Conceptualizing & Analyzing Reparations

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Introduction

On 16 December 2005, the United Nations General Assembly adopted UN Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law* (*Basic Principles*), which outlined the rights of victims of gross violations of international human rights law, as well as victims of serious violations of international humanitarian law, to '*prompt, adequate, and effective reparation*'(Magarrell 2007: 1; italics added). While, this law explicitly lays out the duty of states to provide reparations, in practice there is still a lot of unanswered questions about how to successfully implement such programs.

Reparation to victims dates back before the establishment of the UN General Assembly resolution, some even citing cases of reparations during ancient Greece (Elster 2006). Today, however, reparations are seen as an essential component of any transitional justice initiative (Vandeginste 2003; Magarrell 2007). That is, they are one of the various mechanisms that have been determined to support peaceful coexistence and the restoration of law after conflicts and/or political transitions (Theissen 2004). Surveying the literature on transitional justice one finds several cases of states using a combination of instruments to deal with past abuses, many of which have included reparation programs, such as Argentina (truth seeking commission, judicial processes, memorials, and reparations), Morocco (reparations, truth commission, and public hearings), and South Africa (truth and commission, amnesty, memorials, and reparations), to name a few. In fact, reparation for refugees and internally displaced have been included in many of the peace agreements that have been signed since the mid-1990s (Bradley 2007: 663). Therefore, reparations are seen as vital to the transformation of the relationships within torn countries, which have been plagued by abuses of human rights and violations of humanitarian law.

Most of the literature on reparations, [1] particularly material compensation, is concerned with who should get compensated (e.g., Goldman 1975; Elster 2004), the type of compensation (e.g., Magarrell 2007; Roht-Arriaza and Mariezcurrena 2006) and the amount of compensation (e.g, Kershnar 2002; Klinov 2007). More recently, some scholars have also begun to look at how the reparation programs should be financed (e.g., Segovia 2006; Seibel and Armstrong 2006). However, not much (if any) has been done on the implementation process itself. It is important that we determine how reparations are administered. The logistics and procedures that are designed to implement the reparation program will have a profound effect on the implementation of the program for they will determine how the victims will receive or access the reparation programs.

In this paper, it is argued that in order to begin to analyze reparations we must identify what we mean by reparations as well as how the programs will be designed and implemented A conceptual framework of analysis is put forward by presenting key factors and mechanisms that affect reparation programs and by focusing on the policy formulation, policy design, as well as the implementation process itself. In particular, I will focus on the political, economic and

[1] Since the studies on transitional justice in general, and reparation in particularly, are relatively new most of this literature has been characterized by thick descriptions of single-case studies the aim at presenting the transitional justice mechanisms in the chosen country.

administrative dimensions that are essential to analyzing the implementation results of reparation program. Each dimension is important and contributes to the overall performance of a reparation program. A lack of political will could become a stumbling block to a speedy implementation of a reparation program. The reach of the program and the financing model will determine how adequate the program will be. And last but not least, the logistics and procedures will ensure the effectiveness of the program. Therefore, while each reparation program has its own unique features and challenges, at the same time there are a number of similar dimensions that will impact their success.

This article first lays out the importance of reparation as a mechanism of transitional justice. Next it discusses how to conceptualize and analyze reparations. Then a framework for analysis is presented focusing on the political, economic and administrative dimensions. The article concludes by discussing the next steps in the project.

Reparation as a Mechanism of Transitional Justice

What is Reparation?

Before moving forward to talk about why reparations are important, we must clarify what is generally meant by reparations. While Richards (2007) maintains that neither the meaning nor the goals of reparation programs have been settled, either in theory or in practice, reparation in its most comprehensive notion tends to include, compensation, redress, rehabilitation, restitution and satisfaction (Vandeginste 2003: 145; *Basic Principles* 2005).

Reparations attempt to address both the tangible and intangible needs of victims of human rights abuses as well as victims of humanitarian law violations. Tangible needs could be addressed through service packages or individual compensation. With respect to service programs, the legislation could provide programs that would help victims of specific types of violations get access to a variety of measures, which in turn would help in restitution and rehabilitation. For example, the Rwandan government established in 1998 an Assistance Fund for Genocide Survivors, and the beneficiaries of this fund received reparations in the form of social service packages in several domains, including education, health, housing and income generation (Rombouts 2006: 200). As for material benefits, they aim at compensating the victims either by providing a certain sum of money or some type of pension. Chile, for instance, set up a pension for the families of the victims of human rights violations and political violence (Lira 2006).

As for intangible needs, such as the restoration of dignity, these can only be addressed through symbolic reparations that provide the public acknowledgement of the crimes and violations that occurred. Symbolic components of reparation, which include an apology, such as when the President of the United States Ronald Regan apologized to Japanese Americans for their unlawful incarceration during WWII (Yamamoto and Ebesugawa 2006: 257), or building a memorial in honor of the victims as was the case in South Africa where a memorial park (named Freedom Park) was constructed (Swart 2008: 113), are essential for rebuilding the trust between the victims and the state (Hamber and Wilson 2002).
While different victims may have different preferences about the type of reparation, one cannot underestimate the importance of financial compensation, to all victims (Magarrell 2007). In

addition, material reparation has symbolic value in itself, for it represents that 'the perpetrator is not above the law and indirectly expressing a commitment to reparation can therefore diminish the reparative effect of other efforts' (Richards 2007: 6). Therefore, no matter what type of reparation program is considered, there will be some form of material benefit.

Why Reparation?

