

BOOK REVIEW

Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, New York, Cambridge University Press, 2009, ISBN-13 9780521517928, 416 pp., \$99.00 (hb).
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The right to reparations for victims of human rights violations has been recognized progressively by state practice and by the jurisprudence of international tribunals in the last decades. Moreover, there is an increasing number of scholarly works and publications dedicated to this issue.¹ However, the following questions still arise: have reparations programmes adequately taken into account the unique experiences of women and girls? If this is the case, what were the measures taken? Were these measures implemented? Were they successful in achieving their goals? What were the obstacles?

The book under review proposes to deal with these questions. As the editor, Ruth Rubio-Marín, explains in the introduction, ‘the book seeks to lay the foundations for a gender-sensitive analysis of reparations programmes that would increase their effectiveness as redress measures available to female victims and their families’ (p. 3). Readers may wonder why this analysis is necessary. One of the answers suggested by the contributors is that even though women are frequently victims of violence during conflicts and, in spite of their crucial role in the aftermath, either re-building their families and communities or claiming justice, their particular experiences are often ignored by reparations schemes that adopt a so-called ‘gender-neutral’ approach.

This work is the result of a three-year research project undertaken by the International Center for Transitional Justice and draws extensively on a previous publication edited by Pablo de Greiff, *The Handbook of Reparations*.² The volume is divided into eight chapters and is headed by an introduction which sets the tone of the contributions that follow. As the editor describes, the first part offers the normative framework, while the second focuses on specific topics, such as reparations

1 See, e.g., P. De Greiff (ed.), *The Handbook of Reparations* (2006); K. De Feyter, S. Parmentier, M. Bossuyt, and P. Lemmens (eds.), *Out of the Ashes: Reparations for Victims of Gross Violations of Human Rights* (2006); C. Ferstman, M. Goetz, and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* (2009).

2 De Greiff, *supra* note 1.

for sexual and reproductive violence, for girls and boys during situations of violence and conflict, and for families and communities. The third and final part deals with types of reparations, such as microfinancing, memorials, symbolic measures, and collective reparations.

The concept of gender, undoubtedly key to this analysis, is discussed at the beginning of the book. The editor explains that, even if the term does not refer solely to women, gender issues usually involve the inequality of access, opportunities, and rights experienced by them (p. 4). She nonetheless observes that in spite of adopting this notion of gender, most of the contributors have also identified patterns and notions of masculinity that can have a bearing on reparations programmes. In fact, in chapter 2 ('The Gender of Reparations in Transitional Societies'), Rubio Marín herself asserts that 'the prevailing cultural definition of masculinity and femininity in a given society may translate into different harms for men and women' (p. 97), and thus this diversity needs to be taken into account by reparations schemes.

Whereas the issue of reparations for women is frequently connected to crimes based on sexual violence, it should be underlined that this publication does not focus solely on sexual violence, but rather on women as victims and beneficiaries of reparations and the obstacles they encounter. Notwithstanding, the specific issue of sexual and reproductive violence is examined in depth in the chapter by Colleen Duggan and Ruth Jacobson ('Reparations of Sexual and Reproductive Violence: Moving from Codification to Implementation'). Of particular interest is their argument that in certain social, cultural, or religious contexts, sexual and reproductive violence produces a 'domino effect' on women which causes further harm and increases the effect of the crimes suffered (pp. 130–1). This domino effect also includes a 'vertical intergenerational impact' on children born of rape or sexual slavery, who suffer from social stigma (p. 137).

Central to this volume is the notion that reparations programmes have the capacity to help societies move towards more inclusive and egalitarian democracies, and that, indeed, this should be a goal of every reparation programme (p. 3). In this regard, when dealing with the suffering of women, it is necessary to go beyond a backward-looking notion of reparations that only redresses past crimes, and include measures which face the *status quo ante* that allowed the commission of those crimes. Along these lines, Margaret Urban Walker ('Gender in Focus: A Background for Gender Justice in Reparations') maintains that violence suffered by women in conflict is a continuum of everyday violence which escalates beyond normative bounds, or what she calls gender-normative violence against women (p. 31).

Moreover, this transformative notion of reparations entails that the situation existing prior to the conflict is also an obstacle to obtaining reparations in the aftermath. Indeed, in many societies, women are second-class citizens who are not entitled to own or inherit property or even open a bank account. On this point, Duggan and Jacobson note that designers of reparations programmes should bear in mind that patriarchal societies often undermine the possibility of women having access to pecuniary compensation, and thus devices other than lump-sum payments should be considered (p. 143). This idea is developed in detail by Anita Bernstein ('Tort Theory, Microfinance and Gender Equality Convergent in Pecuniary Reparations'),

who proposes that the transfer payment of pecuniary reparations take the form of shares in a microfinance institution which ‘provides financial services . . . to customers who would normally be considered too poor for a bank to profit from serving them’ (p. 305).

Another main theme present in this work is the participation, or lack thereof, of women in the design and implementation of reparations programmes. For example, Brandon Hamber and Ingrid Palmay (‘Gender, Memorialization and Symbolic Reparations’) underscore that this is critical in order to design meaningful symbolic measures that resonate with those whose wrongs they intend to redress (p. 380). In the same manner, Dyan Mazurana and Khristopher Carlson (‘Reparations as a Means for Recognizing and Addressing Crimes and Grave Violations against Girls and Boys during Situations of Armed Conflict and under Dictatorial Regimes’) point out that nearly all truth commissions under study ‘have failed to consult with child survivors or with organizations dedicated to children’s rights’ when designing reparations schemes (p. 176).

