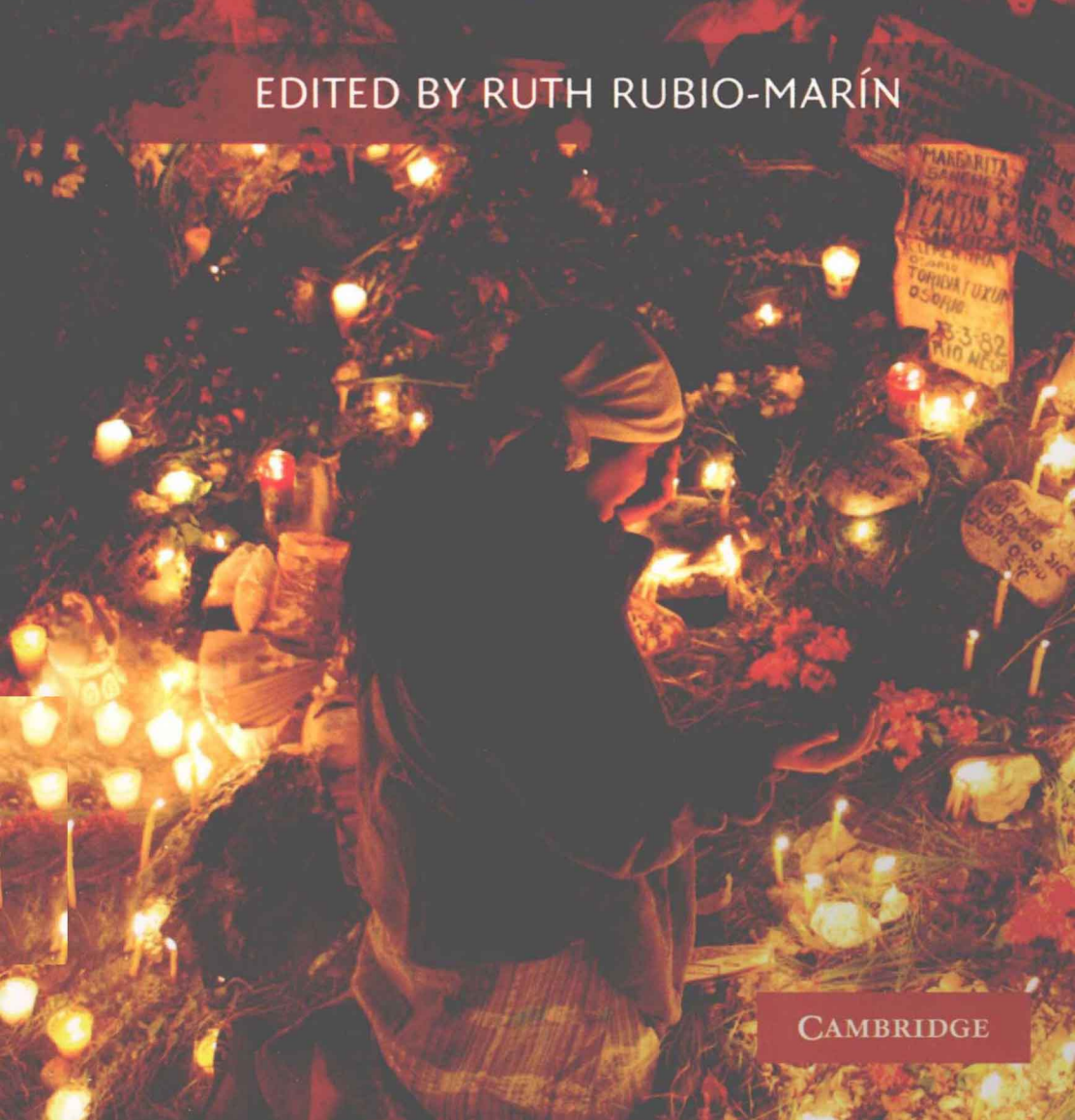


The Gender of Reparations

Unsettling Sexual Hierarchies
While Redressing
Human Rights Violations

EDITED BY RUTH RUBIO-MARÍN



CAMBRIDGE

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RUTH RUBIO-MARÍN

International Center for Transitional Justice



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THE GENDER OF REPARATIONS
*Unsettling Sexual Hierarchies While
Redressing Human Rights Violations*

Reparations programs seeking to provide for victims of gross and systematic human rights violations are becoming an increasingly frequent feature of transitional and post-conflict processes. Given that women represent a very large proportion of the victims of these conflicts and the authoritarianism generating them, and that women arguably experience conflicts in a distinct manner, it makes sense to examine whether reparations programs can be designed to redress women more fairly and efficiently and seek to subvert gender hierarchies that often antecede the conflict.

Focusing on themes such as reparations for victims of sexual and reproductive violence, reparations for children and other family members, as well as gendered understandings of monetary, symbolic, and collective reparations, *The Gender of Reparations* gathers information about how past or existing reparations projects dealt with gender issues, identifies best practices to the extent possible, and articulates innovative approaches and guidelines to the integration of a gender perspective in the design and implementation of reparations for victims of human rights violations.

Ruth Rubio-Marín is a Chair in Comparative Public Law at the European University Institute in Florence, Italy, and holds a tenured position in constitutional law at the Law School of Seville. She is author and editor of several books, including *Immigration as a Democratic Challenge* (Cambridge University Press, 2000), *The Gender of Constitutional Jurisprudence* (Cambridge University Press, 2004), and *What Happened to the Women? Gender and Reparations for Human Rights Violations* (2006).

