

**THE REALIZATION OF VICTIMS' RIGHTS TO REPARATIONS:
ASSESSING THE NEED FOR A COMPREHENSIVE REPARATIONS
PROGRAM IN UGANDA**

**DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF
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OCTOBER 30, 2009

DEDICATION

To the people of Northern Uganda

DECLARATIONS

I, **ISMENE NICOLE ZARIFIS**, do hereby declare, certify and affirm that this research is my own work and to the best of my knowledge, has not been submitted or is currently being considered either in whole or in part, in fulfillment of the requirements of a Masters of Law degree at any other institution of learning. The ideas herein have been taken from different scholars, but have been presented in a manner that has not been taken from other literature hence it is deemed original. I assume personal responsibility to the correctness of facts contained herein and to the presentation thereof.

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Chapter I: Introduction and Theoretical Framework

1.1 Introduction

When international justice mechanisms are being contemplated in societies emerging from conflict, the discourse inevitably focuses on how to achieve peace and justice, whether to choose a restorative or retributive justice approach to address past human rights violations, and what type of accountability mechanism to adopt to achieve its overall objectives. While each society must decide for itself how it will address accountability of perpetrators, one critical, yet often overlooked, aspect of any post-conflict peace and justice process is determining whether, how and when it should repair the harm caused to victims of gross human rights violations. All too often, the lack of understanding as to how to adequately grant reparations, combined with the lack of political will, capacity and resources of most post-conflict States has left scores of victims without relief. Thus far, how to ensure that victims of gross human rights violations receive an effective, adequate and prompt remedy has represented a challenge for most societies emerging from conflict; a process which involves a complex combination of legal, social, cultural, and political considerations. Despite the fact that States have an international obligation to provide an adequate, effective and prompt remedy to victims of human rights violations, it is not yet clear how these requirements will be fulfilled in societies emerging from conflict.

Reparations are integral to the peace, justice and reconciliation process in any post-conflict society. The granting of reparations signifies an admission that wrongs were committed, and represents official recognition of the victims themselves and their right to be compensated. The element of recognition by the State constitutes an important form of accountability to the victims, which is critical to victims' restoration of dignity and the conclusion of the healing process. Without adequately addressing the harm to victims, justice becomes illusory, nor can genuine, lasting reconciliation follow. Given the various socio-economic factors that contribute to modern-day conflicts, in Africa specifically, and in light of the significant socio-economic impact of violence perpetrated against victims and their communities, it is important to conceive of justice broadly to include not only criminal justice measures, but also social justice measures for the benefit of victims directly, and for post-conflict societies generally.

Peace and justice processes in post-conflict societies on the whole however, have not placed an emphasis on guaranteeing the right to a remedy for victims. Rather, priority has been

placed on the establishment of international justice mechanisms to ensure criminal accountability of the perpetrators through prosecutions or by creating truth commissions. Neither of these mechanisms, however, is designed to provide reparations to victims. Consequently, reparations are either not granted at all, or they are granted in a limited manner. An additional disadvantage for victims hoping to receive compensation through such mechanisms is that victims' interests are not central to these processes, thus limiting the nature and scope of the remedy that may eventually be rewarded.

In contrast, the rights of victims have become increasingly part of the international justice discourse and additional efforts are being made to place victims at the center of such international peace and justice processes. In this context, the United Nations adopted its Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law in 2006 (hereinafter, "UN Principles". This specialized instrument is meant to provide a legal framework for States regarding their international obligations vis-à-vis victims of gross human rights violations. A key aspect of the UN Principles sets forth a victim's right to a remedy, including access to justice, for gross violations. It further stipulates that where the liable parties are unable or unwilling to provide a remedy for harm suffered, the State must endeavor to establish a national reparations program to repair the harm to victims.

Despite the adoption of this instrument, its application has yet to be tested in societies emerging from conflict, specifically in Africa where a number of conflicts have waged over the past two decades and which have been characterized by widespread human rights violations. The key question is whether and how this instrument can apply to current situations of societies emerging from conflict. This inquiry requires a full appreciation of the associated social, legal, cultural and political factors that affect how a State can effectively guarantee the rights of victims to an appropriate remedy. As such, more inquiries need to be made into the nature and scope of the right to reparations in post-conflict settings, as well as the process by which they should be granted in order to serve not only the affected individuals, but also to address the underlying structural causes of the violence with the aim to ensure the non-repetition of harm.

In this connection, the situation in Northern Uganda is one example of a society emerging from conflict that has produced scores of human rights violations over the past twenty years, and for which a delicate balance between justice and reconciliation is being sought. As

various accountability mechanisms are being contemplated for Uganda, the government has been reluctant to recognize victims' right to a remedy through judicial or administrative processes.¹ While post-conflict reconstruction projects have been developed to improve conditions in the North, such measures fall short of the state's obligations to repair the harm to victims of gross human rights violations. Given the complex nature of the abuses perpetrated during the conflict; the multiple, immediate and long-term effects of the violence on the lives of victims; and considering the particular interests of victims (social reintegration, rehabilitation, reconciliation at the personal and community level), a specialized mechanism that is exclusively designed to repair the harm appears critical to achieving meaningful justice to victims.

In addition to international law, Uganda holds a similar duty to repair harm to victims of human rights abuses under the regional human rights system and its national legal system. Domestically, the right to remedy is protected in the Ugandan Constitution, however adequate legislation and mechanisms to ensure the right to reparations for victims of gross human rights violations are lacking.² When analyzing the situation in Northern Uganda, a number of critical questions arise that provide an important opportunity to further interpret the nature and scope of the right to reparation of victims of gross human rights violations in the context of societies emerging from conflict. This provides an equally important opportunity for Uganda to adopt necessary appropriate measures to meet its duty to grant victims a remedy, thereby delivering justice and fostering reconciliation.

1.2 Preliminary Literature Survey

Scholars in the area of transitional justice have produced numerous works analyzing post-conflict societies and their struggle to consolidate peace, while achieving justice for gross violations that occurred during conflict.³ While much has been written about accountability mechanisms, the right of victims to a remedy within the transitional justice process in post-conflict societies has not been equally developed. To date, studies have related the act of repairing the harm to victims as a result of other accountability mechanisms. Consequently, victims' rights have not been central to the discussion on transitional justice thus far. However,

¹ The Transitional Justice Working Group set up within the Justice, Law and Order Sector has five committees to address the legacy of human rights violations perpetrated during the conflict, none of which target the issue of reparations exclusively.

² Constitution of the Republic of Uganda (1995), Article 50.

³ Pablo de Greiff, Diane Orentlicher, Neil Kritz, Priscilla Hayner, Alex Boraine, Richard Goldstone, Juan Mendez.

victim's rights are becoming a growing concern to international scholars and greater emphasis is being placed on developing this area of law.

Two key reference documents on the right to reparations include, *The Handbook on Reparations* and the *OHCHR Tools for Post-Conflict States on Reparations Programs*, in which Pablo de Greiff has written extensively on the issue, as well as how reparations contributes to the larger justice process in post-conflict societies. He relates the significance of reparations to victims as a form of justice without which, justice becomes illusory. Specifically, he illustrates the interdependent relationship between the various accountability mechanisms—prosecutions, truth-seeking bodies and reparations--- affirming that the adoption of these mechanisms, without an independent initiative to grant reparations to victims would be tantamount to empty justice. Similarly, he argues that the granting of reparations without the adoption of other accountability mechanisms would be perceived to be paying off victims for the harm they suffered. De Greiff illustrates the limitations behind the other accountability mechanisms for ordering reparations, and suggests national reparation programs as the best option to repair all potential beneficiaries. While he relates the mechanics of how States may go about designing such a program, a number of conceptual issues that arise within a post-conflict setting are left unaddressed.

