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POST-CONFLICT CONSTITUTIONS
WAR CRIMES PROSECUTION

CORE ELEMENTS OF REPARATIONS

Legal Memorandum

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CORE ELEMENTS OF REPARATIONS

Executive Summary

The purpose of this memorandum is to outline the international legal framework concerning reparations for victims of atrocity crimes and to discuss models for and implementation of reparation and compensation mechanisms.

Reparations are a means by which post-conflict states can provide redress to victims in the transitional justice process. Reparations can restore victims of serious crimes to their position before the harm was committed or provide other relief through the provision of services and public acknowledgements of the wrongdoing.

Reparations may be individual or collective, according to the harm suffered. Victims are persons that individually or collectively suffer harm, such as physical or emotional injury, economic loss, or violations of basic rights. Individuals who indirectly suffer harm as a result of crimes targeting another, such as a family member, may also be considered victims for the purposes of reparations.

Types of reparations include restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition. Restitution seeks to restore a victim to his or her position before the violations occurred. Compensation is a financial award for harms that can be accounted for in an economic sense. Rehabilitation provides care and services for victims beyond monetary payments. Satisfaction includes symbolic reparations such as public apologies, verifying facts, and searching for the disappeared. Guarantees of non-repetition provide assurance to victims who may fear retaliation or future harm.

Domestic courts are the primary means of granting reparations. However, states may also award reparations through truth and reconciliation commissions or government programs. The manner in which reparations mechanisms are implemented varies according to the situation that gave rise to the violation. Gender disparities and victim participation are two relevant factors in determining the form and structure of reparations mechanisms. Difficulties in financing reparations can also pose difficulties in assuring appropriate and adequate reparations.

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CORE ELEMENTS OF REPARATIONS

Statement of Purpose

The purpose of this memorandum is to outline the international legal framework concerning reparations for victims of atrocity crimes and to discuss models for and implementation of reparation and compensation mechanisms.

Introduction

The right to reparations for victims of atrocity crimes such as war crimes, crimes against humanity, and genocide is widely regarded as fully or nearly crystallized in treaty and customary international law.¹ However, individual victims have limited mechanisms to bring reparations claims, especially when domestic laws and practice do not fully align with a state's international commitments.²

This memorandum discusses the legal framework of individual and collective reparations for victims under international law. The memorandum then outlines possible implementation of reparations mechanisms, including their structure, factors to consider in their design, and possible solutions for financing reparations.

Reparations for Victims under International Law

Reparations are a means by which post-conflict states can provide redress to victims in the transitional justice process. Reparations can restore victims of serious crimes to their financial, physical, or psychological position before suffering the harm in question. Where restoring victims to their previous position is not possible, reparations can also provide some relief in the form of social services, court judgments, and other public acknowledgement of the harms that were committed.

¹ See Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States, Reparations Programs*, 6 (2008).

² REDRESS, *Reparations for Torture, A Survey of Law and Practice in Thirty Selected Countries* (Apr. 2003), available at <http://www.redress.org/downloads/publications/AuditReportText.pdf>.

An obligation to provide reparations exists if a state, or its agents, violates international law. This may include situations where the state is only partially responsible through a failure to act on a legal duty or where the liable parties are unable or unwilling to provide reparations.³ The right to reparations is found in numerous international humanitarian and human rights law instruments including: the Universal Declaration of Human Rights (art. 8), the Hague Convention IV of 1907 (art. 3), the Third Geneva Convention (art. 68), the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict (art. 91), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14), the Convention on the Rights of the Child (art. 39) and the International Covenant on Civil and Political Rights (art. 2).

