FOUNDATIONS OF TRANSITIONAL JUSTICE AND REPARATIONS

A Training for Civil Society Organizations in Iraq and KRI

Training Guidebook

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INTRODUCTION

Iraq experienced several conflicts over the years, most recently, the conflict with the so-called Islamic State (IS). This conflict led to wide-scale human rights violations, some of them targeted against certain groups and genders. In the aftermath of IS, Iraq is in dire need of a transitional justice process that addresses this legacy of abuses, brings perpetrators to justice, uncovers the truth of what happened, reforms state institutions that failed the people, and provides reparations to victims of human rights violations. Only then can Iraq transition into democracy and sustainable peace.

Civil society plays a critical role in post-conflict countries, from documenting violations to supporting victims. It holds the power to shape transitional justice debates by mobilizing victims and communities and advocating for inclusive and holistic transitional justice. The impact of a well-informed, coordinated and strong civil society in a transitioning country can ensure victims' participation and be determinative in the success of transitional justice mechanisms.

This Guidebook is designed as a supplement to the Fundamentals of Transitional Justice and Reparations training provided by the International Organization for Migration (IOM) to civil society organizations (CSOs) in Iraq and the Kurdistan Region of Iraq (KRI). The purpose is to intensify discussions surrounding prospects of transitional justice in Iraq, bring a victim-centric perspective to transitional justice and reparation debates, and encourage local CSOs' participation in the conceptualization of transitional justice mechanisms early on in the process.

The Guidebook is divided into modules. Each module provides central information on transitional justice issues, with particular focus on reparations and the role of civil society. Case studies from Iraq and other countries that experienced transition are included to help materialize theoretical discussions and provide a comparative analysis of different approaches in various contexts. A bibliography on essential and advanced reading material regarding the subject is included at the end of each module. Further didactic material on transitional justice are listed in the last section.

IOM recognizes the immense role undertaken by CSOs in Iraq and KRI post-IS. We hope that this Guidebook will be of use to CSOs in Iraq and KRI in continuing their commendable work, while inspiring and supporting further programming on transitional justice issues.

MODULE 1: OVERVIEW OF TRANSITIONAL JUSTICE

I. Introduction

Transitional justice is a set of judicial and non-judicial mechanisms designed and implemented to help a country transition from conflict to peace in the aftermath of systematic or large-scale human rights violations, when existing institutions and laws remain insufficient.

The need for transitional justice arises when a country experiences systematic or large-scale human rights violations. These can be committed by the state itself, as is the case in several countries in Latin America, where dictatorial regimes committed many human rights violations against their own people. Or it can be committed by non-state actors, as is the case of the Islamic State in Iraq and Syria.

The reason why we need specially designed mechanisms instead of existing institutions is that judicial systems are designed with the assumption that human rights violations and crimes are the exception, not the rule. Think of the situation in Iraq, where there are hundreds of thousands of victims, and as many perpetrators. During the IS conflict, human rights violations were not exceptional. To the contrary, they became widespread. The ordinary judicial system is not equipped to handle the high number of cases, to prosecute perpetrators and to address the damages endured by victims. The Martyrs' Foundation, the main institution in Iraq to provide compensation to victims of war and their families, does not have a mandate to provide any reparation to survivors of sexual violence, for instance. Nor are there any institutions that could ensure that such a conflict does not repeat. This is why transitional justice is needed, to design certain mechanisms that fit to the particular needs of the country that endured the conflict, and help transition into sustainable peace.

> "…[T]ransitional justice is 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… Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations." (United Nations, Guidance Note of the Secretary-General, "United

II. Main pillars of transitional justice

While there are many different transitional justice measures, designed and implemented according to the specificities of the particular country and conflict, these measures squarely fall

into four categories, the “main pillars” of transitional justice. This is not intended to be limiting but more to give a general picture of what transitional justice processes look like.

1) Criminal Justice: The main purpose here is to fight impunity and deliver justice to those harmed by the violations.
2) Truth-seeking: This is usually done through truth commissions which investigate past violations to bring to light the truth of what happened.
3) Institutional reform: This refers to reforming existing institutions of the state, or establishing new ones, to address the legacy of past violations and to ensure non-repetition.
4) Reparation: Reparations are certain measures provided to victims of human rights violations to relieve them from the harm they suffered.

It is important to note that these four pillars look different in different contexts, and should be designed according to the needs of each country. In fact, local ownership of the transitional justice process is crucial for its success, which can only be ensured through consultations with victims and the civil society and their participation in the transitional justice process. Hence, the case studies explored in this Guidebook are not perfect examples of how transitional justice mechanisms must be implemented, but are material that provide guidance to understand what implications different approaches have.

III. Objectives of transitional justice

The general objective is to transition into peace and democracy. This is established through certain specific objectives:

1) To record past human rights violations. This is especially important to establish these violations as “facts”, as part of human history, which will be taught to future generations and which may provide some sense of healing to survivors since their suffering is acknowledged. This is also important so that the existence of atrocities cannot be denied. For instance, despite extensive documentation, there are still people today who deny that the Holocaust took place.
2) To end impunity. Unless those responsible for human rights violations are prosecuted, victims will not achieve justice, and repetition of these violations will be more likely since perpetrators will believe that their actions will have no consequences.
3) To establish democratic, functioning institutions that contribute to the rule of law. These institutions may rebuild the citizens’ trust in the government and may lead the people to believe once again that the government is there to serve and protect its citizens.
4) To repair the harm suffered by victims. These can take many forms, from psychosocial services and compensation, to apologies and building schools in areas where the victims live. These also contribute to rebuilding trust and healing of the victims through the acknowledgement of the victim’s status.

5) To end violence. This is a must for a peaceful, democratic functioning of the state. Only after this will there be a normal functioning of the society, with the people trusting the government, and civic and commercial life continuing regularly.

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MODULE 2: CRIMINAL JUSTICE

I. Introduction

Criminal justice in the context of transitional justice doesn't refer to the ordinary judicial system where perpetrators of non-atrocity crimes are tried. In a transitional justice process, criminal justice is usually delivered through international, hybrid or domestic courts of law, which prosecute perpetrators of large-scale or systematic human rights violations. These violations often amount to genocide, crimes against humanity and war crimes, and are dealt with under specially designed laws and courts due to their severe nature, since usually, ordinary courts are incapable of handling cases with such severity and in such great volume.

II. Objectives of criminal justice

The main objectives of criminal justice are,

1) Ensuring accountability,
2) Opening up the road to reconciliation,
3) Acting as a deterrent,
4) Recognizing victimhood and victims as right holders,
5) Demonstrating to the public that the judiciary is functioning well, and is trustworthy,
6) Strengthening the rule of law, and
7) Building domestic judicial capacity.

III. Development of criminal justice

Post-WWII

The war tribunals that were set up following World War II are considered the foundations of modern transitional justice. These are the International Military Tribunal (IMT) and the International Military Tribunal for the Far East.

The IMT was established as per the Inter-Allied Resolution on War Crimes, signed in 1942, during the height of Nazi crimes in World War II. Its charter, signed in 1945, is often referred to as the Nuremberg Charter, as the trials took place in Nuremberg, Germany. The Charter was signed by the United States, the United Kingdom, the Soviet Union, and France, to try and punish the Nazis. Its jurisdiction was limited to crimes against peace, war crimes, and crimes against humanity. The IMT heard evidence on 24 persons. In 1946, the IMT ruled for the death sentence for 12 defendants, life imprisonment for three defendants, prison sentences ranging from 10 to 20 years for four defendants, and acquittals for three of the defendants. One defendant was found incompetent to stand trial, and another committed suicide before the trial began.

The IMTFE was established in 1946 pursuant to a special decree to try and punish "major war criminals in the Far East", namely, Japanese officials involved in World War II. It sat in Tokyo, Japan and had jurisdiction over crimes against peace, conventional war crimes, and crimes against humanity. Of the 28 defendants, all members of Japan's military and political leadership, three died in prison, seven were executed, and 18 received prison sentences ranging between seven years and life imprisonment.

An important feature of the Nuremberg and Tokyo trials were the use of "command responsibility". It's usually easier to go after lower-ranking military and political personnel, those who actually committed the crimes. However, the Nuremberg and Tokyo tribunals devised a principle called "command responsibility", which allowed the prosecution of higher-raking officials, who may not have "blood on their hands" themselves, but have ordered those crimes to be committed- making them responsible due to their authority as commander. This principle has been key in future tribunals where mass atrocities were tried.

A critique towards the Nuremberg and Tokyo tribunals is that they were "victor's justice". Indeed, only those who lost the war were put to trial. This meant that, for instance, the Soviet Union troops who raped over two million German women, or the US soldiers who raped 860,000 German women, would not be put to trial. To this day, these perpetrators have not been brought to justice. While designing criminal justice mechanisms, prosecutions shouldn't be limited to certain people. All perpetrators should be brought before courts without being

International Criminal Tribunal for the Former Yugoslavia (ICTY) (1993)

The ICTY was established by the UN in May 1993, and was the first war crimes tribunal created by the UN. The Court had jurisdiction over grave breaches of humanitarian law, genocide and crimes against humanity that were committed as of 1991 in the former Yugoslavia. The ICTY was established as an *ad hoc* body, which means that it was established for a particular purpose, and was to operate for a particular time, after which it would close (as it did in December 2017). Its seat was in The Hague, Netherlands.

The ICTY indicted 161 individuals. 37 individuals had their proceedings terminated or indictments withdrawn. 19 were acquitted. 90 were sentenced, while two are in appeal and 13 were referred to another court established by the UN (The International Residual Mechanism for Criminal Tribunals- IRMCT).

An important feature of the ICTY was that it was the first war crimes tribunal to prosecute sexual violence crimes, which hadn't been done in the Nuremberg or Tokyo tribunals. 78 individuals were accused of some form of sexual violence, and 32 individuals were convicted. The ICTY recognized rape as a form of torture and sexual slavery as crime against humanity. It was also the first international court to enter a genocide conviction in Europe. The command responsibility principle, developed in the Nuremberg and Tokyo tribunals, was widely used.

International Criminal Tribunal for Rwanda (ICTR) (1994)

Another *ad hoc* war crimes tribunal was established in the 1990s: the ICTR. Established by the UN in 1994, the ICTR also had jurisdiction over grave breaches of humanitarian law, genocide and crimes against humanity committed in Rwanda and neighboring states between January 1-December 31, 1994. The ICTR's seat was in Arusha, Tanzania, and it officially closed in December 2015.

ICTR indicted 93 individuals, sentenced 62, and acquitted 14. Ten were referred to national jurisdictions, two deceased prior to judgment, two indictments were withdrawn before trial, and three fugitives were referred to IRMCT. ICTR was the first international court globally to enter a conviction of genocide, and also the first international court to recognize that rape can be used as a means of genocide.

Hybrid courts

In the 2000s, hybrid courts appeared. These courts had an international dimension but also had a domestic component, one that belonged to the country where the crimes took place. This was an option when the judiciary of the country didn't possess the necessary resources or technical and legal skills to undertake trials pertaining to atrocity crimes.

The first hybrid court was the Special Court for Sierra Leone, established in Freetown, Sierra Leone in 2002 as per an agreement between the government of Sierra Leone and the UN. It had jurisdiction over crimes against humanity, war crimes, violations of international humanitarian law, as well as crimes defined under Sierra Leonean laws.

The Extraordinary Chambers of the Courts of Cambodia was established shortly after, in 2003, again as per an agreement between the Cambodian government and the UN. It sits in Phnom Penh in Cambodia, and has jurisdiction over war crimes, crimes against humanity, genocide, and crimes defined under Cambodian laws.

Iraqi High Tribunal

One example of a hybrid court is the Iraqi High Tribunal (IHT), which operated between 2005-2006. The Tribunal was initially conceptualized by the US-appointed Iraqi Governing Council on December 10, 2003, with the Statute of the Special Tribunal for Human Rights. This was later revoked and replaced by an amended statute, the Law of the Supreme Iraqi Criminal Tribunal, on October 18, 2005. The IHT was seated in Baghdad and had jurisdiction over genocide, war crimes, crimes against humanity, and certain crimes defined under Iraqi law that were committed from July 17, 1968 to May 1, 2003. Still, the main purpose of the IHT was to prosecute Saddam Hussein and members of the Ba'ath party.

Notable cases of the IHT include the Dujail trial and the Al-Anfal trial. The Dujail trial started on October 19, 2005. On November 5, 2006, the IHT convicted Saddam Hussein of crimes against humanity and sentenced him to the death penalty for the massacre in Dujail. He was executed on December 30, 2006. The Anfal trial concerned the genocidal campaign by the Iraqi government and military that led to the death of approximately 182,000 Iraqi Kurds in 1988. The Anfal trial commenced on August 21, 2006. Defendants included Saddam Hussein and Ali Hassan al-Majid, dubbed Chemical Ali, who orchestrated the Anfal campaign. The IHT delivered its verdicts on June 24, 2007, after Saddam Hussein was executed as per his sentence under the Dujail trial. Still, al-Majid was convicted of three counts of genocide, and sentenced to death.

The IHT was criticized, most importantly, for fair trial issues. These included the lack of effective defense, the government's interference with the judges, the lack of detailed charges, criminal investigations launched against defense attorneys, and the inability to present witnesses, among others. Another important deficiency of the IHT was the failure to indict defendants for sexual violence crimes, despite the existence of rape as torture as part of the Anfal campaign. Finally, there was no outreach campaign conducted as part of the trials. The verdict was 963 pages, which many people did not read. Nevertheless, despite its deficiencies, the IHT was an important mechanism in bringing to justice some of the worst war criminals.

The International Criminal Court (ICC) (2002)

In 1998, the Rome Statute of the International Criminal Court was signed to establish a permanent court with jurisdiction over international crimes. These international crimes are genocide, crimes against humanity, war crimes, and the crime of aggression.

Seated at The Hague, Netherlands, the ICC started operating in 2002. It was designed to be a court of last resort, to function only when state parties are unwilling or unable to prosecute the crimes defined under the Rome Statute.

IV. Criminal justice in Iraq post-IS

Developments

The Yazidi community in particular demand the ICC to try the crimes committed by IS against the Yazidi. However, jurisdictional issues remain. Iraq is not party to the Rome Statute, which is why the ICC does not have territorial jurisdiction over Iraq. Another option could be for the UN Security Council to pass a resolution, referring the situation in Iraq to ICC. This was attempted for Syria in 2014, but failed after the resolution was vetoed by China and Russia. No attempt was made to refer the situation in Iraq to the ICC after that. A third way is for the ICC to launch investigations based on crimes committed by foreign fighters who are nationals of state parties. Nevertheless, the Chief Prosecutor of the ICC, Fatou Bensouda, issued a statement in 2015, stating that the foreign fighters who are nationals of state parties are not those who are high-ranking in the military and leadership of IS, which meant that they did not fall into the

prosecutorial policy of the ICC (which is to focus on the most responsible). A final option is for Iraq itself to refer the situation in its own territory to the ICC. While this did not happen, and seems unlikely to ever take place, the Iraqi Central Government did make an effort to tackle accountability for IS crimes.