In contrast, Mamdani has interrogated the concepts of reconciliation and justice in the context of post-conflict societies such as Rwanda. He has interrogated the nature and significance of reconciliation, holding that reconciliation may occur at an individual level, between victim and perpetrator, at a societal level, between conflicting groups and which focuses on addressing the social causes of conflict and political reconciliation, which involves the resolution of conflict primarily by and between the main parties to the conflict. Further, Mamdani discusses the various methods of resolving conflict in relation to the different forms of reconciliation he identifies. He holds that lasting, national reconciliation takes the form of social reconciliation and thus, long-term measures that address the root causes of the social conflict are necessary. He emphasizes the importance of transitional justice mechanisms to foster social change through relevant institutional and structural reforms.

Strang places emphasis on the conditions, concerns, and wishes of victims with respect to their role in the criminal justice process. Her findings show that victims' perception of justice does not merely lie in the outcome, but in the process and if they are made to participate

actively in the pursuit for justice, they will not only appreciate this as justice but it will have a restorative effect on them. She concludes that by ensuring victims are central to the justice seeking or truth seeking process, this acts to restore their sense of dignity and promotes healing.

Despite these findings, literature interpreting the scope and nature of a victim's right to reparation is still evolving and several issues have yet to be addressed. Specifically, the approach to reparations to date has focused on procedural issues and on linkages with national transitional justice processes. However, reparations have not been discussed sufficiently from the perspective of victims. This includes an appreciation for their expectations for restorative and social justice.

1.3 Problem Statement

Even while States have the obligation to guarantee the right to a remedy for victims of gross human rights violations, this duty is rarely met by States emerging from conflict. Most States tend to prioritize the adoption of accountability mechanisms, to the exclusion of redressing the harm caused to victims. A victim's right approach to transitional justice is therefore necessary, and in this connection, a victim-centered approach to reparations is also lacking. Furthermore, even when the UN Basic Principles provides guidance on the nature and scope of the right, application of the instrument to post-conflict situations presents a number of challenges, largely due to the character of each conflict and its related social, cultural and political aspects. Consequently, this study seeks to provide guidance as to how post-conflict States can effectively guarantee victims' rights to a remedy in light of States international obligations. This will be analyzed in the context of Uganda.

1.4 Objectives

The study will serve two significant objectives: the first includes clarifying the nature and scope of the right to a remedy for victims of gross human rights violations in relation to Uganda's international obligation to provide a remedy to victims. The second includes establishing the significance of adopting a reparations program to the overall success of the larger peace, justice and reconciliation process in Uganda. Specifically, the analysis seeks to identify key considerations for the application of the UN Basic Principles to actual post-conflict situations.

1.5 Assumptions underlying Study

Firstly, this paper assumes that the State of Uganda will have the requisite political will to adopt a reparations program in favor of all potential victims of gross human rights violations in Northern Uganda, despite or in addition to other accountability mechanisms. Secondly, it assumes that the cessation of hostilities will be maintained and Northern Uganda will continue on a path towards achieving sustainable peace. With respect to the information gathering process, it assumes that key stakeholders in the process will be available for interviews and willing to candidly share their views, expectations, concerns and challenges about their understanding of reparations.

1.6 Research Questions

1. Who should qualify as a 'victim' for purposes of determining beneficiaries of reparations?
2. Who should qualify as a 'liable' party for purposes of determining who is primarily responsible for repairing the harm to victims?
3. What are the most important interests, needs, concerns or demands of victims of gross human rights violations with respect to repairing the harm they have suffered? What is their understanding of 'reparations' and how it should be achieved? What is the understanding of reparations by other stakeholders (government, civil society)?
4. Are reparations essential for achieving justice and reconciliation for victims?
5. What qualifies as "adequate, effective and prompt" reparations in the context of mass violations?
6. In situations where prosecutions of the liable parties are prolonged, how do States reconcile the duty to prosecute criminals for war crimes with the victim's right to a prompt remedy?
7. How are reparations viewed by key stakeholders with respect to the larger process of achieving justice and reconciliation in Uganda?

1.7 Significance of the Study

The significance of this study is grounded in the fact that it expects to relate key considerations for the design and implementation of a comprehensive reparations program for victims in Northern Uganda. As yet, no such study has been conducted in the context of

Uganda. This study seeks to answer the questions that arise when applying the UN framework to the existing post-conflict situation in Northern Uganda, while at the same time contributing to the discourse on the right to reparation in international law.

1.8 Delineations and Limitations of Study

The limitations associated with the study have to do with process, such as accessibility to all key stakeholders will not be possible. Language barriers may also constitute a limitation when attempting to interview people in rural areas. The scope of the study will also be limited to identifying key challenges to the application of the UN Basic Principles to the situation in Uganda, and will not be able to discuss all potential challenges to its application, especially the logistical, technical and budgetary aspects of implementation. Finally, the study will not address the particular challenge facing Uganda with respect to its duty to order reparations for victims of Northern Uganda vis-à-vis its duty to order reparations for previous periods of mass violations. While the duty to repair applies to all instances of human rights violations, the complex and protracted nature of the conflict in Northern Uganda requires an individualized response, which can provide guidance to Uganda on how to meet its obligations for other past events.

1.9 Proposed methodology

Preparation of the dissertation will employ the following methods: qualitative data collection by conducting a combination of desk top research and field research. Field research will seek to document the experiences of victims of the conflict in Northern Uganda (Gulu district) by conducting focus group discussions with affected populations and personal interviews with key stakeholders (Government officials; human rights organizations; victim's associations; affected persons and potential beneficiaries) in Uganda. Secondly, the paper will engage in legal analysis of the international law and principles on reparations. The underlying approach to the issue of reparations will be grounded in a socio-legal analysis, incorporating a victim-centered approach to understanding reparations with the goal of restoring the individual victim and the entire post-conflict society more broadly.

Chapter II: Reparations and Transitional Justice in Post-Conflict Societies

2.1 Introduction

The granting of reparations to victims of gross human rights violations in societies emerging from conflict is an essential pillar to an effective transitional justice process in post-conflict societies.⁴ Transitional justice is understood to be the process by which a State emerging from a period of repressive rule or armed conflict characterized by widespread human rights violations, seeks to transform its institutions so as to embrace peace, the rule of law, democratic values and principles of good governance; a process by which the transitioning society adopts specialized mechanisms, policies and other reforms to address past injustices.⁵ A society in transition is usually coupled with a change in political power and the adoption of substantive institutional reforms, following a period of conflict or governance by an authoritarian regime. The underlying goal behind these measures is to ensure the non-repetition of gross human rights violations and related injustices through the reinforcement of democratic institutions and practices.

2.2 Victim's Right to Reparations

Reparations encompass various methods available to a state to discharge itself from state responsibility for a breach of international law.⁶ International law grants reparations to victims for human rights violations, as reflected in many key human rights instruments including the Universal Declaration on Human Rights.⁷ The duty to provide reparations is grounded in the obligation of states to respect and ensure rights, which includes an obligation to redress violations committed by private persons as well as to abstain from state sponsored violations.⁸ Specifically, "the duty to provide reparations is itself an international obligation that arises upon the commission of an internationally wrongful act."⁹ On this point, the Human Rights Committee held that "without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy is not discharged."¹⁰ This principle has since been

⁴ "Reparations in Theory and Practice" ICTJ Reparations Series 2, <http://www.ictj.org> (9 May 2009).

