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***Outreach to and engagement of victims on reparations -
Lessons learned from truth and reconciliation processes***

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I. Frame of reference: truth commissions, reparations and the victims' role

In addition to the experience gained from the ICTJ's work on reparations matters in various contexts, my remarks draw on an array of written sources, including a forthcoming "rule of law tool document" drafted by my colleague, Pablo de Greiff, for the United Nations' Office of the High Commissioner for Human Rights (cited herein as "HCHR Reparations Document")¹; the ICTJ's recently published *Handbook on Reparations*²; and a volume of case studies on women and reparations titled *What happened to the women?*³ Another reference is the book I co-authored with Julie Guillerot on the reparations process in Peru, *Memorias de un Proceso Inacabado*.⁴

The contextual framework for my remarks is that of truth commissions and reparations. Not all truth commissions involve significant recommendations for reparations, nor do all reparations programs for massive or systematic abuses of human rights unfold after an extensive truth-seeking effort. However, there is much to learn from those cases in which truth commissions have taken on the reparations issue and proposed measures on behalf of victims to redress harm, promote honest acknowledgment of the wrongs committed, and underscore the rights that pertain to victims. The lessons in this paper emerge from that setting.

The HCHR reparations document points to some special characteristics of cases in which reparations and truth-seeking are conjoined in some way:

- On the positive side:
 - Truth commissions are already involved in compiling information about victims that will be helpful in designing reparations programs;
 - Truth commissions usually enjoy a certain amount of moral capital that can give special impetus to their recommendations; and

¹ Title simply, "Reparations Programs," the most recent draft (February 2007) is cited in this paper. My thanks to Pablo de Greiff for sharing this document.

² Oxford University Press: 2006.

³ This text is available for on-line access or purchase at <http://press.ssrc.org/RubioMarin/>.

⁴ This book is forthcoming in English and is currently available on-line in Spanish at:

<http://www.ictj.org/static/Peru.Reparations/Memorias.Peru.esp.pdf>. I would also like to thank ICTJ research intern Rachel Fink, and my colleagues Ruben Carranza and Virginie Ladisch for their input.

- Truth commissions are particularly open to hearing victims' concerns, which can make it more likely for them to be included in discussions about reparations.
- By engaging with recommendations that evolve from truth-seeking and potentially relating them to other mechanisms such as criminal justice and reform, truth commissions can look at repair and healing in a more holistic way than a body that is designing reparations alone, and with regard to a broader universe of victims than a court may be able to do.⁵

It is worth noting that recent truth commissions are also making a contribution to development of law in the area of reparations. Timor-Leste's CAVR, the Ghanaian NRC, Moroccan Equity and Reconciliation Commission, Peruvian TRC, Chilean National Commission on Political Prison and Torture, and the Sierra Leone TRC all refer to the (UN) basic principles and guidelines on reparations. By doing so, they continue to reinforce the status of these principles in international law, while gradually helping to define the contents of the duty to make reparations in circumstances of massive and systematic violations of human rights and humanitarian law. Victim participation is one aspect of that growing body of practice.

But truth commissions also lend some particular weaknesses to the development and implementation of reparations. As the HCHR reparations document points out:

- Their recommendations are often not binding on government and in fact in many cases reparations recommended by truth commissions have not been implemented or only very late or in a small way
- Because truth commissions disappear once their mandate is complete, they are not in a good position to ensure follow-up, and often the mechanisms they do foresee for this purpose are not sufficiently powerful to guarantee results in the face of other political priorities and pressures
- The very nature of truth commission mandates, often negotiated by power elites, can remove important types of abuse from a truth commission's sights even before it begins.⁶

With this background in mind, I want to turn to the question at hand, the lessons learned in the truth commission context about victim participation, outreach, and reparations.

II. Adopting participation as a positive value

A first principle that is generally accepted is that consultation is a virtue that will make reparations more responsive to reality, and thus more effective. This is so as long as consultation does not turn into an obstacle, an easy excuse for non-compliance with recommendations, or unjust grounds for delay. For example, in Guatemala, victims groups had representation on a commission that was to design and implement a

⁵ HCHR reparations document, p. 11.

⁶ HCHR reparations document, pp. 11-12.

reparations program in conjunction with the government, but the issues were so painful and close to their hearts and the organizations still so affected by the conflict that the victim representatives were almost paralyzed and overly divided by their particular interests. Eventually the government excluded them from much of the implementation process, and was in effect able to point to the victims' own representatives as the obstacle to implementation even when many factors combined to make implementation difficult. This is a powerful lesson, but does not mean that some form of participation by representatives of victims is not important; rather, it underscores the importance of ensuring that the process can have a means of obtaining some consensus in order to move forward.