Much of the focus in the peace literature has been on how to manage (e.g., Rothschild 1997; Bercovitch and Jackson 2001; and Zartman and Touval 2007) and/or resolve (e.g., Burton 1990; Hopmann 1998; and Pearson 2001) conflicts. However, countries emerging form a violent conflict or abusive regimes are generally fragile as the negative emotional residues that can ignite future hostilities are still present (Jeong 2010: 214) for they do not simply go away with a signing of an agreement. As a result, scholars have begun to argue that managing a conflict or even resolving the issues may not be sufficient to maintaining peace and/or preventing future conflicts from emerging (e.g., Lederach, 1997; Kritz 2002). This has led many to maintain that what we need is an approach that not only tries to find solutions to underlying issues of a conflict but also works to alter the relationships between adversaries (Assefa 2001). In essence, we need to ensure that reconciliation occurs for it can build stable and lasting peace as it goes beyond the agenda of formal conflict resolution to changing the motivations, beliefs, and attitudes of the communities regarding the conflict, the nature of the relationship between the parties, and the parties themselves (Bar Tal and Bennink, 2004: 12).

Recently there has been an explosion of studies that look at the different mechanisms that states can utilize to deal with past abuses in order to rebuild the relationships in society and ensure that there will such crimes will not be repeated and that justice is obtained (Theissen 2004).[2] While each mechanism provides the states with some measure of justice, Powers and Proctor (2011:2) maintain that reparations, particularly material compensation, are the only transitional justice mechanism that focuses solely on the victims and their needs. Therefore, while prosecutions, truth commissions, amnesty, and institutional reform are all important and complementary mechanisms for transitional justice, they do not necessarily help in restoring, repairing and rehabilitating the victims of both human rights violations and crimes against humanity (Powers and Proctor 2011).

Reparations can play an important role in helping post-conflict and post-transition societies move one step closer to reconciliation and democratization. First and foremost, they can help to restore the relationship between the victims and the state, as victims may blame the state for their abuses and/or its inability to protect them. That is, in some cases the state may not have directly caused the violations, and while individuals may be prosecuted for their crimes, this still does not absolve the state from its failure to carry out one of its most key functions; providing security for its citizens. 'As a *non persona* entity, the state cannot face criminal charges despite its abuse of and failure to protect its citizens, and thus reparations become a means of "making the government pay"' (Laplante and Theidon 2007: 245).

Moreover, while reparations are a response to the human and material damages that occurred during a conflict or as a result of the abuse of the state, 'they rise out of rights and serve as

[2] See Grodsky 2009 for a summary of the literature on the determinants of transitional justice.

measures of accountability' (Laplante and Theidon 2007: 245). That is, reparations are an obligation to those whose rights have been violated, and when a state provides reparations for these violations, they are officially acknowledging in front of the whole community that the crimes did occur. This in turn, helps restore the victims' faith in the rule of law, an important ingredient for the flourishing of democracy. In the final report of the Truth and Reconciliation Commission of Sierra Leone, the Commission maintained that reparations play an important role in restoring civic trust, for a 'sincere commitment from the government to the execution of [its reparation program] will give a clear sign to the victims that the State and their fellow citizens are serious in their efforts to help establish a relation of equality between citizens and the State' (Report of TRC Sierra Leone, 2004: 241). Hence, reparations play a vital role in restoring civic trust and bringing about reconciliation which is also essential for a consolidating democracy (Siani-Davies and Katsikas 2009: 561).

The case of South Africa highlights the importance of the relationship between reparation and reconciliation. That is, while South Africa gained world attention for the work of the Truth and Reconciliation Commission, whose success has been cited as a reason for creating and modeling truth commissions after it such as was the case in Greensboro, North Carolina, one of the most notable shortcomings has been the failure of the government to live up to its promise and commitment on reparation for victims of human rights abuses (Makhalemele 2009; Andrews 2003-2004). In fact, many victim groups, including the Khulumani Support Group, have maintained that reconciliation has not occurred in South Africa due to the "unfinished business" of reparations, despite the acknowledgement within the TRC report that '[without] adequate reparation and rehabilitation measures, there can be no healing or reconciliation' (Norval 2009: 315). Hence, it is vital that we understand what makes reparation programs succeed.

In sum, reparations are seen as one of the essential elements in the process of transitional justice. 'The victims must be able to feel and see that their plight is taken seriously and that they are more than pawns on a chessboard on which others play strategic games' (Tomuschat 2005: 581). It is interesting that in all of the truth commission reports, reparations for victims play a central role in their recommendations for reconciliation and for building national trust (Suma and Correa 2009: 1).

Conceptualizing & Operationalizing Reparations

While the topic as well as the definition of reparation has been highly controversial and contested, Chetingi (2012) maintains that there are working definitions for reparations in statutory law as well as case law. In fact, Bradely maintains that:

> Legal definitions of reparations are discussed in the International Law Commission (ILC) Articles on State Responsibility; the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law; and the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons. (Bradley 2009: 2-3).

The UN *Basic Principles* (2005), which is primarily the focus of most of the definitions on reparations, defines reparations as having five basic functions:

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.

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.

Rehabilitation should include medical and psychological care as well as legal and social services.

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.

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.