⁵ "Rule of Law Tools for Post-Conflict States: Reparations Programmes" OHCHR 6-7, <http://www.ohchr.org> (8 May 2009).

⁶ D Shelton (2005) *Remedies in International Human Rights Law* 44.

⁷ *Chorzow Factory Case* 1927, P.C.I.J (Ser.A) No.9 at 21, quoted in "Rule of Law Tools for Post-Conflict States : Reparations Programmes" OHCHR 5.

⁸ Shelton (n 6 above).

⁹ Shelton (n 6 above).

¹⁰ OHCHR (n 5 above).

supported by jurisprudence of several human rights bodies.¹¹ The theory on reparations is grounded in placing the aggrieved party in the same position as he would have been had no injury occurred, by holding the wrongdoer responsible.¹²

Accordingly, the UN Basic Principles is the authoritative framework intended to promote justice for victims and to uphold the legal order by punishing and deterring wrongdoing.¹³ Thus, the UN Basic Principles stipulate that liable parties are responsible for providing a remedy to victims of gross human rights violations, however, in situations where those parties are unable or unwilling to do so, the State is expected to guarantee victims' right to a remedy through the design of national reparations programs.¹⁴ International law requires that the reparation be proportional to the harm suffered, and can take a variety of forms so as to restore the victim to the original situation before the harm and/or compensate him for damages incurred.¹⁵ "The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law."¹⁶ One of the most important conditions is that the reparation be 'adequate, effective and prompt.' Accordingly, the nature and scope of the right will be influenced by the context and categories of violations in each specific case.

The framework further recognizes the possibility of individual and collective reparations. Individual reparations are remedies awarded to specific and precisely identified persons who are entitled to a remedy for a human rights violation, while collective reparations are remedies awarded to people who suffered from human rights violations as a group.¹⁷ Historically, individual reparations have been ordered pursuant to court processes; however, where mass violations have been perpetrated, this has proven to be unrealistic. Alternatively, collective reparations are important to respond to situations of widespread violations affecting large groups or entire communities. "If a society as a whole is injured by human rights violations, so also may society as a whole benefit from public remedies."¹⁸ In short, without ensuring this right,

¹¹ OHCHR (n 5 above).

¹² Shelton (n 6 above) 38, 44.

¹³ Shelton (n 6 above) 45.

¹⁴ U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of Humanitarian Law A/RES/60/147 (21 March 2006) Section IX 16.

¹⁵ As above 15, 19, 20-23.

¹⁶ UN Basic Principles (n 14 above) 19-23; Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, United Nations Commission on Human Rights E/CN.4/2005/102/Add.1 8 February 2005, Principle 35.

¹⁷ ICTJ (n 4 above).

¹⁸ Shelton (n 6 above) 52.

the integrity of the human rights system is compromised since the purpose of rights is to protect individuals from the abuse of state power, then rights without remedies are ineffectual.”¹⁹

Reparations represent a critical element to the recovery process of victims. Zehr holds that victims experience a fundamental disrespect for their property and their person through their victimization, thus, what they want from justice is an experience of respect.²⁰ Due to an act of abuse, victims tend to feel a loss of dignity, respect and other emotional harm caused by the offence.²¹ A study conducted to assess the capacity of restorative justice mechanisms to respond to victims’ interests identified the following priority areas for victims with respect to achieving justice: (1) less formal process where victims’ views count; (2) more information about the processing and outcome of their cases; (3) participation in their cases; (4) fair and respectful treatment; (5) material restoration; (6) emotional restoration, including an apology.²²

Given that every conflict is unique with respect to its individual causes, nature and consequences as well as the particular social, political and historical context, the legal framework requires a case-specific application so as to ensure that remedies are adequate, effective and meaningful to the intended beneficiaries.

2.3 Reparations and Transitional Justice

Reparations are seen to fulfill three important functions within such a transitional justice process: providing a direct remedy to victims for harm suffered; providing official acknowledgment of past events; and serving to prevent the recurrence of abuses in the future.²³ With respect to societies in transition, the UN Secretary-General declared that, “where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof.”²⁴ Specific to post-conflict societies, reparations impose a duty on States to develop, “structural programs and projects aimed at the cessation and non-recurrence of facts and conditions inherent in the gross and systematic violations that occurred.”²⁵

¹⁹ As above.

²⁰ H Strange *Repair or Revenge* (2004) 208.

²¹ As above.

²² Strange (n 20 above) 193.

²³ J Sarkin, *Coming of Age of Reparations* SUR-International Journal on Human Rights 68.

²⁴ OHCHR (n 5 above) 2, quoting UN Secretary General report S/2004/616.

²⁵ OHCHR (n 5 above).

The relevance of reparations to the process of achieving justice and reconciliation in a transitional society can not be underestimated. Firstly, reparations themselves may serve as a form of accountability that directly responds to victims' interests. Secondly, the process to achieve justice and reconciliation in a transitional society are intimately linked. Therefore, if victims do not also receive other forms of compensation for their loss, justice for victims may be met only partially in some cases or not at all in others.²⁶ This paper adopts the position that by ensuring a measure of justice in a post-conflict setting, peace and reconciliation can be sustained. As such, accountability mechanisms that are accompanied by special measures to ensure the victims' right to reparations are likely to promote reconciliation. The process of reconciliation involves recognition of wrongdoing by the liable party and acceptance or forgiveness by the victim. In so far as the granting of reparations represents an acknowledgment of wrongdoing and an acceptance of responsibility to remedy the harm, this facilitates the reconciliation process, at the individual, community and national levels. On this point, it has been recognized by victims of gross human rights violations in at least one case, Rwanda, that lasting reconciliation depends not only on the acknowledgment of wrongdoing, but on concrete efforts to repair the harm.²⁷ This renders the process of reconciliation meaningful to victims, thereby contributing to its sustainability.

2.3.1 Reparations and Reconciliation

In discussing South Africa's post-apartheid reconciliation process, four levels of reconciliation have been identified, including political, personal, institutional and social; each with its own objectives, strategies, methods and challenges.²⁸ At the political level, reconciliation was necessary between key political actors in order to end the apartheid regime, political violence and embrace democracy.²⁹ At the personal level, reconciliation is necessary between individual victims, survivors, and perpetrators.³⁰ At the institutional level, especially where violations were perpetuated through institutional mechanisms as in South Africa, reconciliation is necessary to improve relations between institutions and the affected population. Finally, social reconciliation refers to the process of reconciling differences between hostile

²⁶ ICTJ (n 4 above) 4.

²⁷ Interviews with genocide survivors in Rwanda, Kigali, Rwanda, March 2009.

²⁸ C Villa-Vicencio & T Savage *Rwanda and South Africa in Dialogue: Addressing Legacies of Genocide and Crimes Against Humanity* (2001).

²⁹ As above.

³⁰ Villa-Vicencio (n 28 above).

communities/groups in society.³¹ In the context of South Africa, this involves reconciliation between the black and white populations. These four levels of reconciliation may apply to post-conflict societies more generally.