The positive impact of victim participation on reparations includes at least the following considerations:

- Victims, their families and organizations that represent them are a direct source of information on key points of information: violations, harm, needs and social situation. As noted in the HCHR reparations document: "In some contexts accurate information about the victims is severely lacking or deficient. The deficits can range from the lack of absolutely basic information such as the numbers of victims to be served by the program, to the absence of more differentiated but yet important data, such as the victims' socio-economic profile. ...Not even truth commission databases and statement-taking procedures are designed with reparations purposes in mind and often come up short in this regard themselves." But to the extent this kind of information can be gathered with reparations in mind, it can "reduce the amount of guesswork that goes into planning a reparations program."⁷
- Moreover, victims know what matters most to them and also what will give them some satisfaction, so consultation helps policy-makers plan more effectively. Reparations will be more successful if they resonate with victims, adopting priorities appropriate to victims' needs. Reparations that are not perceived as such lose their meaning as reparations.
- Civil society organizations of various sorts including victim organizations not only tend to have more information about that universe than official institutions, but they often are the best avenues for outreach to victims to inform them about a TRC, reparations and a registry process once implementation is about to begin.
- To the extent that reparations incorporate the views of victims they can model one of their objectives, which is to recognize victims as respected rights-holders.

We can also point to a positive impact of consultation in broader ways: it builds capacity of victim groups, promotes their active presence in the country's political life, and provides some new ground for trust. In fact, participatory processes create an incentive for victim organizations to increase their strength and capacity.

⁷ HCHR reparations document, p. 14.

- Canada's Aboriginal-run Healing Foundation, formed after a commission of inquiry on aboriginal relations to the rest of Canadian society, is quite successful and has won the respect of non-aboriginal policy-makers, for example.

III. Making participation meaningful

Though participation may be considered a generally positive value, it must actually be meaningful participation. That seems obvious, but achieving meaningful participation is no mean feat, and requires policy-makers to address at least five key questions:

- **Who are the victims and how are they represented for purposes of consultation?**

Victim groups are numerous, not homogeneous, far flung, under-resourced, and often have organizational structures that do not lend themselves to representation by individuals. To illustrate this point, take the Peruvian case: A survey of victim organizations carried out after the publication of the TRC's report identified some 118 organizations in 11 departments of Peru, including 18 regional, 21 provincial, and 32 district organizations, 22 women's organizations, 15 youth groups and 26 organizations of displaced people. Some groups complained that Human Rights NGOs, based mostly in the capital, were not adequately representing them and were obtaining an unfair share of available funding resources. When they worked together, there were problems in ensuring that information was adequately reported back to base communities.

Coalitions came together at specific moments (agreement on a framework for discussion of reparations in the early days of the TRC process, and later, around a march to press for legislative action). But these were fragile alliances and did not last long. Representatives from geographical areas or groups with similar histories of abuse, organized in coordination with human rights NGOs for specific meetings, were more important for the convenience of the NGOs than in terms of real representation of the base of victims.

Dealing with heterogeneity not only as to types of violations, harm, and geography, but also as to differences in terms of political clout or sympathy, different cultural approaches, and varied levels of experience at negotiating, to mention a few examples, poses particular problems for those seeking to devise ways to legitimately "consult with victims" at different stages in the process, when interests may or may not converge within the broader universe of victims.

- **How to identify best ways to engage with them?**

In Peru, ideas were floated about an advisory panel of victims to a national body on reparations, but failed because of practical considerations of how to choose representatives and the role they should play. A follow-up Commission composed of government and civil society representatives proposed a registry of victim groups in order to channel communications, yet victim groups hung back because it seemed to them to be a form of social control.

Given the contexts in which the reparations debate evolves in connection with truth commissions, victim groups – when they have been able to exist at all – are often at a disadvantage, as they make a shift from defense and denouncing violations to making proposals about what to do next.