The United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh, UNITAD in short, was established as per the Security Council Resolution No. 2379 in 2017, upon the Iraqi Central Government's request from the UN to assist with efforts of prosecuting crimes committed by IS. Its Terms of Reference was signed in February 2018, and Karim Khan QC was appointed as the Special Adviser and Head of UNITAD. UNITAD's mandate is defined as "supporting domestic accountability efforts by collecting, preserving and storing evidence in Iraq of acts that might amount to war crimes, crimes against humanity and genocide committed by ISIL in Iraq". This means that UNITAD is not a court, but an investigative body; it does support accountability, but it does not prosecute or try members of IS by itself. UNITAD was welcomed by the international community as well as victims' rights groups, and it started its activities in August 2018. In fact, the exhumations of mass graves started on March 15, 2019 in Kocho, Sinjar, by UNITAD and the Iraqi Central Government.

Trials of IS suspects in Iraq

Prosecutions of IS suspects have started before Iraqi and Kurdish courts. However, neither Iraqi nor Kurdish penal laws have international crimes -genocide, crimes against humanity, war crimes- defined, which is why all IS suspects are being tried under anti-terrorism laws. These laws are enacted to govern over peace time, not war, hence why they are severely insufficient to address the magnitude and severity of crimes committed by IS.

The anti-terrorism laws provide that anyone acting as a main perpetrator or a participant in terrorism acts shall be sentenced to the death penalty. Anyone who intentionally covers up a terrorist act or harbors a terrorist shall be sentenced to life imprisonment. The law does not require proof of a specific criminal act, which means that anyone with plausible connection to IS can be convicted. All persons and families suspected of IS collaboration are forced to live in isolated camps, where crimes of sexual violence by security forces committed against women and girls in particular is reported.

Anti-terrorism trials rely heavily on confessions. The reports of torture and even summary executions concerning IS suspects are highly alarming. Regardless of the severity of crimes allegedly committed by a suspect, the state has the responsibility to respect and protect the human rights of its citizens. The death penalty is a clear violation of human rights law and renders these trials highly problematic. Furthermore, these laws are construed very broadly, without specific references to the crimes committed, and without efficient counsel assistance. Due process is a huge issue. Some cases last as short as 15 minutes, the defense counsels are not allowed to present their cases, and the defendants are directly convicted. Furthermore, there are widespread reports on human rights and children's rights violations committed against

children suspected of IS affiliation. No mention is made about the particular violations committed by the defendants. Human Rights Watch reports that a defendant who admitted to holding four women as sex slaves in an anti-terrorism court in Nineveh was convicted only for IS membership. The fact that the survivors of his crimes were not given the opportunity to confront the perpetrator, demand an apology, provide a testimony, or even just to see him get convicted severely halts the objective of criminal justice to pave the way for closure and reconciliation.

These trials understandably cause grievances that might cause an "IS 2.0" in the near future. Collective punishment, not only of IS suspects but also their families, further deepens the polarization in Iraq and points to a pattern of revenge, which will undoubtedly prevent reconciliation. These trials also do not satisfy the demands of justice of victims, survivors, and their families, as they are pushed out of the process and are not allowed to participate in any of the trials.

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MODULE 3: TRUTH-SEEKING

I. Introduction

Truth-seeking is usually done through truth commissions. Truth commissions are bodies that are officially authorized by the state which focus on the past and investigate patterns of past human rights violations. They are established for a limited period of time, from six months to two years, and usually conclude their work by producing a report on their findings and recommendations for future steps. Truth commissions look both backward and forward. They look backward as they discover the truth about past abuses and call for an end to impunity. They look forward since the uncovering of these abuses are taken to mean that they will not be repeated again in the future.

Truth commissions are usually better suited for laying out the whole truth of past violations than criminal justice. They have less formal and procedural requirements, which slow down or halt the process of uncovering the truth. They are not focused solely on those who ordered the violations or larger abuses but all violations, which allows a fuller picture to be produced. Truth commission hearings are often public, thereby allowing more transparency and involvement by the people. Finally, they are often victim-centric in their design and implementation- at least, if they are done right.

Truth commissions also support criminal justice and can be quite instrumental for achieving accountability. The evidence collected by truth commissions can be used by courts. Even in cases where there is no sufficient evidence to legally convict a perpetrator, truth commission reports may “name and shame” certain people, thus providing moral accountability through stigmatization.

Truth commissions are essential for reconciliation. By investigating the truth objectively through inclusion, they uncover experiences, motives and feelings by all groups and allow a dialogue to take place between them, which may be the first step in mutual understanding.

II. Objectives of truth-seeking

Objectives of truth-seeking are,

1) To prevent denial that these abuses took place. As mentioned, despite extensive documentation, there are still people who deny the Holocaust take place. Truth commissions set forth strong evidence that such abuses did take place, and by that, they also create historical record.
2) Ending impunity, by serving as a deterrent for future possible violations.
3) To examine institutional responsibility. Did state institutions and officials have any role in the violations? If yes, to what extent?

4) To uncover different dimensions of the "truth"- personal stories, forensic evidence, social dynamics…
5) To highlight the victims' perspective, in particular, those whose stories have been left in the dark- mostly women.
6) To support the rule of law, by aiming to end impunity and establishing accountability.
7) To achieve reconciliation between different groups.

III. The right to truth

The right to truth refers to the right of people to know the truth about past abuses. This also includes a relative's right to know the fate of victims, who were subjected to enforced disappearances, torture, summary executions, and similar gross human rights violations.

Article 24(2) of the Convention for the Protection of All Persons from Enforced Disappearances states, "Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard."[1] Article 32 of the Additional Protocol I of the Geneva Conventions references "the right of families to know the fate of their relatives", and Article 33 details the obligation of states to search for the missing.[2]

The UN Principles to Combat Impunity state that "Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations." It further states that "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."

The right to truth enables victims and families to obtain all information on human rights violations, the circumstances under which they were committed, the persons responsible for the violations, the fate of the victims, including the location of their remains, the current status of investigations and any further steps planned by authorities to bring to justice these violations.

IV. Case study: South Africa

Introduction

[1] Iraq is party to this Convention since 2010.

[2] Iraq is party to this Protocol since 2010.

One of the most prominent examples of truth-seeking took place in post-Apartheid South Africa. While it wasn't the first truth commission to be established globally, it certainly was the first to have such a large mandate and such great resources.

The Truth and Reconciliation Commission (TRC) was established in 1995, pursuant to the Promotion of National Unity and Reconciliation Act. The TRC would look into the following: "(a) The killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive."

Its investigation would cover the period from March 1, 1960 to December 1993, when the interim government was established. The TRC functioned through three committees. The Committee on Human Rights Violations held public hearings where victims could participate and tell their accounts, as well as gathering evidence on human rights violations. Through this practice, the truth of the Apartheid era was set forth both in terms of individual violations and systematic ones. The Reparation and Reconciliation Committee provided support to victims during hearings and made recommendations concerning reparations by assessing the impact of violations on the victims. The Amnesty Committee evaluated any applications for amnesty.

Main features of the TRC

The TRC was praised for being so victim-centric. This approach was crucial in satisfying the many demands of victims from the TRC. In a truth-seeking effort, victims are both the drivers and the main beneficiaries of truth commissions. Truth commissions allow victims who experienced years of human rights violations to speak up in an official platform, which acknowledges their truth, pain and victimhood. This acknowledgement may have a healing effect by itself, and together with the sense of solidarity with other victims, truth commissions can be a good platform for coping with trauma and having some closure. What the TRC aimed to do was to restore victims' dignity while uncovering the truth. This feature of TRC was later adopted by several truth commissions in other contexts.

The TRC also helped empower victims as actors during the truth-seeking process. The criminal justice system is inherently perpetrator-oriented- the effects of a crime on the victim has secondary value. In truth commissions, on the other hand, victims are the main focus, with their voices being advanced during the transitional justice process. They are not merely instruments in promoting accountability but are actors in the transition to peace, with their experiences shaping future policies.

The TRC allowed for a healing space for victims. In criminal trials, the victims' testimonies are gathered in a court room, through cross-examination, in legal terms, and usually in a cold

manner. Truth commissions allow for the reconstruction of past experiences in the way the victims prefer, which psychologically assists with healing, as confrontation is usually accepted to be vital in healing trauma.

Finally, the TRC allowed for the perpetrators and the general population to learn the impact of the violations first-hand. Finding out about the experiences of victims, their suffering and trauma, can allow for the perspective of a person to change, for them to empathize with others. In South Africa, this became materialized through a concept called "*ubuntu*", which can roughly translate to humanity. *Ubuntu* philosophy suggests that we are all human because others are human, that our wellbeing depends on the wellbeing of others. We are all connected in invisible ties, and as long as others prosper, we will also prosper. The TRC supported *ubuntu*, indicating that "the nation would be healed by recuperating a notion of human mutuality imagined in the past but disabled by the wounds inflicted by the indignities of the Apartheid."

Amnesties

Amnesties, as part of transitional justice, are pardons issued to people who have committed political crimes. They are sometimes used during transition to peace to ensure that perpetrators do not further disrupt the state, making it impossible to move forward. Amnesties encourage perpetrators to disclose the truth of their actions since they know they won't be penalized for them. They are also cited as a useful tool in reconciliation, since instead of pointing fingers and blaming, which usually occur during criminal justice, they allow for dialogue. They have been criticized widely, however, for advancing impunity, as well as for failing to deal with the past. The victims may be left feeling ignored, which can even lead to

Amnesties were used in the transition of South Africa, to much criticism. Any person whose act or omission taking place between March 1960 and May 1994 constituted a gross violation of human rights could apply for amnesty to the Committee on Amnesty of the TRC. These acts must be committed with a political objective, and a full disclosure of facts was a pre-condition to receiving amnesty. If an amnesty demand was granted, all civil and criminal legal remedies regarding that act were barred in South Africa.

During its mandate, the Committee on Amnesty received 7,112 applications for amnesty. 849 applications were granted, 5,392 rejected, and others were withdrawn. Both TRC's authority to grant amnesties, and its individual amnesty decisions, received wide criticism. An important point, which was contrary to the TRC's victim-centric approach, was that an amnesty decision did not require an apology or an admission of guilt.

The TRC report

The TRC's final report, consisting of five volumes, was published in 1998, although the amnesty process continued for several years after that. The report included testimonies of approximately

21,000 victims and witnesses, with over 2,000 people testifying at public hearings which were also broadcasted nationally.

The TRC gave many recommendations to the South African government, some of which were followed. The TRC highlighted past injustices and the drift between the advantaged and the disadvantaged in the society, and advised to transform education, shelter, access to clean water and health services, and employment. It emphasized the rule of law and the importance of accountability, and urged public prosecutors to pursue cases against perpetrators of gross human rights violations. The TRC called for supporting non-governmental organizations that support victims. For reparation and rehabilitation, the establishment of a separate structure was advised that would oversee the implementation of reparation and rehabilitation measures, including financial measures, exhumations of mass graves, and renaming public streets and buildings in the name of victims. It called for a transparent government that is against corruption. The judiciary had to be improved, with access for justice for both victims and perpetrators being reformed. Security forces, in particular the national intelligence agency, must hand over whatever documents they have for an archive to be constituted (it was known that the intelligence agency had destroyed thousands of documents until as late as 1996). South Africa should also make commitments to protecting human rights of its citizens by ratifying international human rights treaties, such as the International Covenant on Civil and Political Rights.

V. Case study: Tunisia

Introduction

Another example of a truth-seeking effort recently took place in Tunisia. After Mohamed Bouazizi lit himself on fire in protest of unemployment in January 2011, his action turned into nationwide protests against the oppressive government. This was also the start of the Arab Spring.

President Zine El Abidine Ben Ali, who had ruled the country since 1987, was ousted from the government shortly thereafter, and the civil society demanded accountability for corruption, economic crimes, as well as human rights violations such as murder and torture. Ben Ali fled to Saudi Arabia and was not extradited, thus why trials were held in his absence. He was sentenced to 66 years of imprisonment for corruption and weapon and drug related charges. He was then sentenced to imprisonment for life in 2012 for being an accomplice in the murder of protesters in Tunisia.

Truth and Dignity Commission

After Ben Ali left office, the country entered into a transitional justice process. The Organic Law on Establishing and Organizing Transitional Justice was enacted in 2013, after which the Truth and Dignity Commission (Instance Vérité & Dignité- IVF) was established, in 2014.

Its mandate was explained as holding public and private hearings, examining cases of enforced disappearances, determining the fate of victims, establishing a historical record of violations, determining liability for violations, exploring the roots of the conflict, providing recommendations to ensure such violations do not repeat in the future, and developing a reparations program. The acts covered would be from July 1955, when Tunisia gained its independence, to the enactment of the Law in 2013. This period covered governments ruled by Habib Bourguiba (1956-1987) and Ben Ali (1987-2011).

Administrative Reconciliation Law

The president of Tunisia proposed a bill in 2015. The Administrative Reconciliation Law offered civil servants with corruption charges against them a remedy, where they could have all charges against them dropped by paying the earnings of the crime to the state. This caused great controversy, as it provided an amnesty to corrupt state officials. Large protests erupted over the country, which led to public movements like the "Manich Msamah" youth movement.

Nevertheless, the bill was legislated in September 2017. It is perceived as a large obstacle to transitional justice in Tunisia and severely hurt the mandate of the Truth and Dignity Commission, for which accountability was very important.

The IVF report

The Truth and Dignity Commission was closed in December 2018, after completing its four-year mandate. The Parliament refused to extend its term. The Commission had insufficient funding, time, and resources to complete its mission. The government often blocked its access to archives. Security forces resisted reform attempts. President of the Commission, Sihem Bensedrine, faced serious backlash from government officials.

The Commission recorded 62,270 cases of human rights violations and held 12 public hearings. 173 cases were sent to Specialized Chambers for prosecution. The report was presented to the government and is currently awaiting publication.

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MODULE 4: INSTITUTIONAL REFORM

I. Introduction

Institutional reform refers to reviewing, reforming and restructuring public institutions such as security services or the judiciary to incorporate an understanding of rule of law and human rights to state institutions. This is mostly due to the fact that sectors such as security or judiciary are often instrumental in past abuses, and their restructuring is crucial to renew trust into these public institutions.

II. Objectives of institutional reform

The objectives of institutional reform vary according to what methods are used and which institutions are being reformed. Nevertheless, there are certain objectives common to most of such efforts.

1) Institutional reform aims to render public institutions, such as the police force, accountable to the people. This inevitably brings the necessity of transparency in the work of such institutions and mechanisms, that allow proper and adequate oversight of their work, including by the people themselves.
2) While the other three pillars of transitional justice -criminal justice, truth-seeking and reparations- gain much focus, institutional reform is unfortunately often overlooked in transitional justice processes around the world. However, institutional reform is critical to ensure that institutions that either committed or failed to prevent human rights violations are prepared to ensure that such abuses will not happen again. This is the only way to build public trust for these institutions.
3) In post-conflict transition, institutional reform can also be critical in the path to democratization. Indeed, while addressing the causes and actors of past violations, reforms usually tackle directly issues such as structural inequality.

III. Methods

Institutional reform can take place in different ways. Four common methods are addressed here.

1) Transforming the legal framework, either by adopting new laws or reforming existing ones to ensure better compliance with human rights principles. For instance, enacting a law for better protection of minority rights, or abolishing a law that harms religious minorities or women in a country are examples of institutional reform. Legal reform may include joining human rights treaties as well, similar to what South Africa did as per the Truth and Reconciliation Commission Report's recommendations.
2) Vetting. This is a process where civil servants with a background of corruption or human rights abuses are barred from entering public service again, and can be used while

restructuring the security services. The purpose is to assess whether a certain person is trustworthy enough to serve in public offices. Usually, sensitive data is required to assess whether a person is fit for public service. Vetting can be done in a centralized fashion, for instance through an intelligence agency, or in a decentralized way, so that each public body has its own vetting mechanism. Vetting can also be left to private contractors, so that it is outsourced.