In so far as the granting of reparations promotes reconciliation through the recognition of harm and the assumption of responsibility to adopt measures to repair the harm, it follows that reparations should also seek to redress harm at these levels (political, personal, institutional, social), thereby employing different strategies and methods for their implementation. This involves adopting measures to guarantee the non-repetition of abuse, as contained in the UN Basic Principles and the UN Principles on Impunity, which stipulate a series of institutional, legal, administrative and other measures to prevent recurrence of violence and social conflict.³² As such, not only may individual violations be redressed through specialized measures, but the underlying conditions bringing about these violations are simultaneously addressed.

2.3.2 Reparations: Addressing Causes of Conflict

To date, accountability mechanisms adopted by post-conflict societies have been designed with the primary goal of achieving retributive or reparative justice for gross human rights violations.³³ This corresponds to states' international obligations to fight impunity, as reflected in the recently adopted UN Principles on Impunity and based on the belief that human rights violations are best prevented by holding perpetrators accountable for their actions.³⁴ Given this trend, transitional justice mechanisms to date have focused on redressing civil and political rights violations to the exclusion of addressing the social and economic dimensions or inequalities leading to violent conflicts.³⁵

Specifically, there is growing recognition among specialists that transitional justice mechanisms should not only address the immediate and individual violations perpetrated against victims, but should seek to address the underlying causes of conflict more broadly to bring about societal change and transformation, without which justice and lasting peace will not be achieved.³⁶ On this point, experts found that "even perfect judicial processes will not prevent

³¹ Villa-Vicencio (n 28 above).

³² UN Basic Principles (n 14 above) IX, Principle 23; Updated Set of Principles (n 16 above) Principles 35-38.

³³ "Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat all Aspects of Impunity", by Diane Orentlicher, U.N. Human Rights Commission E/CN.4/2004/88 (27 February 2004), para 24.

³⁴ Updated Set of Principles (n 16 above).

³⁵ S Reiff S Servaes and N Zupan "Development and Legitimacy in Transitional Justice" 6.

³⁶ As above.

violence from flaring up again if basic social, economic and political injustices are not addressed,” and that, “a concentration on human rights issues to the detriment of the social and economic dimensions might preserve the status quo, entrench major social inequalities, and even contribute to deepening social injustices rather than bringing about necessary change.”³⁷ Similarly, Mamdani argues that such mechanisms must also seek to achieve social transformation and to tackle structural elements that led to the outbreak of violence. In his view, without undergoing a process to address the social, cultural and political aspects of a conflict, old tensions are likely to persist and/or new tensions are created, preventing a durable resolution to the conflict. Similarly, Shelton believes that, “Remedies for public wrongs must be seen, then as serving not only private redress but public policy, as this is an important means of promoting compliance with the human rights norm.”³⁸

Therefore, it is important that transitional justice mechanisms are designed not only to address the immediate, individual or collective harm caused to victims of gross human rights violations, but must also address the underlying social, economic and political injustices that contributed to the conflict in the first place. With this view, reparations programs can and should serve a far-reaching, preventative function by introducing structural reforms with which true social transformation can be achieved in a society seeking to prevent the recurrence of conflict and to consolidate peace.

2.3.3 Reparations: Development or Redistributive Justice?

Reparations represent a state duty to restore the victim to his original state before the injustice occurred. While it may take different remedial forms, reparations do not equate to development or post-conflict reconstruction initiatives. The principal difference is that reparations signify a public acknowledgement of wrongdoing and official recognition of the state’s failure to protect individuals from harm, as well as the assumption of state responsibility for rectifying the harm.³⁹ Development policies and reconstruction projects do not carry with them labels of responsibility for wrongdoing. Moreover, reparations play an important role in achieving justice for victims, which objective development projects are not intended to meet.⁴⁰ Furthermore, reparations are meant to redress irreparable harm related to the commission of gross human rights violations, which development projects can not redress. Therefore, while a

³⁷ Reiff (n 35 above).

³⁸ Shelton (n 6 above) 52.

³⁹ Orentlicher (n 33 above) para 59.

⁴⁰ C Hoyle “Can International Justice be Restorative Justice?” in Can International Courts do Justice? Conceptions of Justice in Responding to Conflict Working Papers University of Oxford 34.

state may choose to adopt a development plan for a particular region, this does not constitute a means of reparations as conceived of under international law.

Nevertheless, there is a growing recognition among transitional justice experts that social inequalities and socio-economic marginalization of particular group(s) or regions constitute factors leading to recent conflicts.⁴¹ In so far as these constitute a source of conflict, it would follow that reparations granted during a transitional justice process should also serve to achieve social justice or redistributive justice, which requires “addressing socio-economic injustice, stemming from structural injustices and distributional inequalities that are often causes of conflict.”⁴² Accordingly, reparations measures could take the form of structural, institutional and policy reforms that seek to redistribute resources to disadvantaged communities or regions, if they are designed for this purpose and if delivered in recognition of, and in response to the harm caused by mass violations. Such measures would aim to change the underlying conditions, relations and practices that contributed to the conflict.

2.4 Reparations and Transitional Justice in Uganda

Beyond repairing direct harm to victims, reparations have the potential to play a critical role in Uganda’s national peace, justice and reconciliation process. Consultations with respondents in Northern Uganda revealed that reparations are seen by victims as a meaningful form of justice, one that holds liable parties accountable by requiring them to adopt reparative measures that directly impact on victims’ lives. A UN study conducted in the North confirmed that reparations in the form of compensation was highly valued by affected communities, especially given the numerous, pressing needs of victims to rebuild their lives after the disastrous effects of the war.⁴³ In fact, this expressed interest for social and economic forms of justice ranked higher than victims’ interests in formal, criminal justice mechanisms.

Respondents further emphasized the importance of reparations to foster reconciliation at the personal, community and national levels. At the individual level, respondents noted a need to repair relations between victims and perpetrators. At the community level, certain categories of victims experienced ruptures in relations with their respective communities. Finally at the national level, respondents identified the breakdown of relations between the central

⁴¹ Reiff (n 35 above).

⁴² Reiff (n 35 above).

⁴³ “ Making Peace Our Own: Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda”, OHCHR (2007).

government and the North as requiring special reconciliation measures. Accordingly, respondents believed that specialized reparations targeting individuals and communities would promote reconciliation at these levels, while the adoption of reparations for victims in the Acholi sub-region by the central government could improve hostile relations between the central government and the North.

In so far as reparations may serve to address underlying, structural conditions leading to the conflict, the situation in Uganda requires its own historical analysis of the root causes of the conflict, which should then inform the nature and scope of reparations ultimately adopted. In this respect, guarantees of non-repetition may take the form of institutional, policy and legal reforms, which aim to prevent the recurrence of violent conflict. This has been the experience in both South Africa and Rwanda in which significant institutional reforms were undertaken to address the legacy of apartheid in South Africa and related socio-economic marginalization of blacks; and institutionalized ethnic intolerance and discrimination in Rwanda. As noted above, without undergoing a process to address the social, cultural and political aspects of a conflict, old tensions are likely to persist or new tensions are likely to arise, preventing conditions conducive for durable peace.

In this connection, when respondents were asked about the root causes of the conflict, an overwhelming majority noted longstanding tensions and political rivalries between the Northern and Southern regions of Uganda; commonly referred to as the North-South divide.⁴⁴ Over time, political exclusion of the North translated to social and economic marginalization and underdevelopment of the region due to complete neglect by the central government. Respondents pointed to deep seated weaknesses in national governance, the lack of democratic governance, political regionalism (playing on regional differences rather than promoting national unity), social exclusion, discrimination and intolerance. One respondent described the governance problem in Uganda to be rooted in the 'winner takes all' philosophy, which has allowed new conflicts to repeatedly arise. Respondents overwhelmingly agreed that if these underlying conditions were not addressed, especially the longstanding marginalization and underdevelopment of the North, then peace would not be sustainable in Uganda. Therefore, it would be important that any reparations scheme include appropriate institutional, policy and legal measures to ensure a more representative and inclusive government that accommodates and respects Uganda's regional, ethnic and social diversity.