While it can be fraught with tensions, the presence of other non-governmental advocates (usually human rights groups) makes it possible to reach out to victims and engage them in the reparations process even outside of the formal government proceedings and then channel that information to the truth commission. For instance, in Ghana, an NGO (CDD) undertook a survey prior to the start of Ghana's NRC proceedings to determine victims' expectations of the NRC's work. The granting of reparations (and the *prompt* implementation of reparations recommendations) was one of the highest-ranked expectations articulated in the survey. It may be that Ghana's government had its own self-serving reasons for then wanting to disburse monetary compensation to victims, but the fact that this expectation had been systematically articulated earlier may have been a factor.

Although the participation of affected people in the construction of policies and programs and in overseeing the implementation of reparations is difficult and the forms adopted to effect participation should themselves be studied critically, the complexity of the issue does not exempt the State from its responsibility to create and facilitate opportunities for consultation and real participation.

In Peru, everything to date suggests that this will occur in a more genuine and manageable way on regional and local levels, but there still needs to be two-way communication channels with the process in the whole country. With the passing of time and the experience in regional and local spheres, progress could be sought in both the representative capacity of the victim groups and State sensitivity to the most effective forms of participation.

- **Is there a common conceptual ground?**

Are victims, truth commissions and government even talking about the same thing when reparations are on the table? Most victims/victim groups and even human rights groups have experience with development projects or individual litigation, but little experience with designing or imagining a comprehensive reparations program. Government is often in no better a situation in this regard. Moreover, in transitional contexts in which truth commissions come into play, victim priorities are almost always a mix of reparations and other social justice oriented policy issues; sorting those out for the purposes of fruitful consultation around reparations is an important process.

In Peru, a joint research project between the ICTJ and a local HR NGO (APRODEH) to try to come up with a conceptual framework for reparations, served an important purpose: it provided a common ground for discussion by defining reparations and addressing some of the questions about them that would arise in the Peruvian case. The concept was first

tweaked and then adopted by scores of victim groups in an assembly organized to discuss this issue; it was eventually taken on by the TRC as the framework for its recommendations. Once there is a common ground for debate, the conversation is more apt to be substantive and there will be a greater appreciation on all sides for the challenges that any reparations program will face, including expectations.

- **Does participation come at important moments?**

Consultation and participation make sense not only in defining what reparations measures should be, but in defining what violations are being looked at, and later, how reparations will be implemented. Just a quick look at the opportunities presented by some key moments illustrates the point:

Defining the mandate for a truth commission: Any truth commission that has the responsibility of formulating recommendations with regard to reparations, operates within a mandate that generally sets out what time frame, violations and actors are within its scope. A particularly obvious example is Chile, where it was only recently that victims who sought reparations for political prison and torture were brought into the picture, through the Valech Commission.

In the critical issue of the choice of the list of rights whose violation will trigger reparations benefits, it is important to note that the participation of women may help ensure that the sorts of violations of which women are predominantly victims are not left out. In South Africa, for example, because women's organizations did not have the TRC as a priority in the years following the first democratic elections but were focusing their energies elsewhere, they were not central to the creation of the TRC or the drafting of the legislation that created it. As a result, a 'gender-neutral' law was drawn up which fails to spell out the gendered differences in the experience of the conflict and the resulting differences in needs of victims. Women started lobbying on this only after the TRC began its work.

Defining victim-sensitive reparations during the truth commission process: During the truth commission's mandate, it must determine what it will mean by reparations, what it will cover, for whom, and what types of benefits will be provided by what process.

Usually one of the most natural topics for consultation is the question of symbolic reparations. "The participation of civil society in the design and implementation of projects is perhaps more significant than regarding any other reparation measure, given the semantic and representational function of the symbolic measures. The Human Rights Program of the Ministry of the Interior of Chile, for example, provides both material support and technical advice to organizations interested in a variety of symbolic reparations projects including memorials and sites of memory. Programs of this sort are one way for States to take the idea of providing symbolic reparations seriously, without taking control away from civil society including victims' organizations."⁸

⁸ HCHR reparations document, p. 25 and footnote 75.

But most truth commissions that recommend reparations do consult victim groups more generally. In fact, it is during the truth commission process that is probably the moment in which we can point to the greatest consultation successes. In Peru, two major meetings were held in which victim group representatives gathered to discuss with the TRC the proposals on the table for reparations. At one of these, it became evident that the Commission had not taken into consideration the emphatic demand of victims for education for their children as well as for adults. This was eventually included in the recommendations of the Commission. While the consultation process did not radically change the shape of reparations, inclusion in the discussion made a difference, both in sensitizing victims to the difficult choices the Commission faced, and sensitizing the Commission to the priorities and needs of victims.