In order to begin conceptualizing reparations, we need to use the framework of "three-level" concepts (Goertz 2005). According to Goertz, in order to analyze concepts we need to able to determine how many dimensions a concept has, the substantive content of each dimension, as well as the method of aggregation (2005: 6). As a result, he maintains that since most important concepts are *multidimensional* and *multilevel* we need to first begin with the *basic level* i.e., the concept itself that we are attempting to analyze and theorize about (2005: 6). In this case the basic level concept is reparation. The next level, *secondary level*, is the constitutive dimensions of the basic level i.e., the multidimensional character of the concept (Goertz 2005: 6). If we go back to the *Basic Principles* guidelines, there are five components that make up the secondary level. They are: *Restitution, Compensation, Rehabilitation, Satisfaction,* and *Guarantees of Non-Return.* Moving on to the third level, the *indicator/data level*, this levels allows us to categorize

and operationalize our secondary level components i.e., what is the substantive content of each of the dimensions we are interested in (Goertz 2005: 6). In this case we need to think about each of the dimensions and what would be an indicator/data level variable that would reflect the dimension itself. Let us take each of the dimensions mentioned in the *Basic Principles.*

Starting off with *Restitution,* it refers to measures that are aimed at restoring victims back to their original position before the violation occurred. Depending on the type of violation, one could thing of several indicators that may get at whether or not restitution has occurred. For instance, the level of human rights abuses indicates whether or not abuses are still occurring; if the victims were refugees or displaced, we would look at the number of victims who were returned to their homes and were given back their property; if the victims had lost their job, we could look at the number of victims who were returned to their posts.

As for *Compensation,* it should be provided for any economically assessable damage, while *Rehabilitation,* would include any program that would provide medical, psychological as well as social services to the victims. As a result, we would need to look at percentage of the victims that received monetary compensation, and the percentage of the victims that accessed the "programs" developed by the state to help in the rehabilitation process, respectively.

With respect to *Satisfaction,* this aims at a variety of measures, which based on the definition would include reports on truth commissions, and other investigations, as well as public apology and memoralization. Last but not least, *Guarantees of Non-Repetition* combines broad structural measures that focus on institutional and judicial reform, as well as judicial and administrative sanctions.

Looking at **Figure 1**, which outlines the basic, secondary, and indicator levels, and focusing on two components of reparations, *Satisfaction* and *Guarantees of Non-Repetition,* one cannot help but notice that the indicators for these levels correspond to the different tools of transitional justice that are argued to be vital for post-conflict and post-transition societies in dealing with past abuses. That is, the indictors seem to overlap with the calls for criminal prosecution, truth commissions, institutional/security sector reform, as well as memoralization. This is quite problematic for the majority of the literature tends to look at reparations as one of the many tools available for actors in dealing with past abuses, be it after conflict or regime change, however, it would seem that the legal definition of reparation that is widely used and cited tends to include in their description two components that summarize and overlap with the other strategies. This in turn, complicates the study of reparation for then it would seem that the only way we can analyze whether a reparation program is implemented and succeeded is when ALL of the components have been carried out. However, if we look closely at the *Basic Principles* declaration, and endorsed by other courts and legal frameworks, at the most basic level, reparations are meant to be "urgent measures" to **restore**, **repair** and **rehabilitate** the victims; they are the only transitional justice initiative that is "victim oriented" (Powers 2007; Powers and Proctor 2011). As a result, in order to begin conceptualizing and analyzing reparation programs cross-

nationally, and creating a dataset that would help us focus on why reparation programs have been implemented in some cases and not in others, and why they have been "successful"[3] in some cases and not in others, we need to focus on the three components that are specifically designed to restore, repair and rehabilitate the victims (*Restitution, Compensation, and Rehabilitation*).

Factors that Impact Implementation of Reparation Programs

Surveying the literature on reparation, I have identified several factors that impact the implementation of a reparation program and have categorized them into three dimensions: political, economic, and administrative (see **Figure 2**). This paper argues that while the first two dimensions are necessary for policy formulation as well as policy design, they are insufficient. A missing factor in this literature is the administrative dimension, particularly the implementation process (i.e., the logistics and procedures). That is, once the decision to establish a reparation program has been made, and once the numbers of victims, the types of harm that will be covered as well as the financing have been determined, the next logical issue to tackle will be how the reparations will be delivered to the victims. As a result, it is important to consider how the process for reparation implementation is designed so that it ensures that the victims/beneficiaries receive their reparations in the most efficient and effective manner.

Political Dimension: Policy Formulation

Laplante (2009) has argued that in the case of Peru, where the reparation program put forward by the truth commission was believed to be one of the most comprehensive and inclusive reparation plans to date, the actual distribution of reparations has been slow, if not non-existent, as a result of the government's lack of political will for carrying out reparations. In the case of Nicaragua, Philips (2009) also points to the issue of the reparations being a low priority for the government, and as a result payments were postponed time and again. As for Haiti and El Salvador, Segovia (2006) maintains that reparations programs did not even get a chance to get off the ground as there was an absence of broad political coalitions in favor of reparations in both countries.

All these cases point to the importance, and necessity, of political will for the success of a reparation program. Without broad political support for the right and need of reparations it is difficult to create a reparation program to begin with. Several issues come into play, all of which may prevent the emergence of a favorable political atmosphere.

First, in some cases the state may not be the only domestic actor in a conflict (particularly when are talking about civil conflicts), and as a result it may not want to take on the reparations because this may legitimize the group or actors that it had been fighting with. For example, in the case of Colombia the Minister of Interior and Justice argued that government of Colombia would 'not be contributing to the individual reparation of victims unless the State is found to be clearly responsible for the harm suffered'(Richards 2007: 16). In this case, it is very clear that the

[3] While I do not address in detail my definition of "success" here, I do tend to look at two different ways of measuring successful reparation programs. First, by the **output** i.e., did the programs do what they stated they would do? For example, what is the percentage of the people that received their compensation, 25%, 50% or 100%? Second, by the **outcome**; that is, since reparations are believed to help in the democratization process as well as to reconcile the communities, what was the impact on these processes.