⁴⁴ Interviews with CBOs and NGOs, Gulu District, Uganda (October 2009).

2.5 Nature of modern-day conflicts

Mamdani argues that the Nuremburg model of criminal justice is no longer applicable to current conflicts, due to emerging trends that make modern-day conflicts significantly different from traditional conflicts.⁴⁵ The Nuremburg model, designed to respond to traditional conflicts, presumes the presence of the following key factors: a clear victor; a clear end to the conflict; a new government in power to administer justice on the perpetrators; and that victims were guaranteed a safe haven in which victims and perpetrators were not forced to live together following the conflict. This last aspect was seen to have facilitated the accountability process, while at the same time, creating less need for reconciliation where victims created a new life for themselves far removed from the scene of the violence. One might add another defining aspect of the conflict, the clear division between perpetrator and victim, which facilitated the accountability process thereafter.

In contrast, Mamdani discussed the conflict in Darfur to illustrate how modern-day conflicts do not exhibit the same features of the world's major conflicts some fifty years ago. Building upon this premise, information available reflects that recent conflicts in Africa increasingly fall outside the traditional nature of armed conflicts due to a variety of factors including the causes of conflict, how conflict is fought, the diversity of actors/parties to the conflict, and the blurred line between perpetrator and victim. Specific to the nature of modern-day conflicts, Mamdani stressed that there is often no clear victor; no clear end to the conflict; no new government to administer justice fairly; and in most cases; the victims and perpetrators continue to live together. Another unique aspect of modern-day conflicts in Africa especially is the victim-perpetrator phenomenon, whereby initially abducted children are forced to commit atrocities. Mamdani's argument is particularly appropriate when looking at the conflict in Uganda.

While reparations are not directly addressed, Mamdani suggests that a narrow retributive justice approach to responding to conflict would not adequately address the underlying causes of conflict, and therefore would likely allow conditions that led to the conflict to persist, generating new conflict after some time.⁴⁶

⁴⁵ Mahmood Mamdani lecture, University of Makerere, Kampala, Uganda (Aug 25, 2009).

⁴⁶ As above.

Mamdani's findings are extremely relevant and applicable to the conflict in Uganda, as the conflict can be said to have no clear victor; no clear end; the government in power was also a party to the conflict, thus jeopardizing its credibility and objectivity when administering justice; there is no clear line between victim and perpetrator; and finally, victims and perpetrators, to the extent that they can be distinguished, are forced to live together. As such, Mamdani's approach should be considered when proceeding with the design of transitional justice mechanisms in Uganda, and with respect to the design of a reparations policy specifically.

2.6 Conclusion

While Uganda is currently contemplating a number of mechanisms to respond to the conflict, including prosecutions, the establishment of a truth-seeking body and traditional justice mechanisms, the decision to adopt special measures to ensure that all potential victims receive adequate and effective reparations is not yet on the table. The number of considerations and concerns regarding this decision will be discussed in Chapter IV; however even where Uganda adopts one or more of the envisioned mechanisms as contemplated by the Justice, Law and Order Sector, given their mandates, they are unlikely to fulfill the duty to repair in a comprehensive manner as stipulated in international law.⁴⁷ Namely, they will not be capable of providing redress to all potential beneficiaries, and they are unlikely to introduce structural reforms to achieve societal transformation and sustainable peace. Following on Mamdani's proposal to adopt the term 'survivor', this would be particularly important for the design of a reparations program for Uganda, a society that is characterized by no clear distinction between victim and perpetrator.

⁴⁷ "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" Report of the U.N. Secretary General S/2004/616* (23 August 2004) 18; UN Basic Principles (n 14 above) Principle 18.

Ch. III: Victim's Right to Reparations in Uganda: Assessing the Harm

3.1 Introduction

The nature and scope of the violence perpetrated during the course of the conflict in Uganda had devastating consequences on scores of victims, the effects of which continue to manifest in the daily lives of victims today.⁴⁸ Beyond the widespread violations of civil and political rights, communities in the Acholi sub-region were systematically denied their social and economic rights over a prolonged period of time, which has left them in far more vulnerable conditions, now that the hostilities have subsided.

3.2 Gross Violations of International Human Rights Law and Impact

Since 1986 human rights violations including murder, rape, torture, acts of inhuman, cruelty, abductions, disappearances, cannibalism and numerous forms of sexual violence were committed by both parties to the conflict on a widespread scale during the conflict in Uganda.⁴⁹ One report documenting violations perpetrated in Northern Uganda reflected that 37% out of 2,875 persons interviewed were reportedly abducted by the LRA, while 76% of respondents indicated that they had lost a family member to the conflict.⁵⁰ The conflict produced scores of victims, reflecting many respondents' views that 'everyone is a victim' in Northern Uganda.⁵¹ This popularly held opinion is grounded on the fact that nearly all residents were affected by the conflict in that they either suffered harm and/or had an immediate family member suffer harm.⁵² In many cases, victims suffered multiple violations during the course of the conflict, exacerbating the harm and their effects.⁵³ Such was the case of one Acholi woman from Gulu district, who was abducted by the LRA and treated inhumanely and subjected to sexual violence during the time she was 'in the bush', and who also had her family members killed by the LRA.⁵⁴

The impact of the violence on the lives of victims, their families and their respective communities can not be underestimated.⁵⁵ Victims themselves continue to live with the aftermath of the violence, affecting at times their physical, emotional and psychological health.⁵⁶

⁴⁸ Interviews with victims, Gulu District, Uganda (October 2009)

⁴⁹ "Violence, Exile and Transitional Justice" Refugee Law Project 2; OHCHR (n 43 above) 4-5.

⁵⁰ OHCHR (n 43 above) 2.

⁵¹ Interviews with victims, Gulu, Uganda (October 2009)

⁵² OHCHR (n 43 above) 5.

⁵³ As above.

⁵⁴ Interview with female victim, Gulu, Uganda (October 2009)

⁵⁵ OHCHR (n 43 above) 5-7.

⁵⁶ OHCHR (n 43 above) 5-7. RLP (n 49 above) 6-8.

Each form of violence has its own consequences. The indiscriminate killing of innocent civilians results in irreparable harm for which surviving family members continue to suffer emotional and economic loss.⁵⁷ Similarly, family members continue to experience emotional distress associated with disappeared relatives.⁵⁸ Torture victims can live with associated physical, emotional and psychological trauma for years following the initial events.⁵⁹ On this point, specialists have found that the forms of torture applied in the context of conflict tend to be much more severe and cruel than in other settings.⁶⁰ In some cases the trauma is so severe that victims can not maintain a steady job or related responsibilities.⁶¹ Given the strong sense of community among the Acholi, the effects of the violence on individuals have notable repercussions on their families and communities. The nature of the LRA tactics of destroying family and community relationships resulted in generalized feeling of distrust, fear, anxiety and insecurity.⁶² Moreover, nearly all victims of physical violence suffered severe economic loss given that most residents in the North practice agricultural activities as a primary source of livelihood.⁶³ In this context, one psychosocial worker indicated that it was not enough to provide individual treatment to victims, and that such treatment should be accompanied by similar services at the community level.⁶⁴ It is important to note that, to date, no assistance has been offered to victims of human rights abuses perpetrated during the conflict.⁶⁵ Consequently, victims are left to their own devices to rebuild their lives. Moreover, the lack of a Government policy on reparations denies victims their status as rights holders and ignores the difficult conditions under which they currently live, thereby limiting their ability to fully recover from the harm.