In Ghana, the recommendations made by the NRC on reparations apparently hewed closely to the grievances aired by the victims (who testified or submitted testimony), but in some cases too closely, e.g. for those who complained that the public market where they used to trade was burned down by soldiers, the NRC recommended that a new market be built – years after the event took place. The engagement with victims must be constant and sustained – from the time they are heard at the truth-seeking stage to the time reparations are not only recommended but implemented.

In Chile, the Rettig Commission discussed for a long time with the victims whether a lump sum or pension would be better and settled on pensions in part at least because of the victims' view that such a form of reparations was preferable, since a lump sum seemed like a payoff. In Morocco, a National Forum on Reparations held in October 2005 announced that gender mainstreaming would be one of the priorities in its reparations policy. The Equity and Reconciliation Commission was able to bypass an inheritance law to secure widows a larger share of the reparations amount generated by the killing or disappearance of their husbands than they would have otherwise received.

Passage of legislation: In Peru, expertise and organization developed in NGOs and victim groups around the topic of reparations during the TRC process was put to service in the legislative process, through lobbying and public pressure, and the unity they had already forged in the course of their debates with the Commission.

Implementation of reparations: The HCHR reparations document addresses this question:

“Outreach in the context of reparations is normally understood in terms of efforts to make the existence of an already designed program known and to facilitate access to its benefits. As crucial as this might be, if participatory processes of the sort just mentioned are to take place, outreach must start long before the program is fully designed. This is so particularly in contexts in which there is at best a weak tradition of consulting citizens, or where such traditions were interrupted, as is frequently the case in post-conflict and transitional societies.

Even a well-designed reparations program will fail to distribute benefits to every potential beneficiary if it is not accompanied by effective outreach efforts once it is set in place. Some of the difficulties with outreach can be seen from the work of truth commissions. Merely writing a good report, no matter how good its quality may be, does not guarantee its uptake on the part of civil society, let alone its impact, particularly on government institutions. In contexts with high levels of illiteracy, difficult transportation, and deep social fractures (ethnic, linguistic, religious, class or regional differences), outreach becomes even more important. Furthermore, despite the incentive effect of the benefits, sometimes it has proven more difficult to draw people into a reparations program than to give testimony to a truth commission, for the former requires not just providing testimony, but making a request, filing applications, and presenting documents and evidence. The outreach that is called for, then, is not only particularly intensive in terms of dissemination of information about the existence of the reparations program, but also in terms of assistance going through the process. Whatever outreach measures are designed, it is important to be sensitive to gender differences, being ready to adjust outreach efforts so as to draw in as many female beneficiaries as possible. Similarly, in cases in which the conflict has generated large numbers of exiles, it is important to establish outreach efforts that can capture exiled groups.”⁹

Outreach to victims is important after the TRC because an important numbers of victims are not reached by TRC processes for a variety of reasons. While it should not be presumed that all victims would seek the recognition entailed in reparations, generally the assumption should be there are more who need reparations than those who came forward to tell their stories.

Oversight of implementation

In Timor-Leste, the CAVR recommended that the implementing body of the reparations scheme would engage grassroots facilitators at the district level to help connect victims to services, while the implementing body would develop programs together with NGOs to assist victims, victim groups, and communities in addressing “needs and issues in a sustainable and empowering way.” The CAVR also recommended establishment of a permanent consultative advisory board to include representatives of victims and victim groups, and organizations and individuals with high standing in the community for the protection of victim rights. These provisions are still in the form of recommendations only.

In Peru, there was a similar concern with finding avenues for victim participation in the design and implementation of collective reparations, and in the national level policy-making body on reparations and other follow-up to the TRC recommendations. Originally, the TRC had proposed a Consultative Committee of Victims of the Violence, whose 7 members would be designated by the President after receiving proposals from victim organizations. This was probably an unworkable idea. When the President created

⁹ HCHR reparations document, pp. 15-16.

a High-Level Multi-sectoral Commission (CMAN) to oversee policy development on reparations, this idea was dropped. Instead, civil society eventually was allowed 4 representatives of the 11 members of this body: one representative of the human rights organizations (facilitated by the fact that there is an umbrella coordinating body that could name this member); one from the Secretariat of the National Conference on Social Development (CONADES); one from the National Assembly of University Rectors; and one from the Council of Deans of Professional Colleges. The former two are the most active members of CMAN and, in a positive light, bring victims groups and development groups into a collaborative relation. Some groups communicate directly to CMAN and others use the human rights and the CONADES representatives as channels for their concerns and input.