Colombian government felt that groups, such as the FARC, were the ones responsible for the harm and chaos in the country and therefore, they should be the ones to pay compensation and not the government. This of course, complicates the situation as the government is one of the major players in any implementation of reparations program.

Second, in many cases after a devastating protracted conflict the climate may already be politically charged, so bringing up the issue of reparation could stir anger and division as who are the true 'victims' of the conflict could be contentious in itself. This of course, may be seen as a political tool and therefore, many governmental officials will be less willing to stand up against their own communities to fight for reparations. Moreover, there could be concern that by agreeing to provide reparations, and in essence agreeing that the State apparatus was guilty of crimes, could lead to vengeful acts that may destabilize the country even further, especially in countries that have a fragile peace. For example, after the Chilean National Truth and Reconciliation Commission established that thousands of people had been detained and killed and suggested that they be offered reparations, the armed forces and Supreme Court vehemently rejected the report, 'arguing that it did not take into account the historical and political context in which these acts occurred' (Lira 2006: 58). However, soon thereafter, a Senator and ideologue of the former military regime was assassinated. This increased the tension within Chile with respect to the issue of reparations. Moreover, in some cases, even if there was no recent violence, the issue of reparation itself could be controversial. For example, reparations for African-Americans in the United States and the issue of slavery have been a contentious subject and a source of division, and as a result there has been little progress on this front (Powers 2007).

Third, after an armed conflict, and even after a transition, groups begin to compete for the resources of the state. In many cases, the post-conflict/post-transition governments are overwhelmed with new duties all of which need funding; such as, restoration of services, rebuilding of infrastructure, etc, yet they are all constrained by the lack of resources. As a result, many may feel that providing reoperations to a "segment" of the society for sufferings that they endured should not come at the expense or needs of the whole community. Hence, this may lead to tensions between reparation programs and overall development programs. The Salvadoran government, for instance, claimed that the lack of public resources and the need to assign the available resources to the task of reconstruction prevented them from allocating any resources to finance reparations (Segovia 2006: 159). Also, in the case of Uganda the government decided in 2007 to launch a Peace Recovery and Development Program (PRDP) for northern Uganda, but chose not to address the need of the victims of the twenty-year conflict, particularly due to the competition between the resources for the two programs (i.e., development and reparation programs) (Amnesty International 2008).

Therefore, in order to ensure that reparation program are implemented first, there needs to be a political will within the government and a political force willing to defend the policy formulation of the reparation program. It needs to be part of the national agenda in order to ensure the designing and implementing of political strategies to carry it out, which in turn will guarantee the implementation of the program. To gauge the political will in a country, it is important that we look at the perpetrators of the conflict or human rights abuses; was it the state/state agents or other groups within the country, such as rebel groups? Or was it political leaders of certain parties? By determining who the violators of human rights and humanitarian law were, and

whether the wrongdoers are still part of the political system, we can have a better understanding of the political atmosphere surrounding the reparations programs. One can expect that if the violators were still part of the political system, then the political will be weak, if not non-existence, for the creation of a reparation program. Moreover, it is important to determine whether there is a presence of social and political forces to promote the reparations, and how strong they are. That is, we would expect that if there were no presence of civil society organizations, such as NGOs concerned with human rights as well as organizations of the families of the victims, then there will be weaker political forces pushing for reparations and making them part of the national agenda. All of these factors are important indicators of whether or not there is a strong political will for a reparation program, and will have a huge impact on the implementation results, as it will impact both the establishment of such a program as well as its execution.

Economic Dimension: Policy Design

As mentioned above, for many of the societies that are coming out of an armed conflict or have transitioned to a democracy, the circumstances facing the new governments can be quite harsh due to the lack of resources, destruction of infrastructure, and the need to invest in the political and judicial institutions. Therefore, the economic dimensions surrounding a reparation program will be pertinent to how policies will be designed to execute the reparation program. Several factors come into play here: the type of compensation, the scope and reach of program, as well as the financing model that is chosen.[4] Each of these factors will impact the economic dimension of a reparation program for they will determine how much money is needed to carry out the reparation program and where the money will be coming from.

Every reparation program must determine the type of material reparation it will deliver, particularly whether it will be providing individual monetary compensation, service programs, or both. We would also need to determine the scope and reach of the program; that is, how many victims we have and how many types of harms need to be repaired. As the number of victims and harms increase, and as the number of service programs and amount of compensation increase, the more difficult it will be to finance the reparation program and the more sensitive a program is to the type of financing that is chosen.

Some of the mechanisms that have been suggested for financing reparation programs include, 'tax increases, cuts in military spending, or a redistribution of public expenditure'(Segovia 2006: 651). However, in transitional societies, both that have transitioned away from repressive regimes as well as from conflict, such actions may be difficult, if not nearly impossible; at least on their own, that is.

Segovia (2006: 660) presents two types of financing models that have been used to fund reparation programs: special funds and direct financing. With respect to the special funds, the government creates a special fund that is financed by national and international resources through the public budget, foreign donations and loans, public bonds, private resources, and/or special assets. Guatemala, adopted this model as its reparations were mainly financed through

[4] The type of compensation, scope and reach factors parallel the categories presented by De Greiff (2006), particularly the scope, comprehensiveness and complexity elements.

international donors (Segovia 2006: 662). As for direct financing, the government directly funds the reparations from its own funds. In the case of Argentina, for instance, some reparations were financed through bonds issued by the government (Guembe 2006: 33).