3) Disarmament, demobilization and reintegration (DDR). DDR processes include removing weapons from ex-combatants, separating them from their groups, and encouraging them to reintegrate into the society as actors of peace-building. The DDR process is a fragile one that mostly depends on the political will to undergo such mechanism. Thus, DDR processes usually start with mediation to commence such a program, after which the other steps follow.
4) Security sector reform (SSR). SSR refers to reforming security actors (police, intelligence, army), judicial bodies (courts, prosecutions), non-state security actors (rebel groups) and bodies that manage and oversee these (parliament, ministry). This involves restructuring these institutions to allow better representation of minorities or formerly disenfranchised groups, establishing good governance principles, and capacity-building efforts such as trainings for officials.

IV. Case study: Kosovo

Introduction

The institutional reform process in Kosovo aimed to cleanse public bodies from officials and structures that committed or allowed violations to happen and thus, rebuild public trust into these institutions. These were carried out under the auspices of the United Nations Mission in Kosovo (UNMIK) and the European Union Rule of Law Mission in Kosovo (EULEX).

Vetting

One method used was vetting. Two laws were established for this purpose: the Law on the Classification of Information and Security Clearances (2008), and the Law on the Kosovo Intelligence Agency (2010). The former defined the purpose and scope of vetting, categories on how to classify certain information, and established the vetting authority within the Kosovo Intelligence Agency (KIA). The latter regulated the vetting authority KIA, which was supervised by a Parliamentary Oversight Committee. Accordingly, requests for vetting by public bodies had to be made by the head of that body regarding security clearances for its employees. These bodies included armed forces, police, intelligence, ministries of foreign affairs, justice, and economics, and the offices of the president and prime minister. Information was classified into four groups: “top secret”, “secret”, “confidential”, and “restricted”. Top secret information was accessible only by a certain number of public officials.

Such sensitive work has its shortcomings, and some of these were also observed in Kosovo.

Firstly, the KIA was perceived as unprofessional and disorganized, and severely inaccessible. The lack of transparency in the work of the KIA did not help with the ultimate purpose of rebuilding public trust in the security sector. Reports of corruption and clientelism emerged regarding KIA's work. Secondly, the KIA is also the organ to handle the vetting of the Parliamentary Oversight Committee: the body that oversees its own work. Having a legislative office subject to an executive body is undemocratic, and harms the Committee's authority. Similarly, the KIA is required to undertake vetting of judges, who are the ones to bring KIA to courts if needed. Thirdly, these flaws in the work of KIA cause several public bodies to refuse to adhere to the vetting decisions delivered by KIA. Some people who receive negative vetting results also appeal the decisions, which are brought to courts and the Parliamentary Oversight Committee. Unfortunately, there isn't enough capacity to handle the overload of appeal cases, which halts the process. Finally, the political mistrust towards KIA and its decisions prevent the functioning of the vetting system. Misconduct on the KIA's behalf was also harmful to the process. Since people do not trust the KIA, they also do not trust the vetting system.

Lessons learned from this mechanism is that vetting should be done by a politically and administratively independent body, with proper oversight. Otherwise, vetting will be perceived as another dysfunctional mechanism.

SSR

UN Security Council Resolution No. 1244 in 1999, which established UNMIK, also provided for establishing security, demilitarizing the armed group Kosovo Liberation Army (KLA), and facilitating the return of the refugees. NATO would establish peace operations through its Kosovo Force, which would help with securing the area and demilitarizing KLA. Two new institutions were developed: the Kosovo Police Service and Kosovo Protection Corps. Former KLA members, former police officers, as well as new recruits were included in the Kosovo Police Service, while the Kosovo Protection Corps mostly involved ethnic Albanian former KLA members. These efforts were important in the DDR of former KLA combatants, as well as integrating formerly disenfranchised ethnic Albanians in public institutions. Ministries of Interior and Justice were created in 2006, together with parliamentary committees in charge of overseeing security institutions.

Kosovo declared independence from Serbia in 2008. The Kosovo Intelligence Agency, in charge of vetting, and the Kosovo Security Force, were established. EU accession dialogues started in 2010, which focused on democratization and reform to adhere to EU standards.

The SSR process in Kosovo succeeded to reinsert 27,723 former KLA combatants in the security sector. It also managed to involve representation by different ethnic communities in decision-making positions by appointing Serbian police officers. In fact, the Kosovo Police is perceived as one of the most trusted institutions in Kosovo.

An important note here is that many reforms were implemented through the involvement of NATO, UNMIK, and EULEX. The assistance of the international community in SSR shouldn't prevent local ownership of security institutions. Otherwise, a sustainable system cannot be put in place. Several criticisms were raised against the international community's interference with the Kosovo SSR agenda, which often included building institutions from scratch according to Western best practices. While it is still early to assess whether this interference will have lasting negative impact on the future of the security sector in Kosovo, there is a lesson here that local ownership should be pursued in the design and implementation of SSR policies.

V. Case study: Iraq and de-Ba'athification

Introduction

De-Ba'athification started after the fall of the Ba'athist regime in April 2003 to prevent Ba'ath supporters from coming to power again. According to the Higher National De-Ba'athification Commission (HNDC), when the regime fell, there were at least 400,000 Iraqi citizens who held Ba'ath party full membership. 150,000 of these were civil servants and 250,000 of them were in the defense forces or the Ministry of Defense. The number of sympathizers were estimated as 1.2 million to 2 million.

After Baghdad fell to US forces on April 9, 2003, the Ba'ath Party was declared to be "dis-established", although the looting and destruction had caused membership records of the party to disappear. The US Ambassador Paul Bremer was appointed as the leader of the Coalition Provisional Authority and arrived in Baghdad on May 12, 2003. Four days after that, the CPA issued two orders on de-Ba'athification. Order 1, entitled "De-Baathification of Iraqi Society", provided that people who fell into one of two categories would be excluded from public service: (i) all individuals at the four top ranks of Baath party, and (ii) all individuals at the three highest levels of management positions who held any level of Baath party membership.

De-Ba'athification wasn't a vetting process, similar to what happened in Kosovo, as it didn't dismiss people from civil service based on history of corruption or abuse. The de-Ba'athification process assumed that anyone who held a certain level of membership or rank had to be ideologically committed to Ba'athism and/or to have committed a violation on behalf of the party.

Order 2 was established shortly after, entitled "Dissolution of Entities". This provided that entities who could allow Ba'athists to return to power would be dissolved, such as armed forces, security services, party militias, the intelligence, Ministry of Defense, army, navy, air force, and others. As of April 16, 2003, all military ranks and titles were abolished, and all conscripts and employees were dismissed, with termination payments. Pension payments continued for public employees except for those who fell under the Order 1.

After Orders 1 and 2, the de-Ba'athification process fell into the hands of Iraqis. The HNDC was established under the leadership of Ahmed Chalabi. The HNDC continued with Order 1's framework on rank and membership, but expanded the scope of de-Ba'athification greatly. It added categories such as people holding civil service positions from the director general level or above, members of "oppressive institutions", and those known to have participated in corruption, aggression or other violations. These were undefined, large categories and gave the HNDC great discretion. Although an appeals procedure existed, there were no criteria defined on the basis of which an appeal could be made. In any case, HNDC held the power to make final decisions in cases of appeal.

The 2005 Constitution

In 2005, Iraq's new constitution was adopted. In Article 7, Ba'athism was clearly prohibited: "Any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba'ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law."

The HNDC would continue until completing its function, although some oversight of its activities were provided to the parliament: "The Council of Representatives shall form a parliamentary committee from among its members to monitor and review the executive procedures of the Higher Commission for De-Ba'athification and state institutions to guarantee justice, objectivity, and transparency and to examine their consistency with the laws. The committee's decisions shall be subject to the approval of the Council of Representatives."

The Constitution provided that, "A nominee to the positions of the President of the Republic, the Prime Minister, the members of the Council of Ministers, the Speaker, the members of the Council of Representatives, the President, members of the Federation Council, their counterparts in the regions, or members of the judicial commissions and other positions covered by de-Ba'athification statutes pursuant to the law may not be subject to the provisions of de-Ba'athification."

Controversies

During the December 2005 elections, the HNDC attempted to bar approximately 170 candidates from running, which brought it into conflict with the Independent Electoral Commission of Iraq. It was observed later on that secular and Sunni candidates were disproportionately listed by the HNDC. The Independent Electoral Commission objected to the fact that the lists were created arbitrarily, with some candidates deemed ineligible due to fraud, age or alleged corruption, and that there weren't enough evidence to assess the decisions of the HNDC. The candidates listed by the HNDC were asked to fill out a questionnaire, and 40 candidates were accordingly disqualified. This further increased mistrust towards the de-Ba'athification process.

The HNDC also interfered with the work of the Iraqi High Tribunal three times, during the Dujail trial. In July 2005, before the Dujail opened, 19 employees of the IHT were dismissed, but no judges. Certain reports indicate that judges were not dismissed due to US pressure, which threatened to move the tribunal outside of Iraq if judges were dismissed. In January 2006, the Presiding Judge Rizgar al-Amin resigned, and Judge Said al-Hammashi replaced him. The HNDC, however, pressured Judge al-Hammashi to transfer to another case, which was a severe blow to the independence of the judiciary. Finally, weeks before the Dujail trial's verdict was to be released, an internal de-Ba'athification committee was established within the IHT. Four judges were told that they would be given the opportunity to transfer instead of facing the public humiliation of being subject to de-Ba'athification procedures. One judge in the Dujail trial and one member of the cassation chamber thus changed, thereby ensuring that Saddam Hussein received the death penalty.

Accountability and Justice Commission

After Nouri al-Maliki, a former member of the HNDC, came to power in April 2006, sentiments regarding the effectiveness of the de-Ba'athification process and concerns that it resulted in "de-Sunnification" increased. Maliki then announced that the de-Ba'athification process would be reformed. The Law of the Supreme National Commission for Accountability and Justice passed on January 12, 2008.

The Accountability and Justice Commission created a new body entitled the Higher National Commission for Accountability and Justice. Some reforms were (i) a clearer basis for de-Ba'athification efforts and enforcement requirements, (ii) allowing certain level members to return to public office, (iii) provision of pensions to certain level members, (iv) all intelligence agency employees during the Ba'ath era would be dismissed, regardless of whether they were members of the party, (v) a stronger link was established to criminal investigation, (vi) seven new commissioner positions were created, and (vii) an independent appeal chamber was created under the Court of Cassation, together with procedures for reinstatement, although appeal criteria were still unclear.

Lessons learned

First and foremost, it is not possible to qualify de-Ba'athification in Iraq as a vetting program. A vetting program bars certain individuals from public service based on insufficient qualifications or a history of abuse or corruption. Instead, what happened in Iraq was the broad purge of everyone who was a certain ranking member of the Ba'ath party. The assumption of guilt, instead of the presumption of innocence, inherently violated due process. Furthermore, certain lower ranking members who had in fact engaged in abuses were disregarded, which caused an impunity gap.

Secondly, the de-Ba'athification procedure was designed by Iraqis who had been exiled from Iraq and members of the US government who weren't well versed on the situation on the

ground. They lacked sufficient reliable information to undertake such work. They designed the program without knowing in advance numbers and ranks of members. This caused, for instance, for the education sector to fail since many teachers were members of the Ba'ath party, in a level that required being purged.

Thirdly, the program lacked specific goals. Given its controversial nature, vetting programs are usually limited to a certain time, such as one to three years. In the case of Iraq, de-Ba'athification is still ongoing for the past 16 years. At this point, it is unclear what the de-Ba'athification process hopes to achieve. It is inefficient, arbitrary, and does not help rebuild people's trust in public institutions as it should have.

Fourthly, the de-Ba'athification framework was nothing close to transparent, which is an important qualification of proper vetting programs. At least three bodies were involved, with dozens of legal regulations on its operations. The HNDC's enforcement powers were unclear. The ministries were expected to follow the decisions of the commission, but in practice, fear and pressure were the true enforcers. The leadership of the de-Ba'athification processes were perceived to be highly politicized and sectarian, which is not a surprise given that its chair and deputy chair later ran for parliament. The HNDC had no oversight for its activities. While the 2005 Constitution allowed parliamentary oversight, details are unknown. There were no appellate body either until 2010 where decisions could be challenged.

Fifthly, the de-Ba'athification process was initiated without proper consultation with the Iraqi people themselves. Transitional justice mechanisms must be conceptualized and designed by involving the people in the process. This is the key to successful programs. In Iraq, US government officials brought Pentagon drafted orders, discussing with a few exiled Iraqi elites and expecting for this to suffice, while Iraqis had much more nuanced opinions than that. A survey done in mid-2003 in Iraq showed that while people supported dismissing Ba'athists who perpetrated criminal activities, they also accepted that party membership at that time was a mode of survival. They felt it was unfair to punish people based solely on party membership.

Sixthly, the de-Ba'athification process lacked a forward-looking approach. While violators were aimed to be removed from the state, no measures were adopted to secure non-repetition in the form of further institutional reform or capacity building to ensure qualified civil servants to be hired in the future. Furthermore, some people who were dismissed were actually re-hired due to lack of clear criteria for future recruitment.

Finally, the de-Ba'athification process violated due process and human rights of those subjected to such procedures. The presumption of guilt, lack of clear criteria on which dismissals were made, lack of prior detailed notice of allegations, failure to provide an opportunity to defend oneself, lack of substantive evidence, and the inability to effectively appeal decisions made the entire process unreliable and caused people to perceive the mechanism as politically motivated.

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MODULE 5: REPARATIONS

INTRODUCTION

I. Legal basis

International law

The right to reparation is derived from the right to an effective remedy. This right is enshrined in a number of human rights instruments, including the Universal Declaration of Human Rights: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Article 8)

Under human rights law, the right to an effective remedy has two components: a procedural one and a substantive one. Procedurally, this right is interpreted as the requirement to carry out thorough and effective investigations on human rights violations such as murder and torture that lead to the identification and punishment of the perpetrators, including victims' access to proceedings. Substantively, the right to an effective remedy involves wiping out the harm caused by the human rights violation: reparation.

Article 2 of the International Covenant on Civil and Political Rights provides, "Each State Party to the present Covenant undertakes:... To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity..." The Human Rights Committee, in its General Comment No. 31, stated that this provision of the ICCPR "requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged."

UN Basic Principles

In 2005, the UN General Assembly adopted a set of rules that would be crucial for the development of reparations: the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law".

The Preamble of the Basic Principles states that these principles "do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms..." Principles such as these are usually called soft law, which are not binding but guiding. Still the UN Basic Principles have contributed greatly to the debates surrounding the right to reparation.

They serve as guiding instruments for both states devising reparation programs and for victims claiming reparation.

II. Defining violations

The UN Basic Principles provides that "a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law." "Gross violations of international human rights law" and "serious violations of international humanitarian law" are not defined under international law, although a consensus exists on what they refer to. These violations qualitatively and quantitatively effect the most basic rights of human beings, especially the right to life and the prohibition of torture. Genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination are usually accepted as such core rights. Deliberate and systematic deprivation of essential foodstuffs, essential primary health care or basic shelter and housing may also be considered within this group.