The procedure for granting reparations is discussed in many parts of this volume. Rubio-Marín observes that the current trend seems to be for truth commissions to be in charge of recommending reparations for victims, and that this procedure is more suitable to address situations of mass violations of human rights. Nonetheless, in the majority of cases, these commissions lack sufficient power to implement fully their recommendations. This situation, coupled with the already existent structural obstacles faced by women, makes the implementation of reparations especially difficult. However, even if the emphasis of the research is placed on administrative reparations programmes, the book also includes an in-depth comparative study and thorough examination of the jurisprudence of the European and the Inter-American Courts of Human Rights on reparations for family members. Ruth Rubio-Marín, Clara Sandoval, and Catalina Díaz (‘Repairing Family Members: Gross Human Rights Violations and Communities of Harm’³) begin with the premise that violations of human rights create ‘communities of harm that include all those people emotionally tied to the victims or in a relationship of codependency with them’ (p. 215). Therefore they examine the extent to which these individuals have been recognized in reparations programmes as beneficiaries or as victims themselves. Their research does not focus on gender or sex-based violence, but on cases of arbitrary detention, extrajudicial killing, torture, and forced disappearance. They note that even if the Inter-American Court has interpreted the notion of next of kin in a more progressive manner than its European counterpart, and has awarded reparations for both pecuniary and non-pecuniary damages, it has not yet adopted a clear gender perspective.⁴

3 The chapter also includes a study of the practice of states which have adopted reparations programmes, such as Argentina, Chile, South Africa, Peru, Guatemala, and Sierra Leone.

4 Notwithstanding, the authors mention *Aloeboetoe v. Suriname*, where the Inter-American Court referred to the domestic law, the traditional Saramaka custom of awarding reparations to successors, but asserted that it did not make any distinctions between men and women, even though contrary to Saramaka custom, seeking to balance respect for cultural values with the right of women not to be discriminated against on the grounds of their sex. It is worth noting that in the recent case *Pérez Torres et al. v. Mexico* (‘*Campo Algodonero*’), Judgment of 16 November 2009, Series C No. 207 (in Spanish only), the representatives of the victims referred to the crimes committed in Ciudad de Juarez against women as a ‘femicide’, but the Court chose to use

The different reparations measures designed for women are also analysed in the book. As examples of symbolic reparations measures, Hamber and Palmary include official apologies, the changing of names of public spaces, the establishment of days of commemoration and the creations of museums, parks, and monuments dedicated to the memory of the victims. Also applying a case-study methodology, these authors observe that women's experiences are 'often eclipsed in the design of measures which frequently draw on the assumption that women were not involved in conflict and privilege men's actions' (p. 337).⁵ Rubio-Marín ('Gender and Collective Reparations in the Aftermath of Conflict and Political Repression') deals with collective reparations understood as redress measures for violence inflicted on individuals because of their membership of a certain group or as a response to group-based violence (p. 385). In this regard, she examines whether women can be considered as a distinct group, and thus a potential beneficiary of collective reparations. As examples of collective reparations, she proposes sensitization campaigns regarding women's human rights and the training of armed or police forces and legal reforms to remove traces of discrimination against women (p. 395).

The notion of transformative reparations underpinning the book, although ambitious, is commendable and indeed necessary. Designers of reparations programmes should bear in mind the principle of non-discrimination⁶ and aim at granting redress measures for women which also confront the structural inequalities of the communities in which they live. In addition, reparation schemes should include effective procedures capable of overcoming these barriers, which is not usually the case when truth commissions merely have advisory powers. Therefore a more comprehensive analysis of judicially awarded reparations and the degree of success in the implementation phase is still needed, especially given the role that the International Criminal Court will play in the near future, once it sets in motion its power to award reparations to victims of international crimes. At the same time, it remains evident that further research on the influence of the concept of masculinity from a gender perspective on the experiences of male victims is necessary.

the term 'homicide of women for gender reasons' instead, while acknowledging that the expression is also known as 'femicide' (para. 143). The Court adopted a gender approach for the reparations which included different types of measures, stating, *inter alia*, that the Mexican state had a duty to investigate the murders and disappearances of women from a gender perspective (para. 455(ii)), deciding that the date 6 November should be commemorated as the 'National Day in memory of the victims of the femicide' (para. 466), and holding that the state had the obligation to build a memorial for women victims of homicide for gender reasons in the field where the victims were found, after a public and open consultation with civil society organizations, including those representing the victims in the case (paras. 471–472).

5 It is interesting to note the case of the Parque de la Memoria, located in Buenos Aires, Argentina. Following the concept of a wall of names, often used in these cases, it includes the names of the victims of the last military dictatorship. However, it presents a unique feature: the word *embarazada* (pregnant) was added next to the names of the women who were carrying a baby at the time of their abduction, thus reflecting the particularities of women's experience.

6 Even if the UN Basic Principles and Guideline on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law (UN Doc. A/RES/60/147 (2006)) include the principle of non-discrimination, they have adopted a gender-neutral approach. Therefore it is important to complement this instrument with the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparations, adopted in March 2007, which specifically adopts this transformative notion of reparations.

It follows from this brief description that one of the greatest assets of the publication under review is the use of case studies and the richness and variety of good (and bad) practice examined. The unique and clear perspective adopted by all the contributors makes the volume a contribution to this field and an essential tool for those who work in this area. Therefore this collective work must be warmly welcomed, and it is to be hoped that it will provide guidance to judges, practitioners, and policymakers.

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