In practice, financing models based on the special funds have been less successful as they are generally managed on ad hoc basis and are less effective in providing the needed resources that would enable the implementation of the reparation programs (Segovia 2006: 664-665). Interestingly, in their survey of ten international cases of reparations, which included South Africa, Guatemala, Chile, Argentina, El Salvador, Germany, USA, Peru, Morocco, and Colombia, Casas Casas and Toloza (2008; 2009) found that reparations were more successful when the necessary budgetary allocations were allotted to finance the programs and when the international aid agencies committed to the programs; that is, there needed to be both direct funds and international resources for the programs to be successful.

In sum, the type of material reparation, the scope and reach of the program along with the financial model will all influence how successful a reparation program will be, as they will impact the economic dimension which is essential for any program to take into effect. Therefore, it is vital that we take into consideration the economic dimensions of a reparation program, but also realize that there is a strong relationship between the economic and political dimensions as has been suggested in the last two sections. Now, we turn to the administrative dimension; a factor that has received less attention within the reparation literature.

Administrative Dimension: Implementation Process

According to Laplante 'the general know-how on how to create, plan, and carry out an efficient and effective reparation plan' is vital for it can facilitate the process for the victims (2009: 83). Therefore, it is important that we take into account how the executions of the reparation programs are designed. Two factors need to be taken into consideration here: the logistics (i.e., criteria and proof), and the implementation process itself (i.e., the procedures and administrative bodies set up to implement the program). That is, once it has been decided that reparations will be administered it is pertinent that the government begins to think about the *criteria, proof, procedures, and the implementing body* that it will rely on for each of the harms that it will be attempting to redress.

Starting off with the *criteria* this entails the qualifying guidelines that a government will rely on for each of the harms that it will be providing reparations for. For each reparation program, there needs to be clear and transparent standards of what harms are being considered, who will qualify as a beneficiary for the particular harm, and in cases of individual monetary compensation, how the state will determine the allocation of the amount each victim/beneficiary will receive. With respect to what harms will be considered, this becomes necessary for in many situations the government finds itself needing to deal with different types of violations of human rights and humanitarian law. For example, in the case of Morocco the government had promised financial reparations totaling fifty to seventy million dollars, but it needed to determine who will qualify to receive reparations. As a result, the truth commission used the following six criteria to identify the different harms that it will repair: 'deprivation of liberty; forced disappearance; detention conditions; use of torture and other cruel, degrading, and inhuman treatment; the aftermath of

physical and psychological abuse; and the loss of opportunity and potential income'(Hazan 2006: 12).

Also, it is necessary to identify who would qualify to be eligible in the different categories of harms that will be repaired. For instance, in the case of Chile the government identified in its Law 19.123 (and the amended version Law 19.441) that the beneficiaries for reparation pensions will include 'the surviving spouse, the mother of the person with the right or the father in case of her absence, the mother of the victim's biological children or the father in case the mother was the person with the right, and his or her children under twenty-five (25) years of age, or disabled children of any age, be they legitimate, biological, adopted, or illegitimate in those cases provided for in Article 280(1), (2), and (3) of the Civil Code'(Law 19.123 in De Greiff 2006: 754). In this case, as in others, the Law clearly defined who would qualify as a beneficiary for the reparation.

Another factor that also needs to be considered in programs where monetary compensation will be distributed is the rules or measures that the state will rely on to calculate the amounts that each victim/beneficiary will receive. In the case of Argentina, the Ministry of Interior and Economy established how the benefits would be calculated primarily using the roster of the Civil Servants of the National Public Administration. So for example, in the case of detention the government decided that it will pay $27 dollars per day for each day of detention. If the victim had died during his/her detention, then the beneficiaries would receive $27 dollars per day for each day that they were detained and an additional $49,275 dollars, which was equivalent to five years of detention. However, in the case of injury while in detention, the government decided that the individual would receive $27 dollars per day for the duration of the detention plus an additional $34, 492 dollars, which is the equivalent of 70 percent of the total amount for five years of detention (Guembe 2006: 31-34). As we can see, the government was precise and clear in how it was going to determine the amount that each victim/beneficiary would receive in these cases. They also created rules for the other types of harms.

The government will also need to determine other guidelines pertaining to the distribution of compensation. For instance, will the payments be made in one installment or monthly? Or will there be a large sum at the beginning then monthly thereafter? In the case of Chile, the government decided that in its reparations program for the families of the victims of political violence, political executions and disappeared detainees that the beneficiaries will receive a monthly pension that amounted to $226,667 pesos (US$537) and a one-time compensatory bonus equal to twelve months of pensions (Lira 2006: 59). Interestingly, this amount was used as a reference for estimating the different amounts that were provided for each type of beneficiary. So for instance, the surviving spouse received 40% of the total or $90,667 pesos (US$215), while the mother of the petitioner, or in her absence the father, received 30% of the total or $68,000 pesos (US$161).

Moreover, what will happen as time goes by? Will the payments be adjusted for inflation? We need to be careful with compensations that are allocated in installments with gaps in years as there may not be any adjustments for inflation, as was the situation in the Czech (David and Yuk-ping 2005) where the government failed to do this, which created problems for the victims/beneficiaries and made them feel cheated by the system once again. This of course,

would be counter to the aims of the reparation programs to help the victims heal and restore their trust in the state and the rule of law.

Another important logistic to be determined by the government is the type of *proof* that it will require the individuals to submit in order for them to qualify for the reparations. Some important questions to think about here are: whether the government will be satisfied with the list of victims that will be compiled by the truth commission, as was the case in Chile (Lira 2006)? Will it rely on the judiciary, as was the case in Colombia (International Crisis Group Report 2006)? Or will they set up an application process to be managed by some governmental body or institution, as was the case in Argentina (Guembe 2006)? Also, what type of documents would the victims/beneficiaries need to present to whatever institution, be it the truth commission, judiciary system, or governmental agency? In Peru, to qualify for reparations victims' families had to provide evidence that their loved ones were murdered by the guerrillas, the army or paramilitary groups, which was not an easy feat (Paez 2010).