III. Defining victims

As per the UN Basic Principles, "...victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim."

It is now widely accepted among gender experts that people who survive sexual violence should be referred to as "survivors" instead of "victims", as it is a more empowering term. The word victim here is used since it is a legal and technical term.

According to the UN Basic Principles, "victim" has the following elements:

1) A human being is a victim if they suffered physical or mental harm, emotional suffering, economic loss or substantial impairment of their fundamental rights, regardless of their relationship with the perpetrator and whether they can identify the perpetrator,
2) Harm and loss may present itself in different forms,
3) Harm and loss may be experienced individually or collectively, and
4) Victimhood can be direct and indirect.

It is noteworthy that Article 25 of the UN Basic Principles state that, “The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.”

IV. Forms of reparation

The five forms of reparation listed in the UN Basic Principles provide a framework of reparations.

1) Restitution: “*Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.”
2) Compensation: “*Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (*a*) Physical or mental harm; (*b*) Lost opportunities, including employment, education and social benefits; (*c*) Material damages and loss of earnings, including loss of earning potential; (*d*) Moral damage; (*e*) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”
3) Rehabilitation: “*Rehabilitation* should include medical and psychological care as well as legal and social services.”
4) Satisfaction: “*Satisfaction* should include, where applicable, any or all of the following: (*a*) Effective measures aimed at the cessation of continuing violations; (*b*) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (*c*) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (*d*) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (*e*) Public apology, including acknowledgement of the facts and acceptance of responsibility; (*f*) Judicial and administrative sanctions against persons liable for the violations; (*g*) Commemorations and tributes to the victims; (*h*) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.”

5) Guarantees of non-repetition: "*Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention: (*a*) Ensuring effective civilian control of military and security forces; (*b*) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (*c*) Strengthening the independence of the judiciary; (*d*) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (*e*) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (*f*) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (*g*) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (*h*) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."

These forms of reparation are not mutually exclusive. To the contrary, the post-violation status of victims often requires a combination of these measures.

V. Categorizing reparations

Reparations are often grouped in literature as follows:

1) Individual/collective: Individual reparations are provided to certain individuals who suffered harm as a result of violations. For instance, providing compensation to each survivor of sexual violence is a form of individual reparation. Collective reparations are directed not at certain persons, but a collective of people who collectively suffered damage- as is the case of an ethnic or religious group who survived genocide. They refer to both the reparation, i.e. the types of goods and modes of distribution, and the subject that receives them, i.e. a collective of persons. For example, a public apology to an ethnic or religious group that survived genocide would constitute collective reparation.
2) Material/symbolic: Reparations may be material, as in, to have a certain monetary value and enrich the person(s) receiving them. Compensation is a form of individual material reparation, while building a school or hospital in a conflict-affected region is a form of collective material reparation. Reparations may also be symbolic. These do not have any monetary value and are meant to morally address the harm suffered by victims. For instance, a public recognition of genocide will constitute collective symbolic reparation.
3) Court-provided/administrative program: Reparations may be provided by courts or through an administrative program. Court-ordered reparations are usually decided in criminal proceedings, where a certain perpetrator is tried for the crimes they committed and as a result, are ordered to provide reparations to those affected by their acts. Civil courts may also provide reparations in certain cases. Nevertheless, often times the

perpetrators of certain violations are unknown, and even if they are known, they may be destitute and unable to provide reparations. Furthermore, courts tend to be highly bureaucratic and slow, and require high evidentiary standards for submitting claims. As a victim-centric, cost and time efficient solution, states may establish administrative programs to provide reparations which have lower evidentiary standards than courts. These are usually preferred in post-conflict countries as they respond to the needs of the victims much more efficiently than courts. Administrative reparation programs are often established as part of a truth commission's mandate, or under the structure of an existing executive body.

VI. Reparations: Whose responsibility?

UN Basic Principles provides that, "In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim… States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations."

While the obligation to provide reparations for acts committed by non-state actors is a field under international law that has started developing recently, given difficulties surrounding claiming reparations from non-state actors, states are generally the targets of such demands, based on the principle that the state is liable for violations that it failed to prevent.

In Timor-Leste, the truth commission called upon Indonesia to provide reparations for violations committed during its occupation of Timor-Leste, but also stated that "the struggle to gain reparations from an invading nation is one that may take time. In the meantime, many of the victims can no longer wait. East Timor must step into the void. The international community, who looked the other way when atrocities were committed, also bears a portion of this responsibility."

VII. Objectives and limitations

Objectives of reparations are,

1) To repair the harm inflicted upon victims and to the extent possible, restore them to their status before the violation occurred. Reparations recognize victimhood and seek to relieve victims, as well as to support them.
2) To reestablish the sense of dignity of victims. This is achievable only by a combination of reparative measures, both symbolic and material.

3) To relieve victims' stigma. Commemorative programs and memorials, education initiatives contribute to this goal.

The objective to restore the victim to his or her status before the violation is straightforward in cases like restoring property. However, in cases such as torture or rape, reparations will fall very short of restoration, due to the nature of the violations. Some things can never be restored. It is thus very important to be realistic about what reparations can achieve, and not present them as a magical solution that would make everything better. Still, if implemented with a victim-centric approach, reparations may help victims achieve closure, and support their healing.

In some cases, restoration may not be desirable. For instance, sexual violence is a form of gender discrimination, rooted in social, economic, and political inequalities. If restoring to previous status would mean restoring a victim to its unequal situation, then restoration shouldn't be preferred. Commentators argue that reparations should also have a transformative effect. This would include efforts to transform social inequalities and unjust hierarchies, through social recognition, political representation, and economic redistribution.

It is debatable whether reparations are capable of achieving transformation of a society. Some believe that this shouldn't even be an objective of reparation programs, that such discussions divert attention from the individual claim of redress. On the other hand, there is the argument that transformative measures are usually perceived as development programs that are provided to people because they are citizens of the state, not in recognition of their victim status.

VIII. Linking reparations to other transitional justice mechanisms

Reparation is inherently linked to other transitional justice mechanisms. Transitional justice mechanisms shouldn't be prioritized over one another and should be implemented simultaneously and coherently. It is significant to ensure that various transitional justice mechanisms support one another, what is called external coherence.

1) A stand-alone reparation program, regardless of the amount of compensation it may distribute, may be perceived as "blood money" to buy the silence or forgiveness of victims unless it is tied to truth-seeking. Similarly, if there is truth-seeking but no reparations, truth-seeking may be seen as a mere gesture without any concrete effects on the state's behalf.
2) Institutional reform without reparations may cause victims to question the legitimacy of such reforms. On the other hand, reparations without institutional reform may seem empty as there would be no efforts to guarantee non-repetition, which is also a form of reparation itself.
3) Finally, there exists a link between criminal justice and reparations as well. Providing reparations to victims without punishing perpetrators once again risk being perceived as "blood money", as well as leading to impunity. However, criminal justice without

reparations disregards the aftermath of the violation on the victim, and could be seen by victims as retaliation without any consequences for the victim.

IX. Case study: Argentina

Introduction

In 1976, the military in Argentina staged a coup against President Isabel Peron and took over the state and municipal government. Lieutenant General Jorge Rafael Videla became the new president of Argentina and launched what is known as the "Dirty War", in which 10,000 to 30,000 people are estimated to have died. Murder, torture, and baby thefts were common violations. From 1976 to 1983, enforced disappearances were particularly widespread, which led to the world-renowned "Plaza de Mayo Mothers" movement- a group of mothers who protested the state-enforced disappearance of their children by holding weekly vigils in Plaza de Mayo, across from the presidential palace.

Material reparations

Laws on compensation were enacted to provide economic reparations.

1) Law No. 24.043 provided compensation to those who were placed in the hands of the Argentinian government from November 1974 to December 1983. 22,234 applications were made under this Law, and 9,776 were found successful.
2) Law No. 24.411 provides additional benefits to heirs of the forcibly disappeared and those who died as a result of actions by the armed forces, security forced or paramilitary groups before December 1983. 10,123 applications were made and 7,781 were found successful.
3) Law No. 25.192 goes further back in time, and provides a one-time benefit to heirs of those who were killed in the uprising in June 1956. 31 applications were made, and 25 found favorable.
4) Law No. 25.914 gives benefits to children who were born in prison or detention centers as well as children who were taken to these places with their mothers. 1,618 applications were made and 619 were found favorable.

A body was established under the Ministry of Justice and Human Rights called the National Secretariat of Human Rights. Applications for reparations were made here. Decisions of the Ministry could be appealed twice, and also taken to the Inter-American Commission/Court of Human Rights.

Symbolic reparations

As a form of satisfaction, a program was launched to help search for the identity of abducted babies during the dictatorship. The Plaza de Mayo Mothers demanded the creation of a special commission that would focus on the identity of children. The National Commission on the Right

to Identity was established in 1992. This Commission has the authority to investigate cases of abducted children and help identify them, as well as to declare adoptions of child victims of forced disappearance as null and void. Over 500 people applied to the Commission, which cross checked their DNA with the data stored at the National Bank of Genetic Data to see if there are any matches.

In December 2003, the government created the National Memory Archive that aimed to obtain and preserve testimonies and documents on violations that took place during the dictatorship. The archive includes documents of the truth commission in Argentina called The National Commission on the Disappeared (CONADEP) as well as its iconic report, entitled Nunca Mas (Never Again). A Federal Network of Places of Memory were created for the collaboration of governmental offices on methodology and resources, which are running "places of memory" throughout Argentina. In March 2004, the President transferred a secret detention center, the Navy Mechanics' School called ESMA, and converted into a "Place of Memory and Promotion of the Defense of Human Rights", which was followed by conversion of several other detention centers into memory places.

X. Case study: Turkey

Introduction

The conflict between the PKK and Turkish armed forces have been ongoing since the 1980s. The exact number of people killed and forcibly disappeared since the beginning of the conflict remains widely contested, but is estimated to be between 30,000 to 40,000 people. Summary killings, torture, and enforced disappearances were particularly widespread in the 1990s. On May 27, 1995, a group of women, inspired by the Plaza de Mayo Mothers of Argentina, started holding vigils in the Galatasaray Square in Istanbul, demanding information on their children and relatives who were forcibly disappeared by the Turkish state while under custody. Called the "Saturday Mothers", they recently held their 700th vigil, still waiting to find the truth about their loved ones.

The conflict also left over 1 million people displaced, who were forced by the state to migrate to other cities, or left due to safety concerns or lack of livelihood opportunities. Until 2002, the Turkish state denied that such forced displacement existed. With the EU accession process, however, this stance changed. The fact that nearly 1,500 cases were brought before the European Court of Human Rights (ECtHR) against Turkey by forcefully displaced Kurds also served as an incentive to tackle this problem.

Law No. 5233 on Compensation

In 2004, the Turkish Parliament adopted the Law No. 5233 on the Compensation of Damages Arising from Terrorism and Counter-Terrorism as an administrative program to distribute compensation to the forcefully displaced. Often cited as the only legal framework concerning

transitional justice mechanisms and reparation in Turkey, the Compensation Law actually fell quite short of being a reparation program.

1) The Compensation Law defines its target group as "all victims of terrorism", without acknowledging the scope of wide-scale human rights violations committed against a certain ethnic group.
2) Lacking any symbolic recognition, the Law also does not acknowledge the high number of people displaced. It is based on the principle of "strict liability" of the state, which provides that the state shall compensate damages arising from its actions regardless of whether it is at fault or negligent. This lack of acknowledgment of responsibility clearly fails to acknowledge victimhood status and indeed, was perceived widely as "blood money" and an attempt to get rid of the 1,500 cases before the ECtHR while complying with necessities of the EU accession process.
3) The Compensation Law lacked any truth-seeking effort, and was thus seen by victims of the conflict as a payment in exchange for their silence. No criminal justice mechanism was implemented either, which caused a great deal of mistrust among the victims.
4) The Compensation Law only covered material damages, without any recourse for moral or emotional loss, which is undoubtedly crucial for victims of conflict. Even then, the amount of compensation for material damages is considerably low, especially in comparison to compensation awarded by the ECtHR and national courts.
5) The Compensation Law lacks a gender lens. No reference is made to sexual violence crimes committed against women during the conflict, nor is there any specific provisions that address gendered aspects of victimhood.

The Compensation Law in Turkey is a good example of a bad reparatory program. It demonstrates insufficiencies of self-declared reparation programs when they are established without consultation to victims and as stand-alone transitional justice mechanisms, without adopting a holistic approach to transitional justice.

XI. Case study: Iraq and the Law No. 20

Introduction

The Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Acts was enacted to provide compensation to all natural persons damaged by such acts and their families. It applied to acts that took place on or after March 20, 2003, when the US invaded Iraq.

Five types of persons were eligible for reparation:

1) Martyrdom or loss,
2) Full or partial disability,
3) Injuries and conditions requiring short-term treatment,

4) Damage to property,
5) Damage affecting employment and study.

The first three categories were provided three types of reparation:

1) One-time payment of IQD1.75 million to IQD 3.75 million (USD1,480-3,173), depending on the severity of the case,
2) A monthly pension,
3) A plot of residential land.

These were provided directly to the victim, except for martyrdom, in which case reparation was provided to the family of the victim. Family included parents, children, spouses, brothers and sisters, whose share in the compensation would be determined according to Islamic inheritance law.

Compensation for damage to property depended on each case. Types of property included vehicles, houses, agricultural lands, fixtures, stores, inventory, and companies. In case of damage affecting employment and study, the victim was reinstated to their previous place of employment or study and by also providing payment for the time they were deprived of salary and pension.

The Law No. 20 created a Central Committee in Baghdad, which was headed by a judge representing the Higher Judicial Council, and including members representing eight ministries and the KRG. Victims had to apply for compensation through subcommittees which were tasked to prepare case files and investigate accuracy of the claims. Subcommittees made decisions on martyrdom and injury, while property damage or lost persons cases are sent to the Central Committee together with a recommendation issued by the subcommittee. Appeals were reviewed by the Central Committee.

2015 amendment

In 2015, the Iraqi parliament enacted Law No. 57, amending the Law No. 20. With the new amendment, not only natural persons but also legal persons could apply for reparation, in addition to members of the Hashd al-Shaabi and Peshmerga. Kidnapping was added to the categories eligible for reparation, treated similar to martyrdom.

With the 2015 amendment, a new division was created under the Martyrs' Foundation which was responsible for forming subcommittees in each governorate responsible for receiving claims for all categories. The Central Committee in Baghdad would only be responsible for appeal and making final decisions on property claims. The Central Committee would be composed of only three ministries, representatives of the KRG and the Iraqi High Commission for Human Rights, and a representative of the victims. One-time compensations were increased to the range of IQD 2.5 million to IQD 5 million (USD 2,115-4,230).

From 2011 to 2016, over IQD 420 billion (USD 355 million) were awarded as reparation.

Challenges

Despite its achievements, the Law No. 20 isn't without shortcomings.