Victims are defined as persons that individually or collectively suffer harm, such as physical injury, emotional suffering, economic loss, or inability to exercise one's basic rights.⁴ Some courts, including the ICC, have expanded the definition of "victims" to encompass individuals who indirectly suffer harm as a result of crimes targeting someone else, such as a family member, as well as organizations whose property are harmed by certain crimes.⁵

Background on Reparations Mechanisms

Victims' reparations remain a critical aspect of the transitional justice process because they recognize the importance of victims' rights and serve to make amends for past harms suffered.⁶ The types of injuries for which victims have traditionally received reparations include physical injury, death, amputation, sexual violence, psychological trauma, and destruction or loss of property. However, courts differ on the types of injuries for which they will actually award reparations. For instance, the War Crimes Chamber

³ General Assembly Resolution 60/147, Annex, art. 16, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), available at

http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf

⁴ General Assembly Resolution 60/147, para 8, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf

⁵ International Criminal Court, *Booklet: Victims Before the International Criminal Court*, 12, available at: http://www2.icc-cpi.int/NR/rdonlyres/04DDAEA9-6023-492F-AE24-53CF9C9F6D92/144111/VPRS_Booklet_En.pdf.

⁶ International Center for Transitional Justice, *Reparations*, available at <http://www.ictj.org/en/tj/782.html>.

in the Courts of Bosnia and Herzegovina only provide reparations for loss of property.⁷

Individual and Collective Reparations

Collective reparations are often utilized when there have been such massive human rights violations that individual reparations are unlikely.⁸ While individual reparations recognize specific harms to specific victims, collective reparations acknowledge collective harms felt by entire communities and increase the effectiveness of resources.⁹

As with individual reparations, collective reparations can be ordered by international courts and tribunals, government programs, or domestic mechanisms, including Truth and Reconciliation Commissions. Satisfaction and guarantees of non-repetition are the most common forms of collective reparations.¹⁰ Collective reparations may also include non-financial reparations, such as public acknowledgment of the truth and acceptance of responsibility, and activities to remember the victims and educate society on the truth; or financial reparations, such as monetary compensation.¹¹

Types of Reparations

There are five categories of reparations: (1) restitution, (2) compensation, (3) rehabilitation, (4) satisfaction, and (5) guarantees of non-repetition.

⁷ Criminal Procedure Code, art. 193 (Bosnia and Herzegovina, 1996).

⁸ Priscilla B. Hayner, *In Pursuit of Justice and Reconciliation: Contributions of Truth Telling*, in *COMPARATIVE PEACE PROCESSES IN LATIN AMERICA* 363, 374 (Cynthia J. Arnsen ed., 1999).

⁹ See Naomi Roht-Arriaza and Katharine Orlovsky, *A Complementary Relationship: Reparations and Development*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 3 (July 2009), available at <http://ictj.org/sites/default/files/ICTJ-Development-Reparations-ResearchBrief-2009-English.pdf>; Colleen Duggan, Claudia Paz y Paz Bailey, and Julie Guillerot, *Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru*, 2 INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE 192, 199 (2008).

¹⁰ REDRESS, *What is Reparation?* (2004) available at <http://www.redress.org/smartweb/what-is-reparation/what-is-reparation>; Bridget Mayeux, Justin Mirabal, and Ariel Dulitzky, *Collective and Moral Reparations in the Inter-American Court of Human Rights*, HUMAN RIGHTS CLINIC AT THE UNIVERSITY OF TEXAS SCHOOL OF LAW, 1 (Nov. 2009), available at http://www.utexas.edu/law/clinics/humanrights/work/HRC_F09_CollectiveReparations.pdf.

¹¹ Colleen Duggan, Claudia Paz y Paz Bailey, and Julie Guillerot, *Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru*, 2 INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE 192, 199 (2008); REDRESS, *What is Reparation?* (2004), available at <http://www.redress.org/smartweb/what-is-reparation/what-is-reparation>.

