reparations efforts could increase its potential to achieve such a goal.

We argued that transformative reparations and development programs should join forces because they reinforce each other and share the common objective of enhancing women’s capabilities and improving their living conditions. To accomplish their shared goal, engendered compensation and rehabilitation measures must be implemented, considering and overcoming the common obstacles women face when accessing reparations, as well as choosing the more empowering benefits among those available, such as shares in MFIs complemented by social services.

We recognise that transformative reparations alone cannot eliminate poverty and inequality; at best, they can best bring about very modest transformation. However, if transitions offer an opportunity – however minimal- to expose women’s socioeconomic disadvantages that otherwise would go unaddressed, instead of putting forward arguments to justify disregard for transformation attempts, proposals to fulfil reparations’ constraints and enhance its transformational potential should be offered. Transformative reparations, if well designed and implemented, can have follow-on and spillover effects that affect longer-term development; this way, reparations effect will outlive TJ’s lifespan, enabling reparations to not only address women’s immediate needs, but also the root causes of conflict, which, in the long-term, could achieve social transformation for women. Thus, transformative reparations, reinforced by development cooperation, could be considered a possible solution to the current TJ’s limitations to address the socioeconomic harms inflicted to women, as well as a way to pursue the more

ambitious - or rather fair– aim to move towards a more egalitarian society in which women can exercise their rights fully and live with dignity.

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