1) Although the Law No. 20 was enacted in 2009, it wasn't until 2011 that the Law started its application following relevant directives. After that, it took an average of two years to process a claim, which led to a backlog of claims at the subcommittee level. There is no strong centralized bureaucracy for the reparation claims, which is one of the reasons why the process is progressing so slowly.
2) Administrative reparation programs usually have much less strict evidentiary requirements than courts. The Law No. 20, however, has a higher evidentiary requirement than other administrative programs in other countries, which can be quite onerous for both victims and subcommittees. For instance, death certificates, authenticated investigation reports, medical reports, property deeds and so on, requested for the victim and their heirs. Officials explain that this is due to the number of false claims subcommittees receive. Still, high standards of proof are not recommended for administrative reparation programs, and turn out to be highly costly and lengthy procedures.
3) The security situation prevented victims from obtaining necessary documents for reparation claims, applying to subcommittees, and collecting reparations, especially since many people are still internally displaced where they are unable to go to the governorates that awarded their compensation.
4) Even when a claim for reparation is granted, it can turn out to be quite difficult for victims to actually receive the reparation. The lack of a centralized payment system contributes to this.
5) With the amendment to Law No. 20, the responsibility to provide reparation to martyrs and their families were transferred to the Martyrs' Foundation. This was a highly controversial decision as the Martyrs' Foundation is perceived to be politically influenced, with a preference for victims of the Ba'ath regime.

Law No. 20 and the IS conflict

Law No. 20 wasn't enacted to address a conflict with such magnitude. Over 3 million people were displaced, tens of thousands killed, tortured, kidnapped, and entire cities destroyed by a number of armed actors. The Law No. 20, similar to the Iraqi Anti-Terrorism Law, isn't made for times of war but for times of peace, when human rights violations are exceptional and rare.

First and foremost, the Law No. 20 doesn't recognize several of the human rights violations that were committed during the IS conflict, most importantly, sexual violence. The Law No. 20 lacks a gender lens and the specific harms experienced by women, especially as a result of widespread

sexual enslavement of Yazidi, Christian, and Shi'a Turkmen women and girls. Similarly, there are no recourse for children who were abducted and forced to become child soldiers. Moral and emotional damages are not covered under Law No. 20 either. There is no remedy to acknowledge the harm suffered collectively by certain groups, such as the Yazidi.

Law No. 20 provides for material reparation only, mostly compensation. In the aftermath of conflicts such as the one that Iraq experienced, the damages arising from human rights violations vary greatly, all requiring different reparation measures. Forms of satisfaction, rehabilitation, and guarantees of non-repetition are lacking entirely in this framework, especially any sort of symbolic reparations.

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GENDER JUSTICE AND REPARATIONS

I. Gendering conflict

UN's Women, Peace and Security Agenda was materialized with the landmark Security Council Resolution 1325. It highlighted the importance of women's inclusion in peace processes as decision-makers, as well as the impact of conflict on women and girls. Resolution 1820 recognized sexual violence as a weapon of war and highlighted that sexual violence can constitute genocide, war crimes, and crimes against humanity. It mentioned the necessity to develop special methods to address sexual violence.

Gender does not equal women. While women are highly affected by conflict, other genders, men and gender minorities, also experience harms unique to their gender identities. LGBTI+ persons are particularly overlooked in Iraq, where a strict understanding of gender dichotomy prevails. Women have indeed suffered disproportionately in the IS conflict in Iraq, but this doesn't mean that CSOs working in this field shouldn't take into consideration genders other

These developments also led to discussions surrounding gender and reparations. This not only included recognizing sexual violence in conflict, but also designing reparations with the participation of women and in a way that does not reinforce gender injustice.

A single-dimension analysis, with a focus solely on gender, will always remain insufficient. The inclusion of an intersectional perspective brings a holistic approach to conflict analysis. For instance, the impact of the IS conflict on Yazidi women and Sunni women are different, as is the impact of conflict on Yazidi women from Sinjar and Yazidi women from Bashiqa.

II. The Nairobi Declaration

The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation was issued by a group of CSOs who met in Nairobi in 2007. This document, a milestone in gendered reparations, lays out crucial principles to consider when designing reparation programs with a gendered lens.

The Declaration acknowledged "the disproportionate effects of…crimes and violations on women and girls, their families and their communities", and "that gender-based violence committed during conflict situations is the result of inequalities between women and men, girls and boys, that predated the conflict, and that this violence continues to aggravate the discrimination of women and girls in post-conflict situations."

Structural inequalities are both the cause and the consequence of conflict. Conflict feeds off well-rooted social, economic, and political inequalities, and reproduces them as a result. Tackling these injustices are key for measures directed at guaranteeing non-repetition.

The Nairobi Declaration laid out “a right to a remedy and reparation under international law” for women and girls, and their “right to benefit from reparation programs designed to directly benefit the victims, by providing restitution, compensation, reintegration, and other key measures and initiatives under transitional justice that, if crafted with gender-aware forethought and care, could have reparative effects, namely reinsertion, satisfaction and the guarantee of non-recurrence.”

The Declaration emphasized transformative reparations, stating that “reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women’s and girls’ human rights predate the conflict situation.” While designing reparation programs, “the particular circumstances in which women and girls are made victims of crimes and human rights violations in situations of conflict require approaches specially adapted to their needs, interests and priorities, as defined by them”, which includes measures of positive discrimination.

Nonetheless, these measures shouldn’t be undertaken *as* development programs, but *in addition to* reconstruction and development measures, which the government is responsible for. Women and girls are usually overlooked in reparation, reconstruction and development measures and face access issues due to lack of gender-mainstreaming. Positive discrimination is also vital here to ensure equality in access.

In line with Resolution 1325, the Nairobi Declaration calls for “support of women’s and girls’ empowerment by taking into consideration their autonomy and participation in decision-making. Processes must empower women and girls, or those acting in the best interests of girls, to determine for themselves what forms of reparation are best suited to their situation.” Importantly, “processes must also overcome those aspects of customary and religious laws and practices that prevent women and girls from being in a position to make, and act on, decisions about their own lives”.

The Declaration calls upon CSOs to “drive policies and practices on reparation, with governments striving for genuine partnership with civil society groups”. Reparation programs should “guarantee civil society autonomy and space for the representation of women’s and girls’ voices in all their diversity.” “Full participation of women and girls victims should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making.”

It further highlighted the need to “address the responsibility of all actors, including state actors, foreign governments and inter-governmental bodies, nongovernmental actors, such as armed groups, multinational companies and individual prospectors and investors” while designing

reparation programs, thus avoiding selectivity. The “primary responsibility to provide remedy and reparation” belongs to national governments, although “the international community shares responsibility in that process”.

III. Gendering reparations: What to think about

There is no set list of requirements for a gender-sensitive reparation program. The needs vary according to each context, which is why women should be included in the process from the very beginning, when reparations are being articulated, to the very end, after the benefits are distributed. This is also important for local ownership.

Including women in conceptualization of reparations

There are different factors that one may take into consideration while thinking of the gender of reparations. The type of the conflict, the social and political realities of the country, structural inequalities, available resources, the types of violations suffered by women, and how to address the harm resulting from those violations are some important points.

Something observed in many countries is how women tend to speak more about the victimization of their loved ones, rather than themselves. They view their own suffering as secondary and focus on others, particularly since patriarchal societies require women to be self-sacrificing. In the case of sexual violence, women often avoid addressing their victimization due to stigma. They typically participate in victims or families of victims’ organizations, rather than organize around their gendered victimhood experiences. Opening up discussions surrounding women’s experiences as direct victims, especially through CSOs that center their work around women, would allow a clearer picture as to how reparations should be articulated.

Empirical data shows, however, that women’s rights groups have often focused on the day-to-day struggle of women in transition periods, from basic services to domestic violence. Building coalitions between human rights organizations, women’s rights groups and victims’ groups is a helpful approach to involve women’s perspective in transitional justice processes. Women’s groups also play a key role in supporting women to come forward. They can provide expertise on gender-mainstreaming to transitional justice mechanisms such as truth commissions, working on what would make women feel comfortable enough to speak publicly about their experiences.

Form of reparations

Often in the case of widescale human rights violations, women tend to ask for services for themselves and their loved ones rather than compensation, such as medical and psychological care, education for their children, or property assistance. The fact that most women ask for basic services says a lot about the level of poverty and lack of access to services on women’s behalf. It could be that women are not aware that they are entitled to development and basic

services as a matter of right as citizens. Perhaps if they knew, they would be claiming other benefits as reparations. It should be emphasized that reparations are provided to address the victimhood, while also keeping in mind the possible transformative power of reparations.

Commentators have noted that periods of transition are historical moments to address structural inequalities, including gender. This is because oftentimes gender roles change during conflict. Think about the Yazidis from Sinjar. Women were often expected to handle housework but not encouraged, even if allowed, to hold jobs. This has changed drastically after the genocide, with several Yazidi women being employed at CSOs and playing a critical role in the support of their community. Such change can also be reflected at a policy level, by pushing for institutional reform tackling gender discrimination as well. In Iraq, for instance, this can be done through reforming the Penal Code which includes an outdated approach to criminalizing rape, or by enacting laws that would help eliminate structural gender discrimination.

Which harms to address

Reparation programs often address traditional civil and political rights, such as illegal detention or summary executions. The WPS agenda contributed to the inclusion gendered violations such as rape as a gross human rights violation by itself, not as collateral damage.

Note that rape is not the only form of sexual violence. Sexual slavery, sexual harassment, forced nudity are other forms of sexual violence that should explicitly be recognized in a reparation program.

Evidentiary standards to prove victimhood, in particular in the case of sexual violence, shouldn't be burdensome for survivors. One of the reasons why administrative programs are preferred over court-ordered reparations is the relatively more relaxed procedures. In that case, for instance, medical reports shouldn't be the priority, but survivors' testimonies, mental health records, and criminal activity patterns should be preferred.

A victim-oriented approach also requires prioritizing confidentiality and support of survivors in the reparations process. Allowing women to testify in privacy, with loved ones or trained psychologists present, could ease the process and create a more fostering environment. Often times women do not want to explicitly say they are raped but use vague terminology, as is the case with Yazidi women who refer to rape as "he came onto me". Having trained experts who are aware of terminology used by survivors would help overcome difficulties.

Although sexual violence is a priority of gender-focused reparations, it is not the only harm suffered by women. Forced domestic labor, lack of livelihood, forced pregnancies, forced abortions, forced removal of children, forced sterilization, forced displacement also have gender dimensions. The disproportionate impact of human rights violations that women bear should be taken into consideration while thinking of which harms to address as part of a reparation program.

Redress

Women often obtain material benefits from reparation programs. Compensation may indeed assist survivors with rebuilding their lives. Especially if women are disproportionately suffering from poverty, there is the opportunity to use reparations for even slightly improving women's economic subordination. Programs such as vocational training may be initiated, which could help empower women in the long term and support the "transformative reparation" goal. However, it should be kept in mind that the primary purpose of reparations is to help victims cope with the aftermath of violations. If such programs are going to be initiated, other programs should also be put into place to ensure that there is a market for such skills, and women will find employment.

Material reparations should also have a gender analysis. In case of property restitution, for example, women are often left out as they are not the ones holding deeds. Furthermore, there is the risk of women being deprived of the control of the material benefit, especially if they have other family members depending on them.

Rehabilitation services or symbolic measures that cater specially to women's needs can also be adopted. Official apologies and recognition by state officials could help overcome stigma and assist with healing of survivors of sexual violence in particular. Such public and general apologies can be supported by individual recognition efforts, such as sending letters.

Often women face higher levels of domestic violence in post-conflict contexts. Guarantees of non-repetition, such as women's rights trainings or awareness-raising, can be useful. Non-repetition measures also have the ability to look into rooted causes of gender-based crimes, and giving a sort of satisfaction to survivors that their suffering wasn't inconsequential.

Access

Women often face issues unique to them when accessing reparation measures. For instance, lack of identification or other documentation, illiteracy, mobility restrictions are known to impact women in reparation programs. If the reparation is for survivors of sexual violence, there is also the risk of inability to access women as they would fear stigma and exposure, and perhaps pressure from their families and communities. This is true especially if reparation is tied to truth-telling, where many survivors could be deprived of reparations for not wanting to expose themselves out of fear or stigma.

Such possible challenges in access and distribution shouldn't mean that individual benefits shouldn't be provided to survivors of sexual violence. It only means that innovative ways of doing so should be explored, so that people who apply aren't stigmatized.

In Sri Lanka, the government created a special category entitled "mother alone", which distributed benefits to both mothers who were not legally married when their partners were killed or disappeared, and victims of sexual violence who bore children out of the rape. This way, women didn't have to expose themselves as a survivor of sexual violence.

IV. Reparations for sexual violence

Introduction

While conflict-related sexual violence (CRSV) isn't the only form of violation that women face in conflict and should be provided reparations for, it is a priority of reparation programs given its high prevalence.

CRSV has entered transitional justice and reparation discussions. However, few countries have actually implemented reparations for survivors of CRSV. Furthermore, CRSV is being seen as an isolated item, not as part of a larger agenda on gender-based violations and harm during conflict. Commentators rightly so point out that this over-focus on sexual violence carries the risk of an understanding that the worst violation that can be committed against a woman is sexual violence, which in turn leads to the sexualization of women and reinforcement of patriarchal norms which give weight to "purity" or "chastity" as a matter of honor. This is why sexual violence shouldn't be the only focus of reparation programs, but a part of a broader mechanism to address gender-based harm.

It's impossible to measure the harm inflicted by gross human rights violations. Any compensation amount that aims to pay the victims proportionate to their suffering will be insufficient, as the harm experienced has many dimensions. Instead of measuring, a focus on the types of violations and types of harm should be preferred. In CRSV, there are multiple physical and psychological primary harms that can be suffered, such as sexually transmitted diseases, unwanted pregnancies, unsafe abortions, trauma, or depression. Furthermore, there exists a certain level of social stigma and ostracism that accompanies surviving sexual violence, which constitutes the secondary harm experienced by survivors. This can have long-term effects such as being deemed "unmarriable" by the community, or being shunned, limiting life choices of survivors. The stigma can also lead to the survivor feeling ashamed and wanting to isolate herself from the community.

This means that reparation measures for CRSV must address both primary and secondary harms experienced by survivors. The Nairobi Declaration states, "In the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches." The transformative aspect of reparations play a critical role here, to help transform the stigma surrounding sexual violence. This doesn't mean that reparations should expose individual survivors, but should find a balance between recognition of the violation and harm done while addressing the stigma of sexual violence.

Key considerations for reparations for sexual violence

Gender and reparations expert Ruth Rubio-Marin gives ten principles to abide by when designing reparation programs for sexual violence, based on best practices and international standards.