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The Gender of Reparations is a book that explores a subject that had never before received specific and in-depth scholarly attention. Two elements have made it possible. First, the courage of the authors who decided to venture into this new domain, many of whom confessed to being challenged and motivated by the opportunity to explore new ground and by the wide set of expertise that writing each of these chapters required. Thanks to all of them for their

courage and their patience throughout the endless rounds of revisions that this process of reciprocal learning and ongoing discussions has entailed. The book was also facilitated by the empirical research provided in a previous volume (*What Happened to the Women? Gender and Reparations for Human Rights Violations*, Ruth Rubio-Marín, ed. [New York: Social Science Research Council, 2006]). My gratitude to the authors who participated in it and to the many victims and civil society organizations for the interviews and the data provided for the elaboration of the country studies.

This project was supported by a grant from the International Development Research Centre (IDRC). Within it, I would like to thank Colleen Duggan for her great support and her enthusiastic engagement with the project.

I would like to dedicate my share of the contribution to this book to my husband, Pablo, for all the personal and professional support he has lent me during the years this project has lasted, including during some especially rough times. I owe my opening to the transitional justice field to him and will never be able to thank him enough for the personal enrichment that this expansion has brought about.

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Reparations,” in *The Gender of Reparations*

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Vietnam War Women’s Memorial, Washington, DC
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Yuri Gagarin Memorial in Moscow
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International Center for Transitional Justice (ICTJ)

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remains unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and nonjudicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The field of transitional justice is varied and covers a range of disciplines, including law, public policy, forensics, economics, history, psychology, and the arts. The ICTJ works to develop a rich understanding of the field as a whole and to identify issues that merit more in-depth research and analysis. Collaborating with colleagues in transitional societies and often commissioning outside studies, the Center targets its research to address the complex issues confronting policymakers and activists. Identifying and addressing the most important gaps in scholarship, it provides the benefit of comparative analysis to its staff and to practitioners worldwide.

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Introduction: A Gender and Reparations Taxonomy

Ruth Rubio-Marín

In recent years, work in a variety of disciplines has sought to illuminate and highlight women's experience of conflict and authoritarianism. UN Security Council Resolution 1325 on women, peace, and security¹ reflects this when addressing the need to recognize the impact of armed conflict on women and girls, the role of women in peacebuilding, and the gender dimensions of peace processes and conflict resolution. The serious and pervasive nature of gender-based violence in conflict, especially sexual and reproductive violence, has also been increasingly recognized under international criminal law.² Relevant discussions about how other transitional justice measures, including truth-telling mechanisms, can do better justice to women have followed.³ It comes as no surprise, then, that the time is ripe to raise the question of how reparations programs for mass human rights violations can be designed in ways intended to redress women more fairly and efficiently.⁴

The fact that reparations programs are becoming an increasingly frequent feature of transitional and post-conflict processes renders the topic of this book

¹ United Nations Security Council, Resolution 1325, S/RES/1325 (2000), October 31, 2000.

² Proof of this is the Rome Statute of the International Criminal Court, which adopts "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as part of its definition of crimes against humanity and war crimes. See the Rome Statute of the International Criminal Court, Arts. 7 and 8.

³ Debra L. DeLaet, "Gender Justice: A Gendered Assessment of Truth-Telling Mechanisms," in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), 151–181; World Bank, "Gender, Justice, and Truth Commissions," Washington, DC: World Bank, June 2006; Vasuki Nesiah et al., "Truth Commissions and Gender: Principle, Policies and Procedures," (New York: ICTJ, 2006); Fionnuala Ni Aoláin and Catherine Turner, "Gender, Truth and Transition," *UCLA Women's Law Journal* 16 (2007): 229–279.

⁴ International civil society has started to echo this concern: in March 2007, the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation was adopted. See http://www.womensrightscoalition.org/site/reparation/signature_en.php.

only more relevant and urgent. Indeed, there is a growing conviction that doing justice in transitional scenarios requires not only doing something against the perpetrators, but also doing something specifically for victims.⁵ This trend is confirmed by the recommendations of several truth commissions, and by the jurisprudence of both national and international human rights bodies, including the European Court of Human Rights and the Inter-American Court of Human Rights. Nations as diverse as Argentina, Chile, Brazil, South Africa, Guatemala, Peru, and Morocco are examples of countries that have thought of reparations initiatives as an important component of their package of transitional justice measures. The UN has also supported this evolution toward enhancing the importance of the reparative venue and giving victims adequate recognition and redress: in 2005, the General Assembly approved 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*,⁶ and just recently the High Commissioner for Human Rights has produced a tool on reparations programs as part of its series of *Rule-of-Law Tools for Post-Conflict States*.⁷ The latter document is intended, among other things, to guide state practice on how to render the *Basic Principles* operative.

The moves toward “engendering transitional justice” and pushing forward the reparations agenda have thus far progressed in parallel and without meaningful encounters. For the most part, reparations initiatives around the world have to this day failed to raise systematically the question of how to incorporate women’s specific needs and concerns. This is striking in view of the fact that a significant number of victims of authoritarianism and conflict are women who are known to experience both phenomena in distinct ways. Similarly, it is common knowledge that in most cases women play a crucial role in the follow-up of violence – searching for victims or their remains, trying to reconstitute families and communities, carrying on the tasks of memory, and

⁵ See Pablo de Greiff, “Introduction,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 1–18 [*The Handbook*, hereafter].

⁶ *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*, A/RES/60/147, March 21, 2006 [*Basic Principles*, hereafter]. See also the UN Secretary General’s 2004 report, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, August 23, 2004; *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005; Diane Orentlicher, *Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity*, E/CN.4/2004/88, February 27, 2004; and *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, E/CN.4/2005/102, February 18, 2005.

⁷ Available at <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>.