3.3 Internal Displacement

The right of persons not to be forcibly displaced has been recognized as a human rights abuse in key human rights instruments warranting state protection and reparations when such protection is breached.⁶⁶ The nature of displacement involves an intricate set of violations

⁵⁷ Interviews with victims, Gulu, Uganda (October 2009).

⁵⁸ As above.

⁵⁹ Interview with ACTV, Gulu District, Uganda (October 2009).

⁶⁰ As above.

⁶¹ As above.

⁶² OHCHR (n 43 above) 6.

⁶³ OHCHR (n 43 above) 5.

⁶⁴ Interview with CARITAS, Gulu District, Uganda (October 2009).

⁶⁵ N 57 above.

⁶⁶ UN Guiding Principles on the Protection of Internally Displaced Persons, cited in Atim, P. *Critically Reviewing the Legal Regime Governing Sexuality and Gender Based Violence: A Case Study of Pajule IDP Camp, Pader District*, Law, Gender & Sexuality Research Project, Working Paper No.5, University of Makerere, Uganda (January 2008), 7 citing Preamble, UN Guiding Principles on the Protection of Internally Displaced Persons; The Rule of Law and

including the loss of one's land and shelter, which has direct implications on one's ability to carry on their economic, social and cultural livelihood.⁶⁷ It implies an infringement on one's right to housing and access to basic social services. In the context of Uganda, 1.5 million people are estimated to have been displaced from their homes, many of those forcibly confined to 'protected villages' established by the Government, while others sought refuge in Uganda's urban centers.⁶⁸ For adults, it meant losing one's economic livelihood and independence, while for many youths, this meant an interruption in their schooling due to limited access to education facilities or the failure to pay school fees due to their parents' having lost their economic livelihood by the displacement. Being confined to the camps, IDPs were deprived from the opportunity to engage in farming and deprived of their land to engage in their traditional, cultural practices, such as burials.⁶⁹ Moreover, given the protracted nature of the conflict, IDPs spent years living in camps, the conditions of which were extremely precarious and the security inadequate, rendering the camps susceptible to regular attacks by rebels.⁷⁰ The effects of the twenty year conflict on IDPs is well illustrated as follows:

The conflict in Northern Uganda ranks as the worst humanitarian crisis in the world, particularly since it registered a population displacement of between 1.8-2 million people. Displacement has deprived people of their rights to access to and use of land, it has led to the total break down of the livelihood structure and infrastructure, family and traditional support systems, social services, the collapse of the economy and resulting in the loss of property, social marginalization, high levels of poverty and dependence, structural as well as physical violence against vulnerable groups such as women and children and indeed the entire population of the region.⁷¹

At the time of this writing, many camps have been dismantled and the Government continues to urge people to return home, however adequate assistance is not being provided to IDPs for their resettlement.⁷²

There are a number of obstacles to the safe and secure return of IDPs to their villages, including the fact that some individuals no longer have land or a home to return to; and/or they do not have the necessary resources/equipment to rebuild their home or engage in farming.

Transitional Justice in Conflict and Post-Conflict Societies, Report of the U.N. Secretary General, S/2004/616* (23 August 2004), para 25.

⁶⁷ The Hidden War : The Forgotten People, HURIPAC and Liu Institute for Global Issues (Oct 30, 2003) 108.

⁶⁸ RLP (n 49 above); C Dolan. *Social Torgure: The Case of Northern Uganda, 1986-2006* (2009).

⁶⁹ OHCHR (n 43 above) 5.

⁷⁰ OHCHR (n 43 above) 7; "War as Normal: The Impact of Violence on the Lives of Displaced Communities in Pader District, Northern Uganda" RLP (June 2002) 3; Interviews with former IDPs, Gulu District, Uganda (October 2009).

⁷¹ Tindifa Sam (2007): "Land Rights and Peace Building in Gulu District, Northern Uganda: Towards a Holistic Approach, cited in Atim, P (n 66 above).

⁷² Interviews with former IDPs, Gulu District, Uganda (October 2009).

Some villages have been severely destroyed, leaving no functional infrastructure or social service facilities, making conditions especially difficult for returnees trying to rebuild their lives. Others who continue to suffer from trauma prefer not to return to their homes or communities for fear of being reminded of the tragic events that took place there.⁷³ In most cases, IDPS have long relied on humanitarian assistance, leaving them with limited skills or capacity to rebuild their lives on their own.⁷⁴ The nature of displacement creates the need for a specialized response by the state in order to ensure that IDPs receive adequate reparations for their loss, including assistance with resettlement and rebuilding their lives.

3.4 Especially affected persons

A report by the U.N. Secretary General has held that a comprehensive strategy to achieve peace, justice and reconciliation should place special emphasis on abuses committed against groups most affected by conflict, such as minorities, including but not limited to, the elderly, children, women, prisoners, displaced persons and refugees.⁷⁵ Accordingly, the report recommends that particular measures for their protection and redress should be established in judicial and reconciliation processes.⁷⁶ In conformity with international principles, the Agreement on Accountability and Reconciliation calls for special attention to be paid to vulnerable groups of victims.⁷⁷ Similarly, Uganda's proposed National Reconciliation Bill (2009) includes a reference to pay, "particular attention to the experiences of women, children and vulnerable groups, especially as pertains to gender-based violations."⁷⁸ The situation in Uganda reflects two categories of most affected persons, those vulnerable based on their status as members of a minority group, and those vulnerable based on distinct effects of the abuse. The first category includes women, children and other members of vulnerable groups who are designated to receive special protection, while the second category includes newly created groups of 'most affected persons' as a result of the war. All of these merit special treatment due to the distinct personal, social and cultural effects of violence on victims' lives and their respective rehabilitation and social reintegration.

⁷³ Interview with ACTV, Gulu District, Uganda (October 2009)

⁷⁴ Interviews with Gulu District Peace & Reconciliation Team, Empowering Hands, ACTV, Gulu District, Uganda (October 2009).

⁷⁵ The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Report of the U.N. Secretary General, S/2004/616* (23 August 2004) para 25, p9.

⁷⁶ As above.

⁷⁷ Agreement on Accountability and Reconciliation, Agreement between the Government of Uganda and the Lord's Resistance Army (29 June 2007) Section 8.1.

⁷⁸ National Reconciliation bill, 2009, Uganda.

With respect to all categories of victims, an assessment of the harm suffered and its particular affects on the lives of victims must be made in order to determine the special measures that would be adequate to ensure these victims' restoration and healing. While other groups may be identified, the 'most affected persons'⁷⁹ by the conflict and requiring special protection include: abducted youth; victims of sexual violence; war orphans; war widows; HIV infected persons resulting from sexual violence; and disabled persons due to physical attacks.