1) Administrative programs: Using administrative programs rather than judicial proceedings simplifies the procedure, eases evidentiary standards, and protects survivors from the trauma of cross-examination. It could also be much more cost and time efficient.
2) Victims' and CSOs' participation: Societal involvement in the reparation process from start to finish, including design, implementation and oversight, increases chances of success. Consultations with survivors and CSOs who work with survivors are necessary to ensure that the reparative measures truly address the harm experienced by survivors.
3) Overcoming silencing, under-inclusion, undervaluation, under-specification: With CRSV coming to the forefront of reparation discussions in the past decade, steps have been taken to overcome silencing of CRSV crimes. However, CRSV crimes shouldn't be undervalued in a long list of violations and considered secondary and less grave than other crimes. The many forms of CRSV should be adequately incorporated in a reparation scheme without leaving certain crimes out to ensure that violations are adequately recognized. For instance, including rape alone, but excluding sexual slavery would point to a seriously inadequate reparation mechanism in Iraq. Finally, the various harms resulting from CRSV should be properly considered by differentiating between different violations, harms, and redresses.
4) Balance between visibility of CRSV and exposing survivors: While explicitly creating categories of CRSV helps with recognition and perhaps even contribute to overcoming stigma, this shouldn't amount to exposing individual survivors. There should be a balance between the two, which can have different forms in different contexts. For example, in Guatemala, survivors were referred to as "victims of rape" in state ceremonies and provided compensation checks. This is of course not preferable as it singles out survivors of sexual violence.
5) Bringing men to the fore: Men and boys also experience sexual violence. In the context of CRSV, men are usually subjected to sexual violence by other men, which is used as a form of humiliation by establishing masculine domination and feminine subordination. Tackling sexual violence against men and boys is a must for holistic reparation and could also help transform gender roles surrounding masculinity and femininity. Just as harm experienced by women cannot be reduced to sexual violence alone, sexual violence isn't a women's problem only.
6) Services: Provision of health services both physically and psychologically is critical to address the imminent harms arising from CRSV. These should be designed with specific attention to cultural norms in the country and community as well. Since widescale rape often results in children born of rape, which can lead to ostracism from the community, safe housing needs of survivors should also be considered.

7) Compensation: While services are critical, this doesn't mean that compensation shouldn't be provided. Compensation may be paid in lump-sum or as monthly installments. Monthly installments have been preferred in reparations for CRSV as it increases the chance of women to hold on to the money. Vocational skills trainings or grants for start-ups can also be considered as part of compensation. Compensation measures should also take into consideration the danger of stigmatization that may ensue from receiving checks that are addressed to "victims of rape", for instance.
8) Symbolic reparations: Material reparation without recognition or symbolic measures may be rejected by survivors of CRSV. This was experienced when the so-called "comfort women", who were sexually exploited by the Japanese army during WWII, asked for apologies together with compensation. Programs for survivors of CRSV should include individual or collective symbolic measures in addition to distribution of material benefits.
9) Collective reparations: Collective reparations for survivors of CRSV have the obvious benefit of preventing exposure of individual survivors and thus stigmatization. Accessing services that are designed as part of collective programs could ease access by women who fear being singled out. Collective symbolic measures, such as public apologies to survivors of CRSV, can similarly provide some relief without exposing individuals. Collective reparations may also have a transformative effect in overcoming stigma associated with sexual violence. Collective measures should also be designed with the input of survivors.
10) Non-repetition: Focusing on non-repetition for CRSV allows to explore the roots of violence and provides an opportunity to address them. Preventing impunity for sexual violence crimes is a must, as the stigma surrounding sexual violence will not be easily broken if perpetrators run free and sexual violence is still a common reality, abortion is illegal, or rape laws are outdated. Sexual violence is rooted in gender inequality and any measure aimed at its non-repetition should include tackling such hierarchies. In addition to legal reform, wider educational programs may be implemented for both security officers and the general public.

The UNSG Note

The United Nations Secretary-General issued a Guidance Note on Reparations for CRSV in 2014 that serves as a valuable tool for transitioning countries. It provides for eight guiding principles:

1) "Adequate reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations,"
2) "Judicial and/or administrative reparations should be available to victims of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies,"
3) "Individual and collective reparations should complement and reinforce each other,"
4) "Reparations should strive to be transformative, including in design, implementation and impact,"

5) “Development cooperation should support States’ obligation to ensure access to reparations,”
6) “Meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured,”
7) “Urgent interim reparations to address immediate needs and avoid irreparable harm should be made available,”
8) “Adequate procedural rules for proceedings involving sexual violence and reparations should be in place.”

V. Case study: South Africa

The impact of Apartheid on South African women was manifold. Men were transported to industrial areas to work in mines, while women were left in rural areas to take care of their families with no support. Other women had to leave their families to look for employment in urban areas. Sexual and gender-based violence was often perpetrated by security forces, including assault and electric shocks against pregnant women, inadequate medical care leading to miscarriages, rape, flooding of fallopian tubes with water, and various forms of psychological torture. Abortion was illegal and inaccessible.

The TRC was responsible for recommending reparations. Eight of the TRC’s 17 commissioners were women, some exhibiting more gender sensitive behavior than others. Women’s movements were not central to the creation of the TRC or the drafting of its legislation. They were more involved in the creation of the new Constitution and enacting legislation addressed at gender discrimination. Women’s organizations started asking TRC to address gender issues in 1996. However, many of the points raised by women’s groups weren’t adopted by the TRC. Still, women’s hearings were held, which allowed women to testify behind a screen. Some panels included women commissioners only. This increased women’s participation to the TRC process, with 55% of testimonies being provided by women.

In its final report, the TRC addressed gender issues in a short chapter, noting that “Many of the statements made to the Commission by women detail the violations inflicted on others— children, husbands, siblings and parents— rather than what they themselves suffered. Undoubtedly the violation of family members had significant consequences for women. However, women too suffered direct gross violations of human rights, many of which were gender specific in their exploitative and humiliating nature…. The TRC, in its final report, notes that many women who had suffered terribly underplayed their own experiences when talking about what happened to men.”

TRC recommended financial, symbolic, and community reparations. Among the violations recognized by the TRC were “the killing, abduction, torture or severe ill-treatment of any person”. “Severe ill-treatment” was interpreted to include rape and other forms of sexual abuse. However, the criterion to be covered under the reparation scheme was for the crime to be committed with a political motive, which left several women out of the scope of eligibility.

Furthermore, other forms of victimhood such as widowhood, loss of livelihood, and the impact of the sexual violence itself weren't covered. In fact, the TRC itself accepted that "the definition of a gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women".

Another problem arose from the distinction between primary and secondary victims. Secondary victims were defined as "relatives or dependents of primary victims", however, they were only entitled to reparation only if the primary victim had died. This meant that women whose relatives and dependents were tortured or injured had no recourse, neither for loss of income or for psychological suffering.

Finally, the TRC adopted a "closed list", meaning that only those who testified before the TRC were eligible for reparations. This excluded several victims who preferred not to testify for a variety of reasons, including fear and shame.

Issues arose during distribution of reparations as well. While monetary reparations were helpful, several women had problems over control of the money within their families due to patriarchal norms. Having a bank account was a prerequisite to receiving the compensation, which was unusual for poor people and presented further access issues for married women as they were considered as minors under customary law for certain commercial transactions. This meant several women had to use bank accounts belonging to male relatives, which made it harder to control the money. Many women were also illiterate and uneducated, causing issues in applying for reparation.

All "victims" received the same interim and final reparations, without consideration to the harm they suffered, whether it was short or long term. Women in urban and rural areas were also provided the same amount, although women in rural areas were usually poorer.
A positive aspect was that if the victim died, their spouses were provided first preference to receive the final reparation. Spouse was defined to include religious and customary marriages that were not legally recognized.

All in all, the reparation process in South Africa largely failed women, due to limited definition of victim, lack of consultation with survivors, and issues of access.

VI. Case study: Timor-Leste

Timor-Leste, also known as East Timor, gained its independence twice. First from Portugal in 1975, when up to 3,000 people died and thousands were displaced. After that, Indonesia invaded Timor-Leste, and the invasion lasted for 24 years. In that period, civilians suffered from gross human rights violations such as extrajudicial killings, forced disappearances, sexual slavery, rape, torture, and forced displacement. Over 100,000 people died.

The Indonesian army committed many sexual violence crimes against Timorese women and girls. Women were targets of sexual violence if they were part of the resistance movement or a civilian group. Militias and Indonesian security forces sexually enslaved women in military buildings, who were sacrificed for the safety of their community as “army mistresses”. Forced marriages were also a common practice.

The aftermath of the conflict had dire consequences for survivors of CRSV. They had no financial support, none from the Indonesian military men they were forced to marry either. Being a Catholic country, stigma surrounding sexual violence is very high. Poverty is a huge problem in the country which disproportionately impacts women.

The Commission for Reception, Truth and Reconciliation (CAVR) was established in 2002, during the interim UN government in Timor-Leste, and functioned until 2005. Its mandate was to uncover human rights violations committed from 1974 to 1999, support reintegration of perpetrators who committed minor criminal offenses though a community-based reconciliation program, and assist with rehabilitation of victims. It had no prosecutorial authority. Two of its seven commissioners were women.

Timor-Leste was praised for its gender-sensitivity during the transition period. Equal number of women and men were recruited as statement-takers, a special public hearing was held on women where 13 women spoke of their experiences, and a collaboration was established with a women’s rights NGO for six months on documentation. CAVR focused on sexual violence, and documented 853 reported rape and other sexual violence cases, 229 of which constituted sexual slavery.

Even though women’s participation was encouraged, due to gender roles in the society that kept women away from public activities, it was difficult for women to partake in CAVR activities. 21.4% of the 7,669 statements came from women who were witnesses or victims of human rights violations.

A Working Group on Victim Support was established under the CAVR to assist victims during truth-seeking, which in turn established an Urgent Reparations Program. Statement takers of the Urgent Reparations Program were asked to meet with victims to determine the most vulnerable victims to be provided with urgent reparation measures. 10 to 15 victims from each subdistrict were identified, based on severity of need, vulnerability, whether other services were available or easily accessible, whether the need arose from a past abuse, whether the urgency of the situation was obvious, and whether the assistance would help the person in a sustainable manner. Afterwards, the Urgent Reparations Program provided compensation to victims, referred them to existing services, held healing workshops, granted funds to local organizations that could serve the victims, and implemented a collective reparation program which was delivered together with three NGOs. The healing workshops provided a safe space for both men and women to discuss their experiences, and more than 50% of participants were women. One workshop was developed for women only.

Compensation amounts were the same for all victims, similar to that of South Africa. Two women's NGOs participated in developing a collective reparations program for women. Long-term reparation measures included planting vegetables, building a community education center, holding commemoration activities, and providing group counseling.

While the reparation scheme in Timor-Leste was progressive in terms of gender-sensitivity, the fact that reparations were tied to providing a statement hindered women's access to reparations. Furthermore, many of the CAVR's recommendations are yet to be implemented.

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DESIGNING REPARATION PROGRAMS

I. Key considerations for completeness

The OHCHR defines a complete reparation program as one which distributes benefits to all victims, although not necessarily in the same amount or type. “Completeness refers to the ability of a programme to reach every victim, i.e. turn every victim into a beneficiary.”

Victim does not necessarily mean beneficiary. A person who suffered from a human rights violation is a victim regardless of whether they receive reparation. However, only a victim who receives reparation is a beneficiary. The goal is to design a reparation program that allows every victim to be a beneficiary. Some aspects that affect completeness are:

1) Information: Having basic information about victims turns out to be crucial in the design of reparation programs. At the very least, information such as age, gender, family structure, links of dependence, level of education, level of income, type of work, the violations suffered and a brief account of the consequences of the violations. CSOs can play an important role in this.
2) Participation: In widespread human rights violations, or human rights violations directed at a specific group, victims may not be registered as such anywhere or at a single place. Victims may not feel comfortable enough to resort to the authorities to register themselves. Again, CSOs may have more information than state authorities and can assist with this process. Their active involvement is crucial for completeness. Furthermore, being active participants in the reparation process may have a healing effect by itself, turning victims into stakeholders.
3) Outreach: Outreach refers to not only disseminating information about an existing reparation program but also tools used to increase participation. This is why outreach should start long before the program actually starts. Illiteracy, mobility restrictions, and social injustices make outreach even more important. Outreach also includes assisting victims with applying for reparations, such as filling out forms, presenting documents, and providing evidence.
4) Access: To achieve completeness, access must also be easily achievable for all victims. Short deadlines to apply for reparation, requiring victims to apply in person (rather by proxy or post), and creating closed lists that victims must register to be considered as applicants all create hurdles in accessibility. Short deadlines are particularly risky for survivors of CRSV, as they be reluctant to come forward immediately.
5) Evidentiary standards: Administrative reparation programs usually have lower evidentiary standards than courts, which is why they are often preferred in cases of large-scale abuses. Requiring high standard of proof may leave many victims out. Police and other institutional records, media, NGO documentation may be used as evidence. Higher standard of proof may exclude a higher number of false claims, but it may also leave victims out of the program and preventing it from achieving completeness.

II. Identifying violations

Adopting a uniform definition of victim, such as the one included in the UN Basic Principles, is advisable at the start of the process. Still, a decision should be made on which violations to include in the reparation program. A program that includes all violations that occurred during conflict would be a complete program. No reparation program has achieved full completeness, however, since violations of rights such as freedom of speech or assembly have not been included. Usually, reparation programs focus on civil and political rights.

The decision to focus on certain violations is not entirely unjustified, as resources may be limited and a decision has to be made. What is important here is to provide a justification as to why such violations have been chosen, something that has been missing from most reparation programs. Usually, the chosen violations disproportionately exclude women and marginalized groups. Setting forth criteria used to choose violations could help identify gender and other biases.
If certain violations are committed against a certain group, excluding such violations would automatically mean that certain groups are excluded, preventing completeness. For instance, excluding sexual slavery from a reparation program in Iraq would undoubtedly exclude Yazidi women as a whole.

III. Identifying benefits

OHCHR defines programs that combine a variety of benefits as complex reparation programs. This involves including different modes of benefits in a single program, such as rehabilitation, compensation, and guarantees of non-repetition, both individually and collectively. Complex reparation programs will maximize resources. The maximum number of victims can be reached through a program that includes a variety of benefits. A complex program will also have the ability address different harms that can be caused by a violation.

A reparation program can be very simple, such as handing cash, or complex, by combining cash provision with health care and collective symbolic measures such as apologies. As it is generally accepted that money cannot repair everything, having a complex program may provide benefits to a larger number of victims, and also provide relief to non-victims who are part of a larger group, particularly in the case of collective symbolic reparations. For instance, Yazidis in Duhok may not have suffered from human rights violations as direct or indirect victims, although they are part of a collective (the Yazidi religious group) that survived genocide. A public acknowledgment of the genocide and apology could also target those Yazidis as well.

Symbolic measures can be individual, such as sending an individualized letter of apology to victims, or collective, such as building museums and memorials, renaming public places after victims, or establishing commemoration days and activities. Such measures undoubtedly aim at recognition, which is a significant objective since by making the memory public, they relieve victims of the obligation to keep the memory alive and assist them to move on. The

participation of CSOs in the design of symbolic measures is perhaps even more significant than other measures as representatives of the victims.

Reparation programs should also include health services. High levels of trauma and risk of disease (which is higher amongst victims) require both psychological and medical care for victims. Making existing health services available to victims is usually not enough. Firstly, victims usually have special needs that ordinary healthcare staff are not trained to satisfy. Secondly, victims of human rights violations experience things very different than others, which means that services for them should be tailored specifically. This includes not only psychological services, such as trauma healing, but also medical services, such as fistula surgery for survivors of CRSV. The quality of healthcare services usually depends on the existing healthcare system, since post-conflict countries cannot afford to establish new systems. The problems that may arise here can be mitigated by providing specialized staff to address victims.

Several forms of rehabilitation can assist with rehabilitating not only health of victims but also their civic status. Expunging criminal records, restoring identity cards and passports would support recognition of victims as rights holders and citizens. New systems can be put in place to address the needs of victims. For instance, spouses of the forcefully disappeared may not want to ask for death certificates, yet this may create problems concerning custody, marital and succession issues. In Argentina, surviving spouses were provided instead with certificates of absence by forced disappearance.