It is vital that states address the problem of evidentiary weakness. In many cases, due to the circumstances surrounding the abuse it is difficult to attain the necessary proof to qualify for reparations. As a result, Niebergall (2009) maintains that for reparation processing to be successful, reparation programs need to relax the evidentiary requirements in favor of claimants. This can be done in several ways. First, the government can distribute the burden of proof by obliging other parties directly or indirectly involved in the claims process to cooperate in gathering evidence. For example, in the case of the reparations for former slaves and forces laborers under the National Social Regime, while the German Forced Labor Compensation Program required the claimants to submit documents to demonstrate their eligibility, 'the German Foundation Act that governed parts of the claims resolution process also directed German enterprises and German state entities (e.g. Social Security and other archives) to assist claimants in the production of evidence' (Niebergall 2009: 152).

Second, they could entrust the administrative bodies implementing the reparations program with a general fact-finding role. Going back to the German Foundation Act, it also established a general fact-finding role for the implementing organization that processed the claims, which allowed the implementing body to cooperate closely with external archives such as in Poland and Yugoslavia, in order to supplement and match information in individual claims (Niebergall 2009: 152).

Last but not least, the state can relax the standards of evidence. Again, with respect to the German Forced Labor Compensation program, the government supplemented the original rule of the eligibility of applicants by submission of documents, by allowing the implementing body to assess the eligibility of the claimant's application in some other credible way (Niebergall 2009: 158). So for example, they allowed for any formal or informal evidence to be brought forward including written narrative such as excerpts from the victim's diary.

After the logistics have been dealt with, the government needs to set up a framework (i.e. the *procedures*) to carry out the plan, which entails the steps that the victims must take to receive the reparation. The government may set up administrative bodies that will be in charge of processing the reparations. They will be in charge of verifying the applications and making decisions

pertaining to who qualifies, as well as processing the claim. The cases in the literature seem to suggest that it may be best that the government creates different organizations to deal with the different types of harms. For example, in the case of Peru after the Truth and Reconciliation Commission recommended the creation of an Integral Reparation Plan the government passed a law 'to create the framework for the PIR (Law 28592) and the two national bodies responsible for its implementation: the Reparations Council (*Consejo de Reparaciones*) and the High Level Multi-Sectoral Commission (*Comisión Multisectoral de Alto Nivel* CMAN)' (Peru Support Group 2009: 6). While this was a great first step, unfortunately not much has been done since the law was passed due to budgetary constraints and political obstacles. What is interesting though about this case is that the government set up two bodies, one to deal with individual reparations and another to deal with collective reparations. These two bodies worked together, and the CMAN was able to compile 463 communities based on the Victims' Registry to move forward to the second phase in the collective reparation process (Peru Support Group 2009: 7). In the case of Chile, the Institute of Pension Normalization was established and put in charge of distributing the reparation pensions to the families of the victims that were identified in the National Truth and Reconciliation Commission (Lira 2006) however, other administrative bodies were set up to deal with the different types of harms that the government was providing reparations for.

When setting up institutional bodies, it is important to keep in mind here several key issues pertaining to their design: the scope of issues, centralization of tasks, rules for controlling the institution (i.e., monitoring), flexibility of arrangements[5] and the staff. Each of these factors will impact how efficient the claim process will be.

With respect to scope the government needs to determine what types of harms will the administrative body deal with and whether it will cover more than one type. This will be important because the last thing that is needed is for the administrative body to be overburdened with several tasks and end up failing in all of them. As for the centralization of tasks, the government will need to decide whether all the tasks carried out by the main central body or will there be regional branches of the organizations. Of course, there are advantages and disadvantages for having a centralized body. For instance, one centralized organization will help to reduce redundancy, prevent waste of resources, will create one single database, and may make oversight easier. On the other hand, there may be a delay for victims/beneficiaries to get their reparation as it may be burdened by the number of victims it would need to provide reparations for. Also, by not decentralizing many victims/beneficiaries may have difficulties reaching the administrative body especially, when the office is in the capital and the victims live in the poor and rural parts of the country. Having local branches may help in disseminating information and create personal and direct relationships with the victims/beneficiaries. The accessibility of a reparation program was highlighted in the report of the Truth and Reconciliation Commission in Sierra Leone, and it was argued that in order to ensure access the implementing body needs to have branches in the provinces and not just the capital, Freetown (Report TRC of Sierra Leone 2004: 248). This is important because for reparations to have an impact they must be meaningful and carried out in a timely fashion.

[5] While these are not the only important design features, Koremens, Lipson and Snidal (2001) argue that they are substantively important, broad and easier to measure than other features that have been identified in the organizational literature.

With respect to the controls and monitoring of the institution, decisions need to be made pertaining to who the body reports to and whether there will be measures for holding individuals accountable. Herzfeld (1993) maintained that bureaucracies can produce cultures of indifference, which can lead to inefficient bureaucrats and in turn become an institutional obstacle. So we need to make sure that there is some type of accountability that would ensure the victim's rights, particularly their monetary compensation, are not being swept away by the inefficient, and in many of these countries, corrupt bureaucrats. Some have argued that oversight should be retained in the hands of the legislative body so that the implementing body does not fall to the whims of the executive branch.[6] External auditing could also be an option. This would ensure that there is an independent third party that would be holding bureaucrats and officials accountable. In the case of Chile, the National Office for Returning Exiles, which was in charge of implementing the reparation program set up for returning exiles, had to report annually its work and expenses to the Chamber of Deputies (Lira 2006: 73). Another important issue for oversight is whether or not the families of the victims/beneficiaries, or organizations that represent them, are involved in the set up. It is pertinent that in cases where the administrative body does not make payments in a timely fashion that there is away to identify the obstacle(s) and rectify it.