3.4.1 Abducted youth

Children were especially targeted for recruitment by the LRA throughout the conflict.⁸⁰ Among the respondents interviewed, an overwhelming majority of abducted youth were taken between the ages of 5 and 10 years old and were subjected to various forms of violence and exploitation, including hard labor, sexual services and armed combat while being deprived of adequate food and water.⁸¹ This is congruent with previous studies on the effects of the conflict on children.⁸² Many children testified that they were made to walk for days carrying heavy loads, which caused them to suffer from persistent physical ailments.⁸³ Other forms of cruel and unusual treatment were also meted out, such as forcing children to kill their family members or to witness such killings.⁸⁴ In many cases, the abductions were perpetrated with physical force and accompanied by the killing of family members during raids on villages.

The impact of abduction on the lives of children has been manifold, manifesting in the personal, social and cultural spheres. While physical, emotional and psychological effects of the abduction vary depending on each child's experience in captivity, a majority of the youth testified to having had their education interrupted and related difficulties to pay school fees, having lost family members who were once responsible for them.⁸⁵ For those who stayed from at least one to several years with the LRA, the physical, emotional and psychological effects were considerably greater given their prolonged exposure to violence and exploitation. In such cases, these youth continue to suffer from emotional and psychological trauma with little access to necessary and appropriate counseling services.⁸⁶

⁷⁹ UN Basic Principles stipulates that special measures should be afforded to those most affected by violence.

⁸⁰ OHCHR (n 43 above) 9.

⁸¹ Interviews with formerly abducted youth, Gulu District, Uganda (October 2009).

⁸² OHCHR (n 43 above) 9.

⁸³ N 81 above.

⁸⁴ OHCHR (n 43 above) 6.

⁸⁵ N 81 above.

⁸⁶ N 73 above.

In the social and cultural spheres, abducted youth suffer from strong stigma by their communities.⁸⁷ Whether they committed atrocities or not, the mere fact that they were abducted and spent time with the LRA is used as a basis to discriminate and alienate these youth.⁸⁸ Those who committed atrocities are branded as 'rebels', with no potential for positive change and are not welcome back to the communities, but viewed with fear and distrust. The fact that generally these youth were forcibly recruited by the LRA is not sufficiently recognized by communities to view and treat them as victims in the first place. While social reintegration is a challenge for these youth, there are also cultural barriers to their reintegration and full recovery. Given the LRA's strategy to break social and cultural ties between these youth and their communities, former child combatants were often made to commit atrocities against their own families or communities, which had particularly damaging effects for members of the Acholi community and their cultural beliefs and traditions.⁸⁹ As such, these children are expected to undergo certain cleansing rituals in order to be accepted back into their communities.

3.4.2 Victims of sexual violence

Multiple forms of sexual violence were perpetrated during the conflict, subjecting primarily women to rape, sexual slavery and other forms of sexual abuse and exploitation.⁹⁰ This became a widespread phenomenon that left a number of lifelong scars on its victims, including unwanted pregnancies, physical ailments or diseases, and emotional or psychological trauma.⁹¹ Further, women victims face pervasive social stigma and alienation related to having been raped or returning home with children conceived while 'in the bush'.⁹² These women are viewed and treated as social outcasts, having lost their prospects for marriage or re-marriage.⁹³ In many cases, they receive no emotional or economic support from their families or from the father of their children. As heads of households and sole caretakers of their children, these women are often prevented from resuming their education, and can not engage in training or income generating activities, thereby severely limiting their capacity to gain economic independence and maintain a basic livelihood for them and their children.⁹⁴ Finally, many victims of sexual violence have contracted the HIV infection, thereby compounding the negative

⁸⁷ OHCHR (n 43 above) 9.

⁸⁸ As above.

⁸⁹ As above.

⁹⁰ Atim (n 66 above) 3; OHCHR (n 43 above) 9-10.

⁹¹ OHCHR (n 43 above) 9-10.

⁹² Interviews with women victims, ACTV, CCR, PVP, Gulu District, Uganda (October 2009); OHCHR (n 43 above) 9-10.

⁹³ As above.

⁹⁴ As above.

and long-term effects of the abuse. Finally, due to the social stigma around rape, these women face significant obstacles in seeking assistance and prefer to remain silent for fear of being stigmatized and rejected by their communities.⁹⁵

3.4.3 War orphans

The conflict claimed many innocent lives, resulting in the destruction of families and irreparable harm. In this context, a new category of victims was created, those who lost both parents during the war. In some cases, children lost all members of their immediate family. The loss of one's parents has a variety of immediate and long-term consequences on the lives of child orphans, including problems securing shelter, food and maintaining access to education or skills training opportunities. Community members in Gulu district could not identify any state-run shelters for homeless children; thus children in such conditions are either taken in by extended family members, assisted by NGOs, or forced to fend for themselves, in some cases resulting in the phenomenon of child-headed households or for the less fortunate, ending up on the streets. Those housed by extended family eventually tend to face problems whereby they become a financial burden, and are often mistreated, denied education opportunities or made to leave.⁹⁶ Those child headed households tend to live in precarious conditions, struggling to access sufficient food and to pay their monthly rent and school fees.⁹⁷ Due to the distinct emotional, psychological and economic impact of having lost one's parents, one's home and one's family life, critical to child development, these children are in need of variety of services and support to ensure their healthy development and growth, so as to restore them as close as possible to their previous conditions. In most cases, what land title claims these children may potentially have to family property, they are either unaware or incapable of enjoying this right due to their condition/status as a child within the community property regime in the North.⁹⁸

3.4.4 War widows

The loss of civilian life during the conflict resulted in a number of war widows. Having lost their husbands who were often key breadwinners in the family, widows suffer immediate and long-term personal, social and economic consequences from losing their husbands. Widows singly take on significant economic burdens for looking after the family. Given the

⁹⁵ Atim (n 66 above) 3.

⁹⁶ Interviews with youth victims, Gulu District, Uganda (October 2009).

⁹⁷ As above.

⁹⁸ As above.

practice of community property ownership in the North, women are not key decision makers or beneficiaries in the area of land tenure.

3.4.5 HIV infected persons

Due to widespread acts of sexual violence, one devastating consequence was that many victims contracted the HIV infection.⁹⁹ To date, state sponsored services for this group is extremely limited given the number of potential beneficiaries of assistance. Further, given the social stigma attached to one's HIV status, many people suffer from emotional distress and anxiety, social stigma and rejection causing them to refrain from discussing their situation publicly or from seeking necessary treatment and support.

3.4.6 Disabled persons

Violent attacks on the civilian population created a special group now suffering from a variety of disabilities. Physical body mutilation and maiming became signature war tactics of the LRA.¹⁰⁰ Meanwhile, land mines claimed lives and limbs of many others. For those deprived of their limbs, this has resulted in the inability to care for them selves independently, or to generate an income. Others have had lips, ears and other body parts cut off, leaving debilitating wounds that carry with them lasting emotional scars. In many cases, victims continue to live with old bullets or land mine fragments in their bodies. No specialized state-sponsored assistance has been afforded these war victims to date.

3.5 Role of the State: Priorities and Challenges

3.5.1 Uganda's current peace and justice efforts

In line with the Juba peace agreement, Uganda is in the process of adopting a number of measures to achieve peace and justice in response to the protracted conflict in the North.¹⁰¹ One of the key initiatives has been the Post-Conflict Reconstruction and Development Program (PRDP) for Northern Uganda.¹⁰² The government considers this to be a targeted

⁹⁹ OHCHR (n 43 above) 7, 13.

¹⁰⁰ OHCHR (n 43 above) 4.

¹⁰¹ Agreement on Accountability and Reconciliation, Agreement between Government of Uganda and Lord's Resistance Army, Juba, Sudan (29 June 2007).