The real participation of victims to date in Peru is more noticeable at the community and regional level, and this may hold out promise for eventually developing a better way of ensuring their voices are heard at the national level.

- **Does participation have a real impact?**

Participation must not be seen just as a way to make a better proposal or even to help tell more people about well-intentioned reparations efforts. It must also be something that ensures ultimate delivery of real benefits to victims; that is, a process that carries weight. Engagement of victims should be furthered in a way that links their experience to broader social understanding and alliances for implementing reparations, and that builds credible grounds for trust between government and victim groups for working together in the future.

There were attempts to reach out and talk to victims about their needs and expectations in both Sierra Leone and Guatemala, to greater or lesser extent, and their concerns were reflected in recommendations by the respective truth seeking bodies. However, in these two cases, the lack of an effective response so far from government underscores the lack of trust that can evolve out of “participation without impact.” A report from South Africa provides another cautionary tale in this respect:

“...by failing to consult with survivor groups before deciding on the final amount for reparations, government wasted an opportunity to learn about the different survivor needs, which would have helped in designing a more comprehensive reparation policy with potential to optimize its effectiveness. The report also characterizes that failure as a lost opportunity for government to mend a difficult relationship between itself and survivor groups, including NGOs and other stakeholders lobbying for reparations.”¹⁰

¹⁰ Oupa Makhalemele, *Still not talking: Government's exclusive reparations policy and the impact of the R30000 financial reparations on survivors* (Center for the Study of Violence and Reconciliation, 2004).

Participation also needs to be strategic. In South Africa, campaigns to demand a policy on reparations was focused too heavily on financial grants and moved attention away from the need to address other survivor needs.¹¹

Reparations are usually a long-term project that necessarily lasts longer than one term of a government. This means that stability through legislation, and strong alliances across the political spectrum will be important to sustaining the reparations program. Social understanding of the importance and need for reparations, of the reasons why this is a responsibility of the State, and of the justice in victims' right to reparations, is usually slow and painstaking in arriving. This may require in many cases a necessary self-critique that few individuals (and institutions) in society are willing to undertake. How to generate comprehension? How to mobilize the political and financial support needed to make reparations not only in material terms but also in terms of acknowledgment and solidarity? Educational campaigns that explain not only to victims but also the larger society can be very important.

IV. Some conclusions

The objective need for participation is often not matched by an easy parallel of capacity, resources, and forms of participation in the universe of victims. The truth commission process is an important time for building the capacity of victim groups to participate effectively – with regard to servicing their own community and the greater universe of victims, and with regard to contributing to the reparations process.

There is increasing awareness of the importance of ensuring that victims have a voice during the operational phase of a truth commission mandate. Participation is often lacking earlier, when the scope of mandates are defined. However, the greatest challenge to participation is in the transition from proposal to implementation. Unless victims have strengthened their voice and political clout, and gained public sympathy through the truth commission process, this will be a significantly difficult period for effective participation.

Victims tend to have the least power in implementation and often become divided as they seek scarce resources in the face of variable political will, with some sub-groups enjoying greater sympathy than others. When government has not embraced truth commission findings and actively promoted the recommendations in some way, this uphill struggle becomes even more fraught. International assistance and support seem to drift away during this post-truth commission phase, when victim groups and human rights NGOs may need more attention and resources than ever. International actors need to be reminded of this lesson and urged to continue to pay attention as implementation gets underway.

Participation at the local level, where local authorities and victim groups have greater access to each other and where there may be greater political sensitivity to victims' situation, can be the most robust. However, without input at a national level, this strength

¹¹ Ibid.

can be limited to only those localities where victim groups are stronger than perpetrator factions, and where local political will is favorable. Local participation may yield more impact, but it is insufficient. Attention to building effective national arenas for participation and two-way communication is critical.

Participation, outreach, and engagement in the question of reparations are not all about victims. Reparations policy, to become reality, must have a stronger alliance of support than only victim groups. Truth commissions need to ensure that they “prepare the ground” for recommendations in this area, while those working for reparations from outside the commission need to broaden their alliances and inform policy makers.

While more and more information is being made available on reparations policy, we need to pay more attention to this issue and share lessons across experiences. Little has been written with specific attention to the role of victims in these processes. Like policy-makers in contexts where truth and reparations are needed, we who work in this field must be prepared to listen to, and learn from, the voices of victims and survivors.