Restitution

Restitution aims to place victims back in their original situation prior to the violations.¹² Forms of restitution may include restoration of citizenship, return to one's place of residence, restoration of employment and property return.¹³ Restitution is seen as a proper solution for victims who seek the right to return to their homes or an equivalent payment for displaced property.¹⁴ Historically, restitution was considered the ideal type of reparation. However, in the case of large-scale violations and protracted conflicts, making all victims whole is often not possible.¹⁵

Compensation

Compensation generally refers to financial awards made for damages resulting from violations that can be accounted for in some economic sense.¹⁶ This may include physical and mental harm, material economic damage, moral damage, consequential damages and costs of support services, and lost opportunities and benefits.¹⁷ As with other forms of reparations, the harms accounted for and level of compensation depend on judgments of proportionality and appropriateness.¹⁸

Rehabilitation

Rehabilitation is intended to provide care and services for victims, beyond monetary payments. Rehabilitation can include physical and psychological care, as well as social and legal services, often in a community-focused context.¹⁹ While rehabilitation emphasizes the

¹² General Assembly Resolution 60/147, Annex, para. 19, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

¹³ General Assembly Resolution 60/147, Annex, para. 19, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

¹⁴ Rhodri C. Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, International Center for Transitional Justice (May 2007), available at <http://ictj.org/sites/default/files/ICTJ-Global-Right-Restitution-2007-English.pdf>.

¹⁵ Rhodri C. Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, International Center for Transitional Justice (May 2007), available at <http://ictj.org/sites/default/files/ICTJ-Global-Right-Restitution-2007-English.pdf>.

¹⁶ General Assembly Resolution 60/147, Annex, para. 20, U.N. Doc. A/Res/60/147, (Dec. 16, 2005) available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

¹⁷ General Assembly Resolution 60/147, Annex, para. 20, U.N. Doc. A/Res/60/147, (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.; *See also* Truth and Reconciliation Commission of Sierra Leone, Witness to Truth: *Report of Sierra Leone Truth & Reconciliation Commission, Vol. II*, Chap. IV, para. 21 (Oct. 5, 2004), available at <http://www.sierra-leone.org/TRCDocuments.html>.

¹⁸ General Assembly Resolution 60/147, Annex, para. 20, U.N. Doc. A/Res/60/147, (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

¹⁹ REDRESS, *Rehabilitation as a Form of Reparation Under International Law*, 10 (Dec. 2009), available at <http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf>.

provision of services and care for victims, it may also be provided through payments rather than in-kind services.²⁰

Satisfaction

Satisfaction includes a large number of possible symbolic forms of reparations such as official declarations; public apologies; commemorations and tributes; truth-seeking and public disclosures; and verifying facts and searching for the disappeared. Satisfaction also includes memorialization through the marking of important locations, building of museums, re-namings, and holidays.²¹ A court's finding of guilt may even be considered a form of satisfaction.²² Satisfaction is most often collective in nature, but can have an individual component if victims are identified for specific symbolic acts.

Guarantees of Non-Repetition

Guarantees of non-repetition, which focus on the prevention of future violations, are crucial to providing assurance to victims who may fear retaliation or future harm. State measures that promote political stability, encourage monitoring and improve the rule of law prevent future violations and ensure that reparations are not simply a short-term measure.²³ These efforts may include strengthening civilian control of the military, providing human rights and international humanitarian law trainings, creating codes of conduct, improving the independence of the judiciary, and establishing mechanisms for prevention and monitoring.²⁴

Implementing Reparations Mechanisms

The implementation process for granting reparations to victims can be complex and may require extensive planning and organization to ensure an operational reparations program for victims. Critical stages include

²⁰ REDRESS, *Reparation, A Sourcebook for Victims of Torture and Other Violations of Human Rights and International Humanitarian Law*, 19 (Mar. 2003), available at <http://www.redress.org/downloads/publications/SourceBook.pdf>.

²¹ General Assembly Resolution 60/147, Annex, para. 22, U.N. Doc. A/Res/60/147, (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

²² REDRESS, *European Mechanisms*, available at <http://www.redress.org/smartweb/regional-human-rights-mechanisms/european-mechanisms>.

²³ Truth and Reconciliation Commission of Sierra Leone, *Witness to Truth: Report of Sierra Leone Truth & Reconciliation Commission, Vol. II*, Chap. IV, paras. 22-23 (Oct. 5, 2004), available at <http://www.sierra-leone.org/TRCDocuments.html>.