Collective reparations can be symbolic, as is the case with public apology, a measure which has proved effective in nearly all contexts. Collective reparations can also be material, such as when a school or hospital is built for the sake of a particular group. There is always the risk of collective material reparations being perceived as development programs that are directed at both victims and non-victims, which undermines the “recognition” purpose. Victims have the right to development programs not as victims but as citizens, which is why beneficiaries will rightly perceive them not in response to their victimhood. A solution here could be to prioritize the development needs of victim groups over others. Additionally, if the programs are shaped around non-basic services, the chance of being perceived as reparations by victims increases, as is the case with educational, cultural, artistic, vocational and specialized medical services that target special needs of victim groups.

IV. Identifying level of compensation

Governments may adopt various levels of compensation that are distributed as material reparations. The South African TRC had recommended a yearly grant of $2,700 for six years, although the government decided to make a one-off payment of less than $4,000. In Chile, a monthly pension of $537 was distributed, which was divided between different members of families. The rationale to set the level of monetary compensation can vary. Mean house-hold income for a family of certain numbers, salary of the highest paid government officials are rationales used in some contexts.

The criteria for just compensation is for it to be fair and appropriate. Fair means that both the context under which reparation is being distributed (i.e. the number of victims), and the limited resources that can be used are taken into consideration. Restitution in terms of compensation is not a standard applicable to widescale abuses, which is why absolute terms are hardly identified. Individually, fair means that reparation is distributed without discrimination among certain groups or victims. This doesn't mean that all victims should receive the same amount. It means that differentiation must be reasonable and justified. Appropriate means that both the form and modality of reparation should be suitable according to the harm, victims, violation, and the broader society.

While the goal of reparations is to acknowledge the victims' status as victims, they are also meant to recognize their status as citizens and rights holders, equal to other citizens. This way, civic trust can be achieved both vertically (between citizens and state institutions) and horizontally (between citizens).

V. Registering victims

ICTJ provides the following key recommendations for registration processes:

1) Learn from experience: Include government agencies, NGOs, CSOs with previous experience in dealing with mass human rights violations and which represent victims.
2) Avoid being legalistic: The registration team should be multidisciplinary. Not only lawyers but also communication, IT, data collection experts should be involved.
3) Use the design process to increase participation: The design process can create room for collaboration between the government, victims' groups, and CSOs. Feedback and input from victims and CSOs can shape the reparation process itself.
4) Do no harm: No undue administrative/financial burdens. Registering victims involves remembering and narrating traumatic experiences. The process should allow time and space for victims to register and PSS measures should be provided during the registration process.
5) Find ways to make registration itself reparative: The registration form and guidelines may acknowledge the victims and the harms they suffered. The registration process should at all times treat victims with respect and dignity.
6) Anticipate the use of the registration form: What info will be collected from victims while registering them? Why? How will that info be used and analyzed? If a reparation policy hasn't been finalized yet, the collected information may be used make policy decisions. Sometimes, a small pilot study may be conducted before moving on to a full registration effort.
7) Take poverty and marginalization into account: Registration process shouldn't impede access by vulnerable groups. Financial, logistical, emotional, and educational challenges must be anticipated, in addition to insecurity, fear, mistrust of authorities, concerns about stigma, and social/economic vulnerability.

A registration form usually includes the following:

1) Personal information
   - Identity of applicant/claimant
   - Name of victim and family members/beneficiaries
   - Age/date of birth
   - Occupation/source of livelihood
   - Gender
   - Status in relation to spouse/parent/child/other family member
   - Religion/ethnicity/language
   - Address
   - Banking information
   - Contact information
2) Eligibility related questions about violations and harms suffered
3) Questions on special categories of vulnerability
4) Questions designed to assess applicant's level of need
5) Questions on consequences of violations to determine which types of reparations the applicant is eligible for
6) Questions to determine amount of compensation
7) Questions about the perpetrator

VI. Identifying modes of distribution

Compensations may be one-off payments or paid in installments. While lump sum could be preferred to maximize individual choice, experience has shown that lump sum payments could create divisions within communities and families. It is also difficult to take control of a lump sum payment especially for female victims. Installments, or monthly payments, have proven to have more impact than one-off payments in the long term. Furthermore, monthly payments could be perceived more as reparations than lump sum payments, which can be seen as a price set by the government for the loss of a loved one or pain suffered by the victim.

Monetary compensation should be apportioned in accordance with preset percentages among family members. In Chile, the $537 monthly pension was apportioned between family members, such as, 40% to the surviving spouse, 30% to the mother or father, and 15% to each child of the disappeared until the age of 25 or for life if the child is disabled.

VII. Financing

Financing reparation programs in post-conflict societies, where the economy is often not at its best and there are a high number of victims, is understandably a big concern. However, experience shows that usually political constraints are as significant as economic ones. Even if

the country can afford a reparation program, the lack of strong and broad coalitions in favor of reparations could prevent even the very modest programs from being implemented.

One of two ways are usually used to finance reparation programs domestically. A special trust fund may be created, or a line can be dedicated in the yearly national budget for reparations. Oftentimes countries that used the first option fared worse than the second, perhaps due to lack of political commitment. Dedicating a budget line is a great way to demonstrate commitment.
Some other methods include:

1) Special taxes directed at those who benefited from the conflict or human rights violations. This was recommended by the TRC in South Africa, but never implemented.
2) Recovering illegal assets. The state may recover reparations it provides to victims from those who perpetrated the violations. For example, Peru used a portion of assets recovered from corruption for reparations. This doesn't mean, however, that reparations should be conditional upon recovering assets.
3) Debt swaps. Governments may negotiate deals where international lenders may agree to cancel portions of debts on the condition that the same amount is used for reparatory programs. Peru was able reach such agreements.

VIII. Case study: Germany

Introduction

In the 1990s, a number of people started filing class action lawsuits in the US against the Government of Germany and German companies to collect financial compensation for the violations they were subjected to by the Nazi regime. Between 1998 to 2000, stakeholders including governments, companies and victims negotiated the possibility of a compensation program directed at survivors of forced labor and slave labor and their heirs. The Foundation Law, establishing the Remembrance, Responsibility and Future Foundation (EVZ Foundation) in charge of the reparation program, was enacted on August 12, 2000. The Law included the recognition on the part of the German State and German companies of the historic and moral responsibility for the "severe injustice [committed] on forced laborers, through deportation, internment, exploitation which in some cases extended to destruction through labor, and through a large number of other human rights violations".

Structure

The EVZ Foundation, based in Berlin, would be in charge of main coordination of the program. The implementation, however, was done by partner organizations that processed claims, decided on eligibility, and carried out payment. The partner organizations were:

1) Belarus: National Foundation “Understanding and Reconciliation,” also responsible for Estonia
2) Czech Republic: “German-Czech Future Fund”
3) Poland: Foundation “Polish-German Reconciliation” (FPNP)
4) Russia: National Foundation “Understanding and Reconciliation,” also responsible for Latvia, Lithuania, and so-called CIS states
5) Ukraine: National Foundation “Understanding and Reconciliation,” also responsible for Moldavia.
6) Conference on Jewish Material Claims Against Germany (JCC) for Jewish claimants worldwide, except those living in the countries named above
7) International Organization for Migration (IOM) for non-Jewish claimants worldwide, except for those living in the countries named above.

IOM’s designation as a partner organization in this program made IOM the first permanent international organization directly engaged in the implementation of a large-scale reparations program.

Eligibility

The Foundation Law provided two main categories of eligibility for compensation. Category A included beneficiaries who performed forced labor and were detained in a concentration camp, ghetto, or other place of confinement with inhumane conditions of detention, insufficient nutrition and lack of medical care. These survivors were eligible for 7,670 Euros. Category B included all persons who were deported from their home country, kept in detention, detention-like or comparable “harsh living conditions” and forced to work, including all types of work except in agriculture and households. Category B survivors were eligible for 2,560 Euros.

These two categories left out a considerable number of victims, which is why the eligibility criteria were expanded. Category C allowed partner organizations to allocate certain amounts of money to eligibility categories they could establish by themselves in each context. This category was included thanks to the participation of victims’ groups in the negotiation phase.

As for heirs, the Foundation Law provided that “In a case where the eligible person has died after February 15, 1999, (…) the surviving spouse and children shall be entitled to equal shares of the award. If the eligible person left neither a spouse nor children, awards may be applied for in equal shares by the grandchildren, or if there are no grandchildren living, by the siblings. If no application is filed by these persons, the heirs named in a will are entitled to apply.”

Funding

While the victims’ groups preferred to start fundraising based on the number of potential beneficiaries and the severity of their suffering (bottom-up), the German negotiating side, the

ones who had to provide the funds, centered this question on how much funds they can rise in the first place (top-down).

It wasn't feasible for German companies to provide continuous funding to the program, which is why it was decided that the fixed fund would be collected only once. The agreed sum was 5.2 billion Euros, which the German State and German companies would equally share. The German State was able to pay this amount from its national budget, while it proved more difficult for companies. At this time, media played a key role as they exposed companies that profited off of slave labor but didn't contribute to the fund.

The amount raised for compensation was divided between the seven partner organizations very early in the process. A positive implication of this was that each organization could work at its own speed and according to its own capacity, since the funds were already secured. On the other hand, some of the estimates turned out to be inaccurate, and Category C victims were usually compensated according to funds available within the partner organization.

Outreach

Outreach to access potential claimants was to be handled by partner organizations directly, although the EVZ Foundation also conducted some outreach activities. In Poland, where the number of people who were subjected to forced labor and slavery were very high, victims started contacting the national partner, the Foundation for Polish-German Reconciliation, very early in the process. The Foundation thus established an information center that would be the first point of contact for victims. It would handle contact with media, dissemination of information, collaboration with victims' associations, receiving claims, and corresponding with claimants and their families. Additionally, the Foundation started an information campaign, primarily through mass media channels, where information on how the forms should be completed and when the deadlines are were disseminated. The national partner's database already held a large list of victims due to its previous activities, who were sent claim forms, in addition to other organizations that worked with victims.

IOM's work was even more difficult, as it had to reach non-Jewish victims globally, except for the Eastern European countries covered by national partners. Unlike Poland, where there were pre-existing data on the number, location and profile of victims, there were little knowledge about IOM's target group. IOM thus established its own sub-program, entitled the German Forced Labor Compensation Program, and informed general public, national governments, and victims' associations, thereby obtaining initial data about the size and location of potential claimants. Then, a global public information and outreach campaign was launched to disseminate a one-page public service announcement through country offices, German embassies, and Permanent Missions in Geneva. Thereby, 46 core countries were determined. Mainstream media was used to disseminate information, and collaborations were established with victims' associations, international organizations, national governments, and so on. The

outreach campaign included 1,400 printed newspaper ads in 40 countries, 40 press conferences in 30 countries, 24 published press releases, and a webpage.

Processing and resolving claims

The partner organizations were in charge of implementation, while the EVZ Foundation provided guidance and oversight. A claim form was designed that had to be suitable for mostly older claimants across languages, countries and cultures. Then, both national partners and JCC/IOM categorized the data received in their database. Review committees involving both the partners and the EVZ Foundation reviewed the claims.

The program applied relaxed evidentiary standards. They were verified either by documentary evidence, through external archives, or by being found credible. Later on, the EVZ assisted in setting up a process where partner organizations could match claims against the information contained in the International Tracing Service in Germany, the largest archive of Nazi documents and records.

Payment

The German forced labor compensation scheme remains one of the largest compensation schemes implemented in history. The partner organizations together paid 4.34 billion Euros to a total of 1.66 million beneficiaries.

The payment was made in two installments since although the funding allocated to each partner organization was fixed, the exact number of beneficiaries were unknown until later stages. Partner organizations established partnerships with banks in their countries, while IOM used checks through an international bank. Payments continued until the cut-off date, which was later determined as December 31, 2006.

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MODULE 6: TRANSITIONAL JUSTICE AND CIVIL SOCIETY

INTRODUCTION

I. Transitional justice and civil society

Civil society is a sphere of various self-established groups and institutions. CSOs can be in the form of mass media, non-governmental organizations (both local and international), mass movements, community-based organizations, academic institutions, student groups, trade unions, business associations or religious groups.

CSOs have played a crucial role in transitional justice processes around the world. They are instrumental in both conveying demands of the local population and ensuring international standards are followed throughout the process.

II. Significance of civil society

Civil society plays a great role in transitional justice. First and foremost, CSOs can bridge the gap between state institutions and the people. In post-conflict societies, state institutions usually lose legitimacy, which makes it harder for them to gain people's trust and access the people themselves. CSOs can increase the reach of state institutions. Furthermore, CSOs can contribute technical knowledge and fill the insufficient capacity of state institutions in this process, bringing expertise onto the table.

Concerns over state legitimacy can also impact state institutions' capacity to manage transitional justice mechanisms. This is the case especially when the state itself is responsible for violations, and is considered not credible in the eyes of the public. CSOs then can step in as credible actors and assume leadership positions, particularly those CSOs who have a certain level of credibility in the eyes of the public due to previous work.

Post-conflict states may have deficiencies in their ability to provide public services. CSOs which engage in development work usually have better access to marginalized or overlooked communities, which can be utilized in the transitional justice process.

In the aftermath of conflict, CSOs undertake vital roles such as international/domestic advocacy, pursuit of justice, or peacebuilding. The know-how and network developed through these activities allow CSOs to play a significant role in the transitional justice process as well.
Very importantly, transitional justice is a long-term, ongoing process that needs oversight and critique to ensure that measures are on the right track. CSOs fulfill this critical role by monitoring state activities.

III. Types of CSOs in transitional justice

While certain CSOs emerge during transition periods to work specifically on transitional justice, most of the important actors are pre-existing CSOs with a certain focus that contribute to the transitional justice process according to their capacity and expertise. The most common eight types of CSOs in transitional justice processes are as follows:

1) Human rights NGOs: Human rights NGOs traditionally fulfill the very important role of documenting human rights abuses and advocating for justice. With the development of transitional justice, these NGOs have extended their efforts to other areas, such as reconciliation. They are also important actors to ensure accountability where transitional justice processes fail.
2) Peacebuilding NGOs: Peacebuilding NGOs focus on the underlying causes of conflict and aim to transform conflict into peaceful relations. These can take the form of national, local or community level reconciliation.
3) Psychosocial/medical NGOs: These NGOs play a significant role for victims and their participation in the transitional justice process. They can remedy the lack of state-provided support services for victims as well, such as individual or group counseling, or even technical assistance in exhuming mass graves.
4) Gender NGOs: Each transitional justice mechanism must be gender mainstreamed to ensure that vulnerabilities particular to women and LGBTI+s are taken into consideration. Gender justice NGOs ensure this. They can provide expertise to transitional justice mechanisms when the abuses are gender-based, as in the case of the sexual enslavement of Yazidi women. They can also help bring to light ignored implications of gender in conflict, such as the case of widower's pension.
5) Victim organizations: These organizations are collectives constituted on the basis of abuses suffered by certain people. For instance, an organization for survivors of conflict-related sexual violence, or an organization for Yazidi survivors of genocide. They represent the victims vis-à-vis the state and provide perspective to policy debates.
6) Social movements: Transitional justice can be quite technical and difficult for the people to grasp, which is why outreach of developments surrounding this process is crucial. Social movements serve this role by emphasizing concerns of the people in a language accessible by everyone. They can be very effective in mobilizing the people. An example is the "Manich Msamah" campaign in Tunisia.
7) Religious organizations: Religious organizations often have promotion of peace as part of their mandate. They are known to have played an important role in transitional justice processes due to their privileged position and sense of legitimacy in the eyes of parties to the conflict. Nevertheless, religious organizations can also be detrimental to the process if religion itself was source of conflict.
8) Coalitions: The above-mentioned types of CSOs can work independently, or as part of a coalition. Such collaborations are very useful to strengthen the stance of civil society and present a united front. Nevertheless, it can prove very difficult as different CSOs have different perspectives and ideologies on transitional justice, and may not agree on methods or objectives.