As for flexibility, we need to make sure that the administrative body is able to accommodate to new circumstances, and if there are issues outside its jurisdiction, there needs to be clear rules on how they go about dealing with them. Also, the flexibility of the institutions will be vital when it comes to assessing the evidence provided by potential beneficiaries of a reparation program. If the implementing body does not have enough latitude in judging the evidence provided, then it may have to reject more claims than it probably should. Going back to the Peruvian example where many potential beneficiaries had to provide concrete evidence that their loved ones was murdered by the army or paramilitary groups, since the implementing body did not have much flexibility for assessing the evidence this made it difficult for the families of the victims to obtain their reparation. However, in the case of the United Nations Compensation Commission, which was involved with providing reparations to the victims in the Iraq war against Kuwait in 1990, it recognized that many claimants could not document all aspects of the claim. As a result, it established a 'test of balance of probability,' which gave it some flexibility in determining the required level of proof necessary and took into consideration the conditions existing at the time of the invasion and loss (Niebergall 2009: 159). Therefore, in designing the implementing bodies the governments should allow them to be flexible enough to take into consideration the circumstances at the time the harm occurred.

Last but not least, the issue of staffing must be dealt with. The implementing body must not only have sufficient manpower but must also include qualified and technical assistance. No reparation program can be implemented without the personnel who carry out the program, from the validation of the claim to the processing of the claim. Without the proper knowledge, skills and abilities, the implementation process will be stalled, inefficient and ineffective, which in turn could add new grievances and harms.

In the end, we also need to make sure that when the procedures are set up for reparation claims that they do not clash with the domestic laws nor should they be biased against the victims. With

[6] See paper on a National Reparations Program for Timor-Leste prepared by Working Group on Reparations for more discussion. http://www.laohamutuk.org/Justice/Reparations/ReparationsConceptJul08En.pdf

respect to the first issue, the situation in Argentina pertaining to the disappeared and illegal detentions would be a perfect illustration of this point. According to Argentinean law, a person had two years to file for unauthorized/illegal detention, but this was a constrain for many of the victims who, for instance, had been released before the military *Junta* had collapsed in 1983 and their statute of limitation had expired. Therefore, they were not eligible for compensation. As a result, the government decided to create a new decree that would allow these individuals to apply for compensation by restarting the clock with the day that democracy was re-established, 10 December 1983 (Guembe 2006: 28-29).

Another example, also from the Argentinean case, for creating a new law to deal with legal obstacles was when the Argentinean government passed the Law of Absence by Forced Disappearances, which did not require the death of a disappeared person in order for their families to be compensated (Guembe 2006: 35). This was quite groundbreaking as it meant that the families would be able to deal with issues of inheritance, pensions, etc., without having to declare their loved ones dead and feel as if they were giving up on them. As for laws that may be prejudiced against the victims, in the case of Peru the government had required people to register with the Victims' Registry, but they needed official IDs to do so. However, many of the victims had no legal documentation due to the fact that they lived in forgotten areas of the country with little to no presence of the government in those areas (Peru Support Group 2009:6-7). Hence, there needs to be a revision of any laws that would impede the implementation of the reparation process.

In sum, logistic and procedural challenges can play a critical role in delaying the implementation of the reparation programs, which can lead to the failure of such programs. We need to make sure to design polices that are appropriate for guaranteeing the reparations. Therefore, the implementing body needs to design an operational and procedural framework that will be efficient, but flexible enough to carry out the reparations program. We also need to make sure that the government passes a law, or laws, that would deal with each type of harm by outlining the rights and benefits to the victims and their beneficiaries. And last but not least, the procedures should remain simple and that the victims and beneficiaries are aware what they are and the information is accessible to them.

Next Step?

This paper is a very preliminary and first cut at conceptualizing and analyzing reparations; there is a lot more work that still needs to be done. The next step is to further develop the argument and to begin to analyze the relationships in a couple of cases in order to be to assess some of the factors that I have discussed, but also to have a better picture of the implementation of the reparation programs and how "successful" they are. That is, to look specifically at the policy formulation, policy design, and implementation process and how they impact the implementation output as well as outcome. I also need to conceptualize and operationalize what I mean by "success."

A couple of cases that I have begun looking into are: South Africa, Argentina and Peru. The first two cases have received a lot of attention in the case study literature and are particularly interesting. For instance, in the South African case while over 70,000 victims have been

identified as being eligible for reparations, many have argued that only 16,000 have actually received their reparations. The Argentinean case is interesting because the government developed over five different types of reparation programs for the different harms that were identified by the Truth Commission, and while there is a lot of information about the policy formulation and design there is little work on the implementation of the programs. And last but not least, Peru is significant because while the Truth Commission put forward one of the most comprehensive and inclusive programs, the actual distribution of reparations have been lacking.

I have also compiled a list of cases where we have seen either a transition towards a democracy or post-conflict, and have been able to identity whether these countries have had some reparation program (primarily focusing on restitution, compensation and rehabilitation attempts). The Olsen et al dataset for example, only has identified 6 countries with reparations, yet in my preliminary investigation for the same time period I have been able to identify 66 countries that have discussed or implemented reparation programs. I am hoping to then use the coding sheet (**see Table 1**) that I have developed to code data on political, economic, and administrative dimensions for each of the programs developed. I am also hoping to collect data on the output (i.e. the indicator level data presented in **Figure 1**) as well as to think about how to analyze outcomes (i.e. reconciliation levels and democratization levels), which will be crucial for my measurement of "success."