²⁴ General Assembly Resolution 60/147, Annex, para. 23, U.N. Doc. A/Res/60/147, (Dec. 16, 2005), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

establishing the program's overall structure, amassing sufficient funding, prioritizing the allocation of funds, and designing a procedural framework to fairly regulate the distribution of reparations to victims.

Structure of Reparations Mechanisms

Reparations are generally awarded by courts or by truth and reconciliation commissions (TRCs), but reparations may also be implemented through government programs. In awarding or enforcing the grant of reparations, states may consider the general types of harms suffered by victims and the financial capacity of the convicted. In cases where the offending party's financial resources are inadequate, courts may supplement offender-funded reparations with additional resources, either from local governments or through contributions made by the international community. While states are not restricted from creating other bodies to award reparations, domestic courts are usually the primary means of granting reparations.

State governments are often responsible for providing reparations to victims, particularly when the harm suffered by the victim results from state acts or omissions.²⁵ When the harm is attributed to a person or entity other than the state, that individual or entity is responsible for providing reparations to the victim or for compensating the state for the cost of reparations already made to victims.²⁶ In the event that the individual liable for the harm cannot provide the appropriate reparations, state-organized domestic reparations programs can provide reparations and assist victims as needed.²⁷

Reparations Awarded by Courts

Crimes may be prosecuted before civilian or military tribunals in the domestic criminal judicial system; by hybrid tribunals, which combine international and domestic law and personnel; or by international tribunals, such as the International Criminal Court (ICC) or *ad hoc* international tribunals. Existing international, hybrid and domestic tribunals that

²⁵ General Assembly Resolution 60/147, para. 15, U.N. Doc. U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

²⁶ General Assembly Resolution 60/147, para. 15, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

²⁷ General Assembly Resolution 60/147, para. 16, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

prosecute international crimes utilize different systems for awarding and funding reparations. For example, the Extraordinary Chambers in the Courts of Cambodia awards collective and moral reparations, but has not specified how the reparations will be funded.²⁸ Because the Special Court for Sierra Leone does not directly award reparations, victims rely on the Sierra Leonean Truth and Reconciliation Commission.²⁹ Similarly, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) do not grant reparations. In the context of the ICTY, victims must use domestic courts. In Rwanda, victims can use either the domestic courts or the Gacaca courts.³⁰ The ICC, the first international court to award reparations to victims, turns to both a defendant's assets and the Victims' Trust Fund.³¹

Truth and Reconciliation Commissions

Truth and reconciliation commissions (TRCs) are independent, temporary commissions of inquiry established to investigate past patterns of human rights violations that occurred over a specified period of time.³² TRCs can help to facilitate a transition from violent conflict to post-conflict peacebuilding. The primary activities of TRCs include researching and investigating alleged abuses, reporting on documented findings, and making recommendations to promote reconciliation and prevent similar abuses from occurring in the future.

Often TRCs include a mandate to establish a record of past abuses. A TRC's final report generally includes recommendations, which can include encouraging holding certain perpetrators accountable and awarding

²⁸ Law on Criminal Procedure art. 5 (Cambodia, 1993), available at <http://www.cdpcambodia.org/soclaw.asp>. See also Cambodian Human Rights Action Committee & REDRESS, *Considering Reparations for Victims of the Khmer Rouge Regime, Discussion Paper*, 11 (Nov. 2009), available at <http://www.redress.org/downloads/publications/CHRAC%20REDRESS%20Cambodia%20Reparations%20final%2018%20Nov%2009.pdf>.

²⁹ See Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 23 (Vol. 1-3, 2004) available at <http://www.sierra-leone.org/TRCDocuments.html>.

³⁰ See Heidy Rombouts, *Women and Reparations in Rwanda* in WHAT HAPPENED TO THE WOMEN? GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS, 194 (2006) available at http://www.ssrc.org/workspace/images/crm/new_publication_3/%7Bd6d99c02-ea4a-de11-afac-001cc477ec70%7D.pdf.