IV. Role of CSOs in transitional justice

Various roles played by CSOs in transition periods are listed into eight groups here. These are not exhaustive, but merely examples of more dominant trends.

1) Mobilizing action: Transitional justice usually starts with a demand for democratization. CSOs play a huge role in mobilizing people around the demands for democratization, justice, and peace, as well as specific objectives of transitional justice. After the conflict is over, governments may not have the political will to undertake such efforts due to fear of renewed conflict. They may be too tired to do so, or they may have other priorities. CSOs advocate for transitional justice to be taken seriously. They remind the state that these are not issues to be forgotten. CSOs both shame the state into taking action and open up fora for people to publicly debate transitional justice related issues.
2) Advocacy: CSOs may advocate for particular demands or mechanisms, such as a truth commission to be established, or for mass graves to be exhumed. Advocacy targets may be reached directly through meetings, or through public advocacy strategies. These may involve mobilizing the people, such as protests, confrontation, media engagement, or social media campaigns. More official methods such as petitioning, litigation, organizing conferences or seminars for information exchange, or networking meetings may also be used. Strategies would differ according to the context and political climate of the country in which CSOs operate.
3) Monitoring: Once transitional justice mechanisms are established, their operations require proper oversight to ensure that they are not falling short on their duties or becoming compromised due to lack of state interest or political interference. CSOs have been very successful in monitoring activities of transitional justice mechanisms and ensuring that they operate fully, transparently and in accordance with human rights principles.
4) Official support: In post-conflict countries, the state may not have the necessary capacity to perform all duties related to transitional justice mechanisms in an adequate and just way. CSOs can assist with this. For instance, CSOs may collect victim and survivors' testimonies, provide PSS, conduct community outreach programs, engage in public surveys and research on transitional justice, or assist with exhumations and other investigative procedures.
5) Public engagement: CSOs provide platforms for the voice of the people, especially the most marginalized, to be heard. They are key factors in developing a participatory, victim-centric transitional justice process.
6) Service provision and victim support: In post-conflict countries where state-provided services are lacking, CSOs play an important role in providing psychosocial services to victims, survivors, and the general public who may be traumatized due to conflict, offer medical care, or legal assistance. Victim support becomes critical during traumatic events such as exhumations or providing testimonies, where CSOs offer a great deal of support to victims.
7) Peace-building, reconciliation and development: CSOs may address underlying causes of conflict and aim to transform relations through national, local or community level

interventions. Similarly, CSOs can play a role in development. Lack of public services and development are often reflective of the roots of a conflict, as well as one of its consequences. CSOs with a focus on development and provision of public services such as healthcare or education can highlight the importance of socio-economic rights in the transitional justice process.

8) Truth telling, commemoration and memorialization: CSOs open up platforms for victims and marginalized communities to tell their stories. They engage in commemoration and memorialization work to help create inclusive spaces. These become especially valuable when formal transitional justice mechanisms, such as truth commissions, limit the stories to be heard due to restrictions of time or mandate.

V. Case study: Rwanda

Introduction

In the aftermath of the Rwanda genocide in 1994, the ICTR was established on an international level to try the high-level commanders of the genocide, while lower ranking perpetrators were left to be dealt with in conventional courts. The genocide had led to death of nearly half a million people, among them judges and other judicial staff. The task to try the perpetrators of the genocide after such destruction was proving extremely difficult. In 1998, there were 130,000 prisoners in prison space designed for 12,000 people. This was causing inhumane conditions and led to the death of thousands of people.

Conventional courts started trying perpetrators of the genocide in December 1996. In 1998, they had only tried 1,292 cases. At this pace, genocide trials would continue for over 100 years. Instead of resorting to the international community, the Rwandan government decided to open up community-based courts to try suspects of genocide, called the “gacaca” courts (gacaca literally means “grass”). These were local dispute resolution mechanisms that usually heard small claims such as land disputes or disputes between neighbors. It was a controversial decision at the time to hand over genocide cases to these courts, as they were run by judges with often no legal training, and were thought to be incapable of handling cases of such magnitude.

Gacaca courts

The gacaca courts were launched in June 2002. They have since been a much-discussed transitional justice mechanism as both an innovation in the field and as a grassroots attempt to solve one of the biggest problems of post-conflict countries. They aimed to speed up the trials, contribute to the fight against impunity, show the capability of Rwandan people to solve their own problems, and promote reconciliation.

The jurisdiction was divided into 12 pilot areas, where an information gathering phase commenced. Judges collected information from community members in each of these areas on

the events that took place from 1990 to 1994, made a list of victims and suspects, and divided the suspects into four groups according to the alleged crimes committed. The first category involves the planners and organizers of the genocide and those who committed sexual violence, the second category concerns those who committed murder, the third category is for other serious violence to individuals, and the fourth category is for those who damaged property. First category cases were handed over to conventional courts, with the gacaca tasked to try the remaining three categories.

When the law on the gacaca was first proposed, rape was under category four, together with damage to property. Rwandan women organized with the assistance of women's rights NGOs, inviting female parliamentarians to speak with survivors for them to understand the impact of rape and the severity of the crime. Afterwards, women organized a protest march to the capital of Rwanda. This caused rape to be re-classified under category one, together with the organizers of the genocide. This is one example of the vital role civil society, and in particular,

The gacaca courts started trials in 2005, and completed their first-degree trials in 2010. They were able to complete over 1.2 million cases. They received mixed reviews. Many people said the courts contributed to reconciliation and truth-seeking, and that they were able to find the remains of their loved ones and bury them with dignity. They contributed to the fight against impunity by bringing several thousand perpetrators to courts. However, there were also severe concerns regarding the right to fair trial. The limitation on being represented by a lawyer, allegations surrounding the impartiality of judges, judges with insufficient legal training, witness intimidation, and corruption were some valid points raised against the gacaca courts.

Gacaca courts and civil society

CSOs weren't consulted when the gacaca courts were first being established. Only a few "wise men" were involved in the discussions. Civil society played an important role after the gacaca courts were established, in both raising concerns over certain aspects of it and reaching out to the community.

When the gacaca courts were first established, there was a level of general mistrust towards the idea. Many groups within the society didn't have sufficient information. Survivors didn't trust the courts and doubted that the perpetrators would make true testimonies, while others thought this might be a good approach to reconciliation. The prisoners doubted the ability of gacaca courts to deliver fair judgments and feared this was merely a way to make them confess. Civil society played an important role in helping the community overcome these fears and bring

credibility to the courts. When the judges were being elected for the gacaca, women's rights groups held protests saying "truth heals" to encourage women to participate in the elections. Churches played an important role in encouraging prisoners to take part in the gacaca trials, confess their actions, and ask for forgiveness.

Civil society in Rwanda undertook the vital task of researching and monitoring activities of gacaca courts too. A coalition of five Rwandan human rights organizations observed the election of judges for the gacaca courts and then moved on to monitor the activities of the courts, while also developing resources and manuals on how to undertake monitoring activities. They provided recommendations on how to improve operations.

CSOs organized an advocacy strategy that had a huge impact on the transitional justice process. A network was established, which included local and international human rights NGOs. They met four times a year to discuss their activities, observations on the process and how to improve it, and provide recommendations.

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VICTIM PARTICIPATION AND REPARATIONS

I. Ensuring victim participation

ICTJ suggests that ideally, participation should include,

1) Effective representation that recognizes complexity and builds capacity,
2) Information, knowledge and capacity sharing between the state and victims, and
3) Meaningful and transparent impact.

Still, victim participation bears risks, and may contribute to the success or failure of reparation programs. Policy making by the government may not accommodate victims' participation, which often happens by imposing certain time frames for policy development. Victims' groups and other CSOs may not have the necessary resources, technical/legal skills or organizational capacity to contribute to policy-making efforts. These risks require a well thought approach on how to maximize victims' participation both directly and through CSOs, which facilitates their participation. Otherwise, victim groups may leave feeling ignorant or inadequate. Respectful, transparent, and knowledgeable participation would support the feeling that victims are recognized as citizens and right holders. This may by itself have a reparatory effect, especially if the victims are marginalized or vulnerable groups. Interactions with state institutions during this process could help understand the causes of conflict and by itself lead to a guarantee of non-repetition.

II. Managing expectations

While victims' participation is crucial and should be supported at all phases, victims aren't the only actor in reparation processes. Policy decisions are based on many factors. Victims may not be the only voice for some policy decisions, and may not even be appropriate for certain decisions at all.

Victims will often have maximized demands from reparation programs, although this usually doesn't translate into policy. Victim groups should have a realistic understanding of what reparation programs are capable of, and what they can and cannot accomplish. At the same time, victims should be strategic about their demands and expectations so as to identify their priorities within a larger agenda. While playing a key role in maximizing victims' participation, CSOs should also assist with managing expectations of victims from a reparation program.

Demands from reparation policies should look beyond the current status of victims and thus avoid limiting expectations and reparation policies to address urgent or current needs only. Less immediate demands should also be considered. For instance, many Yazidi survivors voice that their only demand is the rescue of those still in captivity. This shouldn't mean that the only reparation program should be satisfaction, but other measures, such as compensation and rehabilitation, should be taken into consideration while shaping demands from reparations.

III. Identifying victims and representatives

Victims and their representative CSOs are various, and often politically marginalized, under-funded, and lacking strong structures. Several victims don't belong to a certain CSO. Even when representatives are identified, there may be no clear incentive or capacity to establish joint efforts. For instance, in Peru, national coalitions were built to unify efforts and strengthen civil society actors demanding reparations. These coalitions quickly dismantled, demonstrating difficulties in joint action. Nonetheless, even a single joint program or event was important.

Identifying victim organizations to ensure participation presents other challenges as well, for instance, tensions between organizations based on different demands, cultural differences or political tensions. It isn't easy to overcome these differences and present a harmonious front vis-à-vis government institutions. Oftentimes governments tend to link with organizations that are politically close to them, which gives the impression of participation without actually being inclusive. Or, the largest and loudest organizations may be selected to protect the government from public criticism. This surely contradicts the objective of establishing a holistic and inclusive program and leads to further marginalization of minority groups.

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CIVIL SOCIETY AND REPARATIONS

I. Coming up with a common conceptual framework

Developing a reparations policy inherently involves coming up with a joint decision. Still, this doesn't mean that interests and demands aren't diverse. There is often no single conceptual framework among CSOs, which may not be involved in large-scale reparation efforts before. Similarly, the government may not have experience in dealing with such issues and may lack the important symbolic and subjective elements required for a reparation policy.

Having a clear conceptual framework shaping the reparation debate that is established through agreement of different actors is crucial in setting priorities and channeling efforts accordingly. It provides a shared vision of what reparation means, as well as where it's located in the larger transitional justice agenda. Allies of the reparation process can strengthen their position and provide a united front through consensus building. This may in turn increase impact of advocacy and lobbying efforts.

II. When to participate?

Commentators highlight three moments when participation is key:

1) Articulating the reparations agenda,
2) Supporting policy-making,
3) Implementation and oversight.

Articulating the reparations agenda

Discussions surrounding reparations commence with a larger debate on human rights violations and justice. These are key moments to help shape the reparation debate with a focus on violations, victims, harms, and possible redress, and influence future steps. In particular, feminist organizations' involvement in the process from the beginning can provide a gender-sensitive perspective and avoid exclusion of gender-based crimes.

Outreach efforts at this phase should include informing victims of their right to reparations, and start way early in the process given the high number of victims and possible difficulties that may arise in reaching them. Furthermore, such programs should aim to explain what kind of reparation benefits may be available to manage expectations and convey what reparation entails. For instance, reparations in Iraq are usually perceived as compensation. Outreach programs should include information on other forms of reparation, such as collective reparations, which may not be self-evident.

Supporting policy-making

Policy-making on reparations requires input from victims to ensure that proposed measures correspond to the interests of victims and are perceived as adequate by them. Participation at this stage can have great impact, although the danger of creating unrealistic expectations is also present.

Firstly, policy-makers should know the experience, situation, and needs of victims. These consultations should initially be conducted with victims themselves, through direct testimonies. While victims may not be in a position to provide policy recommendations, they are well-placed to talk about their experiences and expectations. Consulting merely on the violations isn't enough. Further consultations should be conducted to determine whether the proposed redress would have reparative meaning for the victims. As part of outreach strategies, workshops with victims and representatives on violations, harms, needs and expectations, joint statements and submissions have proved useful in different contexts.

Implementation and oversight

Implementation is usually when victims' reasonable expectations are frustrated by inaction or inefficiency. Implementation requires individual delivery of benefits to victims, which is complicated by institutional capacity challenges and the need to incorporate symbolic measures in addition to material ones. Implementation is a good measure to understand how meaningful victims' participation has been, and how much their demands have been heard as to what would be an effective way to approach them.

Consulting victims as implementation efforts begin, and providing information as to the victims and their needs, are two strategies for participation at this stage. Collective measures should be shaped with consultations with community members, which should reflect the inner diversity of the group without excluding the marginalized.

CSOs here can play an important role in overseeing implementation, consulting with victims, and providing feedback on how to improve the procedures' effectiveness and quality.
CSOs have also contributed to the implementation of reparation programs directly, as decision makers and implementing partners. This doesn't mean that CSOs should bear the primary responsibility of an effort that is the duty of the state. CSOs may participate as implementing bodies, although this decision should be made both strategically and from a practical standpoint.

III. Case study: Argentina

Argentinian law recognized only three categories of persons: the living, the dead, and the presumed dead. Relatives of the missing didn't feel comfortable with presuming their loved ones are dead, while lack of legal recognition of the status of the missing caused hurdles in terms of property, marriage, or inheritance. CSOs in Argentina lobbied for a legal category of "disappearance" that didn't presume death. Furthermore, they advocated for the enactment of

the compensation law that provided reparation for relatives of the missing. Through this effort, families of victims were able to claim compensation without legally declaring their loved ones were dead.

During the final years of the military junta, documents related to the missing were destroyed, which meant that official documents relating to a victim's detention, kidnapping, or murder were non-existent or difficult to obtain. CSOs lobbied for a more relaxed standard of proof for claiming reparations in light of these difficulties. They also engaged in documentation efforts, providing a source of evidence for victims to claim reparations.

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ADDITIONAL MATERIAL

The International Center for Transitional Justice often publishes articles or reports on both best practices and current developments regarding transitional justice: ICTJ, "Publications", https://www.ictj.org/publications.

The University of Oxford has a Transitional Justice Podcast that includes speeches on different current topics by experts on transitional justice: University of Oxford, "Transitional Justice Podcast", https://podcasts.ox.ac.uk/keywords/transitional-justice.

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