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Table 1: Checklist for Political, Economic, and Administrative Dimensions of Reparation Programs

Political Dimension	
Who is the Perpetrator(s)?	1) State/State Agents 2) Groups 3) Leaders 4) 1 & 2 5) All of the Above
Is the wrongdoer(s) still part of the political system?	1) Yes 2) No
Is there support for the reparation program?	1) Yes 2) No 3) Divided
Strength of Civil Society?	1) Strong 2) Moderate 3) Weak 4) Non-Existent
Economic Dimension	
Monetary Compensation	1) Yes 2) No
Programs or Service Packages	1) Yes 2) No
Number of Programs or Service Packages	Raw Number: 0-100
Number of Victims	Raw Number: 0-1000000
Different Types of Harms to be Repaired	1) Yes 2) No
Number of Types of Harms to be Repaired	Raw Number: 0-100
Financial Model/Program	1) Special Funds 2) Direct Financing
Administrative Dimension	
How are the victims/beneficiaries determined?	1) Truth Commission 2) Judicial Process 3) Application
Burden of Proof	1) Complicated 2) Not Complicated
How will they get the reparation to victims/beneficiaries?	
Administrative Bodies Established	1) Yes 2) No
Centralized Information	1) Yes 2) No
Autonomy	1) Yes 2) No
Staffed Adequately	1) Yes 2) No
Flexible	1) Yes 2) No
Monitoring	1) Yes 2) No
Complicated Process	1) Yes 2) No

Figure 1: Conceptualizing Reparations

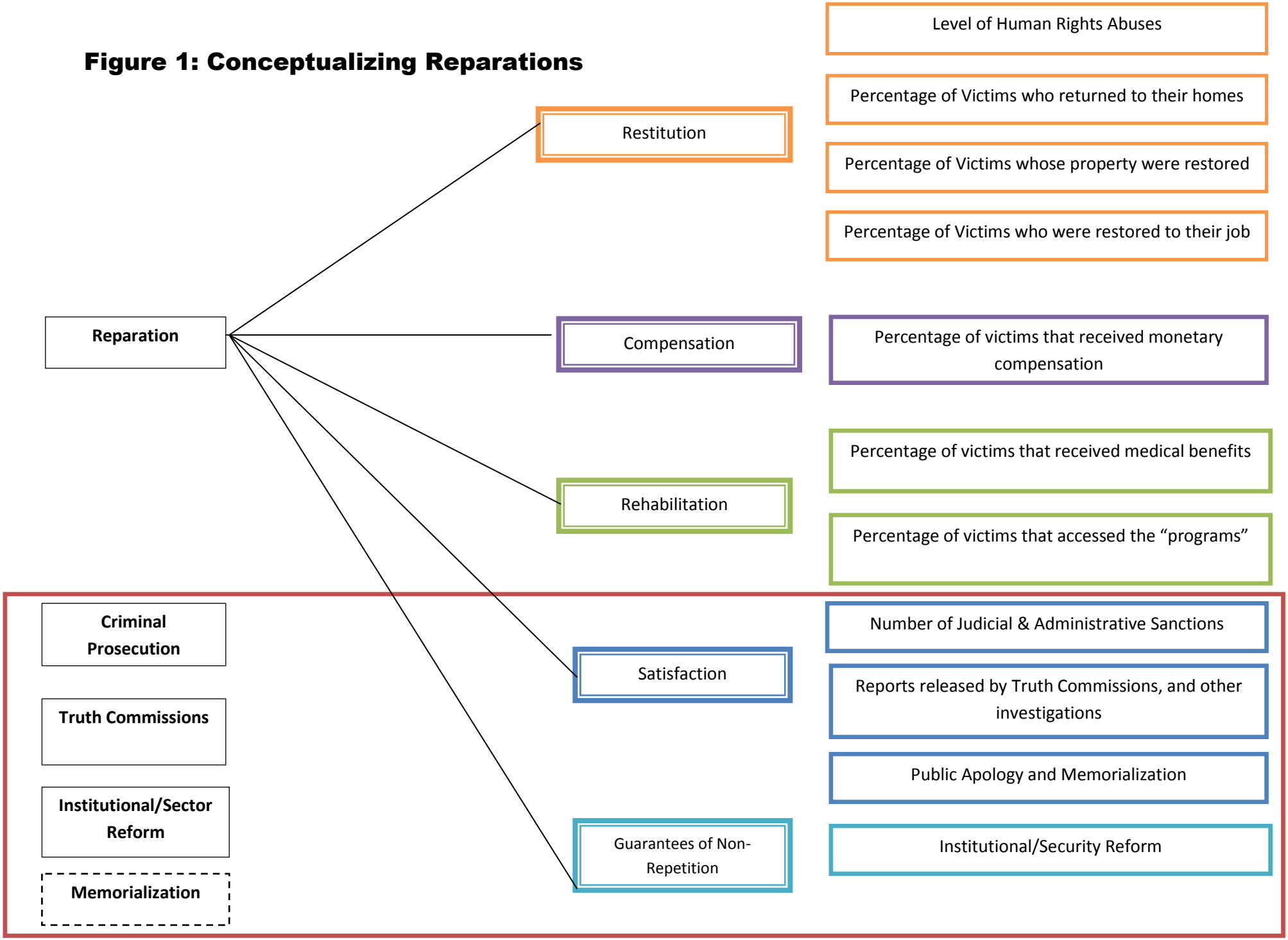

Figure 2: Framework for Analysis