³¹ Rome Statute of the International Criminal Court art. 75 (1998), available at http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf.

³² Mark Freeman, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 18 (2006) and Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict States*, para. 50, U.N. doc S/2004/616 (Aug. 23, 2004).

reparations or compensation to victims.³³ For example, the truth commission in El Salvador recommended creating a fund for victims.³⁴ The TRC in Sierra Leone recommended an expansive reparations program, including pensions, physical and mental healthcare, education and training services.³⁵ However, the success of reparations programs recommended by TRCs will depend on the availability of funds and the political will to move forward with compensation and services.³⁶

Government Reparation Programs

State governments may be responsible for providing reparations to victims, particularly when the harm suffered by the victim results from state acts or omissions.³⁷ When the harm is attributed to a person or entity other than the state, that individual or entity is responsible for providing reparations to the victim or for compensating the state for the cost of reparations already made to victims.³⁸ In the event that the individual cannot provide appropriate reparations, state-organized reparations programs can provide reparations and assist victims as needed.³⁹

Government reparation programs have been implemented with varied rates of success. The Dayton Peace Accords provided that all refugees who fled because of the Bosnian Genocide were to be awarded the property they left behind.⁴⁰ Refugees who could not receive their original property were to be compensated.⁴¹ In Rwanda, the *Fonds d'Assistance aux Rescapés du Génocide* (FARG) was established by the Government of Rwanda in 1998 to

³³ M. Freeman & P. B. Hayner, *Truth-Telling*, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK, (D. Bloomfield, T. Barnes and L. Huyse eds., 2003).

³⁴ Patricia Hayner. UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 177 (2010).

³⁵ Patricia Hayner. UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 175 (2010).

³⁶ See Patricia Hayner. UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 167-179 (2010).

³⁷ General Assembly Resolution 60/147, para. 15, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

³⁸ General Assembly Resolution 60/147, para. 15, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

³⁹ General Assembly Resolution 60/147, para. 15, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

⁴⁰ Dayton Peace Accords Annex 7(1) (Dec. 14, 1995), available at <http://www.state.gov/www/regions/eur/bosnia/dayann7.html>.

⁴¹ Dayton Peace Accords Annex 7(1) (Dec. 14, 1995), available at <http://www.state.gov/www/regions/eur/bosnia/dayann7.html>.

provide services for genocide victims, including microfinance, healthcare, education, and housing services.⁴²

Factors to Consider in Designing Reparations Programs

States may consider multiple factors in implementing reparations programs. These include determining the program's objective in the context of reinforcing victims' rights and furthering the state's domestic agenda and resolving disparities related to gender.⁴³ In determining the appropriate remedy for victims, states may also consider the proportionality of reparations to the gravity of the violation suffered by the victim.⁴⁴

Gender Disparities

During violent conflict, women are often exposed to gender-based violence, including sexual and reproductive violence. While female victims of violence are entitled to equal, fair, and efficient access to reparations, women who may be poor, illiterate, have family obligations such as childcare, or face language barriers often have limited access to the judicial system.⁴⁵ Even if given the opportunity to seek a judicial remedy, female victims may be particularly vulnerable during the litigation process.⁴⁶ For instance, women may feel especially vulnerable during cross-examination since they may be subject to intense interrogation and forced to relive traumatic experiences through their testimony.⁴⁷

Women suffering from sexual violence may need tailored reparations that focus on rehabilitation through psychological counseling in addition to medical treatment. Female victims of sexual violence may be the target of social stigmatization or abandonment since they are often deemed unmarriageable, impure, or have medical complications making them sterile

⁴² Pablo de Greiff, *DDR and Reparations: Establishing Links Between Peace and Justice Instruments*, in BUILDING A FUTURE ON PEACE AND JUSTICE: STUDIES ON TRANSITIONAL JUSTICE, PEACE AND DEVELOPMENT 321, 335 (Kai Ambos, Judith Large & Marieke Wierda, eds., 2009).

⁴³ International Center for Transitional Justice, *Reparations*, available at <http://ictj.org/our-work/transitional-justice-issues/reparations>.

⁴⁴ General Assembly Resolution 60/147, para. 15, U.N. Doc. A/RES/60/147 (Mar. 21, 2006), available at http://untreaty.un.org/cod/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

⁴⁵ Rubio-Marin, THE GENDER OF REPATRIATIONS, 5 (Rubio-Marin, ed., 2009).

⁴⁶ Rubio-Marin, THE GENDER OF REPATRIATIONS, 5 (Rubio-Marin, ed., 2009).

⁴⁷ Rubio-Marin, THE GENDER OF REPATRIATIONS, 5 (Rubio-Marin, ed., 2009).

or incontinent.⁴⁸ Victims of sexual violence may be more prone to future sexual assaults since they may lack protection from family or friends.⁴⁹

Victim Participation in Implementing Reparations Policy

Victim participation in designing reparations policy can facilitate the objectives of restitution, rehabilitation, and compensation by respecting victims' political opinions and acknowledging their rights.⁵⁰ Victim participation can help to ensure that the reparations made to victims are meaningful.⁵¹ Providing for adequate victim representation through an exchange of meaningful information is most effective in identifying appropriate reparations policy and implementation mechanisms.⁵² Still, victim groups are often under-represented and have few resources to enable them to actively participate.⁵³

Financing Victim Reparations

Funding reparations programs and providing victims of serious crimes with adequate compensation for their injuries is a challenging aspect of the reparations process. Some courts stipulate that convicted offenders are responsible for reparations, but these individuals often lack sufficient funds to fully satisfy every claimant. This leaves many victims in a vulnerable position.⁵⁴ Other courts established victim trust funds with donations from

⁴⁸ Margaret Urban Walker, *Gender and Violence in Focus: A Background for Gender Justice in Reparations*, in THE GENDER OF REPATRIATIONS 18, 19-20 (Rubio-Marin, ed., 2009).

⁴⁹ Margaret Urban Walker, *Gender and Violence in Focus: A Background for Gender Justice in Reparations*, in THE GENDER OF REPATRIATIONS 18, 19-20 (Rubio-Marin, ed., 2009).

⁵⁰ Carla Ferstman and et. al, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY, 4 (Brill Academic Publishers, 2009), available at <http://www.scribd.com/doc/77068760/3/By-Carla-Ferstman-Mariana-Goetz-and-Alan-Stephens>.

⁵¹ Carla Ferstman and et. al, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY, 1, 4 (Brill Academic Publishers, 2009), available at <http://www.scribd.com/doc/77068760/3/By-Carla-Ferstman-Mariana-Goetz-and-Alan-Stephens>.

⁵² Carla Ferstman and et. al, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY, 4 (Brill Academic Publishers, 2009), available at <http://www.scribd.com/doc/77068760/3/By-Carla-Ferstman-Mariana-Goetz-and-Alan-Stephens>.

⁵³ Carla Ferstman and et. al, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY, 4 (Brill Academic Publishers, 2009), available at <http://www.scribd.com/doc/77068760/3/By-Carla-Ferstman-Mariana-Goetz-and-Alan-Stephens>.

⁵⁴ Case 001, Case No. 001/18-07-2007-ECCC/TC, Civil Parties' Co-Lawyers' Joint Submission on Reparations, 12-13 (Sep. 14, 2009).

the government and private individuals, though even with supplementary funding, these funds may not always meet victims' needs.⁵⁵

Possible Sources of Funding

States are traditionally considered responsible for financing post-conflict reparations based on the presumption that the state has the political power to mobilize and finance a reparations program.⁵⁶ States may finance reparations schemes through tax increases, such as a social reparations tax; cuts in military spending; and a redistribution of public expenditures in order to allocate resources to a trust fund as part of the reparations program.⁵⁷ For instance, the Rwandan government funds reparations by contributing five percent of its annual internal revenues.⁵⁸

Where states choose to establish a trust fund for victim reparations, potential funding options, besides government funds, include receiving contributions from donors, gaining financial support from foreign governments, and seizing assets from those convicted of grave violations.⁵⁹ States can supplement their donations with seized property from convicted perpetrators and private donations. In Rwanda for example, corporations contribute a portion of their profits to funding reparations.⁶⁰ The Government of Sierra Leone received funding from the United Nations Peacebuilding Fund to provide direct reparations to victims.⁶¹ The ICC provides reparations to victims by way of a trust fund, funded by perpetrators' property, private donations, and governmental donations.⁶²

Conclusion

⁵⁵ James Munyaneza, *Ministers Discuss FARG, Order Audit*, THE NEW TIMES, Jun. 19, 2006; Rome Statute of the International Criminal Court art. 79 (1998), available at http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf.

⁵⁶ See Alexander Segovia, *Financing Reparations Programs: Reflections from International Experience*, in THE HANDBOOK OF REPARATIONS, 650, 651 (Pablo De Greiff, ed., 2006).

⁵⁷ Alexander Segovia, *Financing Reparations Programs: Reflections from International Experience*, in THE HANDBOOK OF REPARATIONS, 650, 651 (Pablo De Greiff, ed., 2006).

⁵⁸ Edwin Musoni, *FARG Blames Govt Officials For Its Woes*, THE NEW TIMES, Jan. 7, 2009.

⁵⁹ See Jamesina King, *What Happened to the Women? Gender and Reparations in Sierra Leone: The Wounds of War Remain Open*, in WHAT HAPPENED TO THE WOMEN? GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS, 246, available at http://www.ssrc.org/workspace/images/crm/new_publication_3/%7Bd6d99c02-ea4a-de11-afac-001cc477ec70%7D.pdf.

⁶⁰ James Munyaneza, *Ministers Discuss FARG, Order Audit*, THE NEW TIMES, Jun. 19, 2006.

⁶¹ UN Integrated Regional Information Networks (IRIN), *Sierra Leone: Compensating War Victims*, <http://www.irinnews.org/Report/87380/SIERRA-LEONE-Compensating-war-victims>.

⁶² Rome Statute of the International Criminal Court art. 79 (1998), available at http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf.

Post-conflict states have at their disposal a number of different models for funding and distributing reparations. The form that reparations programs will take depends on the realities of the conflict, the needs of the victims, and the nature of the violations that gave rise to the need for reparations. States may account for gender and varying degrees of victim participation in the design of reparations programs. Funding for reparations programs can be sourced from the violators themselves, from government funds, and from outside contributions. However, the success of any reparations program will largely depend on the availability of resources, the perception of satisfaction amongst victims and the political will to move forward with compensation and the provision of services.

About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization, which operates as a global pro bono law firm providing free legal assistance to states and governments involved in peace negotiations, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG's four primary practice areas are:

- **Peacebuilding**
- **War Crimes**
- **Post-Conflict Political Development**
- **Public International Law**

To provide pro bono legal advice and policy formulation expertise, PILPG draws on the volunteer services of over sixty former legal advisors and former Foreign Service officers from the US Department of State and other foreign ministries. PILPG also draws on pro bono assistance from major international law firms including Baker & McKenzie; Covington & Burling; Curtis, Mallet-Prevost, Colt and Mosle; DLA Piper; Sullivan & Cromwell; Steptoe & Johnson; Milbank, Tweed, Hadley & McCloy; WilmerHale; Vinson & Elkins; and graduate international affairs and law students at American University and Case Western Reserve Schools of Law. Annually, PILPG is able to provide over \$2 million worth of pro bono international legal services.

Frequently, PILPG sends members in-country to facilitate the provision of legal assistance and its members often serve on the delegations of its clients during peace negotiations. To facilitate this assistance, PILPG is based in Washington, D.C. and has points of contact in New York City, Boston, Seattle, Cleveland, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, Tbilisi, Kabul, and Nairobi.

PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organizations status to PILPG.

In January 2005, a half dozen of PILPG's pro bono clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."