¹⁰² The PRDP targets reconstruction of the region's infrastructure in the area of public services.

response to address the longstanding situation of underdevelopment in the region.¹⁰³ While the PRDP may constitute one way to address the social and economic imbalance in the North, the PRDP does not adequately meet the distinct and individualized harm perpetrated against victims in the course of the war.¹⁰⁴ Namely, it does not provide a direct response to the multiple abuses that have resulted in irreparable harm to victims or cater to their holistic needs to achieve full recovery, as required by the law on reparations for gross human rights violations. As such, additional specialized measures are required to provide a more comprehensive response to the various forms of harm caused by the war at the individual, community and regional levels. A number of social workers in Gulu district emphasized the need to adopt an ensemble of complementary measures that aim to provide holistic recovery for victims, while at the same time promoting reconciliation within the affected communities.¹⁰⁵

More recently, the Justice Law and Order Sector established a high level inter-ministerial Transitional Justice Working Group to give effect to provisions of the Juba Peace Agreement. The Transitional Justice Working Group is comprised of 5 thematic sub-committees including, (1) war crimes prosecutions; (2) truth and reconciliation; (3) traditional justice; (4) finance; and (5) integrated systems.¹⁰⁶ Accordingly, Uganda is planning on establishing a war crimes chamber at the High Court to try perpetrators and is also considering the establishment of a truth-seeking body, which is expected to complement traditional justice mechanisms. The integrated systems committee is expected to harmonize the ensemble of TJ mechanisms and to ensure complementarity of the mechanisms. None of the sub-committees are expected to address the issue of reparations exclusively; however, it is possible that any one of them may include provisions on reparations. At the time of this writing, the committees have not completed the conceptualization phase of the anticipated measures. For example, a war crimes bill¹⁰⁷ and a national reconciliation bill¹⁰⁸ are both the subject of parliamentary consideration. In the event that one or more of the committees plans to address reparations to victims, it will be important to ensure that a coordinated and complementary response is provided to victims through these multiple transitional justice mechanisms. Even where the response is coordinated, it will be important to assess the extent to which the ensemble of these measures adequately meets the

¹⁰³ Due to allegations of corruption and mismanagement of funds for the PRDP, the program has been halted since December 2008.

¹⁰⁴ Interviews with CARITAS, Luo Talent Center, Concerned Parents Association, Center for Reparations and Rehabilitation, Gulu District, Uganda (October 2009).

¹⁰⁵ Interviews with CARITAS and Kwe Kwaro Acholi, Gulu District, Uganda (October 2009).

¹⁰⁶ RLP (n 49 above) 3.

¹⁰⁷ International Crimes Bill, 2008, Uganda

¹⁰⁸ N 78 above.

needs of victims, as outlined above. Alternatively, the creation of a specialized committee to provide for comprehensive, administrative reparations may best serve victims' interests to receive an adequate, effective and prompt remedy, as stipulated in the UN Basic Principles.

A more contentious initiative on the part of the state was the adoption of the Amnesty bill, which granted blanket amnesty to LRA combatants who agreed to demobilize and disarm in exchange for an agreement not to prosecute them for abuses they may have committed while in combat and an amnesty benefits package, including a sum of money, farming equipment and basic living amenities.¹⁰⁹ While this strategy worked in part to lure LRA combatants to abandon their military positions, fostering peace in Uganda, it poses a direct threat to the realization of victim's rights to reparations and to holding perpetrators of human rights violations accountable for their actions. Consequently, blanket amnesties such as this one are controversial in that they favor impunity, merely creating an illusion of peace. While amnesties have long been utilized to promote the end of hostilities and prioritize peace, blanket amnesties such as this one are well established by international courts to contravene international human rights law.¹¹⁰ Specifically, "the U.N. Special Rapporteur for Impunity holds that states cannot grant amnesty before affording victims a remedy, no matter what the aim. The HRC also views blanket amnesties as the worst violations to the right to a remedy because they result in impunity."¹¹¹ Similarly, the U.N. Secretary General summarized the UN's policy on amnesties as follows:

While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of civil war or an internal armed conflict, the United Nations has consistently maintained the position that amnesty can not be granted in respect of international crimes, such as genocide, crimes against humanity, or other serious violations of international humanitarian law.¹¹²

Thus, amnesties will not be valid if they preclude investigation, prosecution, or redress for certain serious international crimes such as torture and disappearances.¹¹³ In accordance with international standards, several countries have abrogated amnesties that violate their

¹⁰⁹ Interview with Lawrence Twanyze, Registrar War Crimes division, High Court of Uganda (September 2009).

¹¹⁰ Young, G.K. *Amnesty and Accountability* The Regents of the University of California (2002) 35 U.C. Davis L. Review 427, 448, 455.

¹¹¹ As above.

¹¹² Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat all Aspects of Impunity, by Diane Orentlicher, U.N. Human Rights Commission E/CN.4/2004/88 (27 February 2004), para 31.

¹¹³ Young (n 110 above).

international obligations.¹¹⁴ On a related matter, the Government's willingness to reward former fighters juxtaposed to its failure to grant reparations to victims of human rights violations risks jeopardizing Uganda's justice efforts and threatens sustainable peace. Rewarding former combatants to the exclusion of granting victims' their right to reparations for harm suffered is an obvious injustice in the eyes of victims.¹¹⁵

3.5.2 Political, Legal and Practical Challenges to Granting Reparations

One of the primary challenges to granting reparations to victims in Uganda is linked to persistent historical, political and regional tensions between the North and the South and the related struggle for political power between these regions, which led into the twenty year conflict between the central government and the North.¹¹⁶ It is widely viewed by residents in the North that the political factors that initially led to the war have not been resolved, thus expectations are low regarding the government's willingness to officially recognize the wrongs committed or to admit that it failed to protect the civilian population from harm. According to Northerners, these constitute key challenges to the government's assumption of responsibility to redress the abuses committed by both parties to the conflict.

According to interviews with victims, community based organizations and members of civil society more generally, the mismanagement of funds by government institutions constitutes a significant challenge to the implementation of government programs. This has compromised the effectiveness of these programs as potential beneficiaries have rarely received the intended assistance. According to residents in the North, tangible results of the PRDP have yet to be seen. Similarly, the expressed a lack of confidence in the government's will and capacity to provide effective reparations to victims. Measures to ensure financial accountability are therefore critical to the effectiveness of any reparations program.

The legal and practical challenges to granting reparations are also significant. Legally, there are critical questions relating to the application of the international framework on reparations that must be addressed in order to ensure that all potential beneficiaries affected by the conflict in Uganda receive an adequate remedy. This includes the determination of the term 'victim'; 'liable party'; 'adequate, effective and prompt remedy', and determination of when the

¹¹⁴ Orentlicher (n 112 above) para 28-30.

¹¹⁵ Interviews with victims and Concerned Parents Association, Gulu District, Uganda (October 2009).

¹¹⁶ HURIPPEC (n 67 above) 5.

State should intervene to provide a remedy where the liable parties are 'unable or unwilling' to do so. Granting reparations through court processes is typically the first option for victims, however, in the context of mass violations there are a number of challenges associated with securing a remedy under these circumstances. Practically, while the perpetrators have the primary responsibility to compensate the victims, many perpetrators in the context of the Ugandan conflict are either dead, at large or can not be identified. Further, those who can be identified by their victims or witnesses are generally insolvent. Moreover, war victims are significantly prejudiced by the failure to meet often times strict, evidentiary court requirements. These are mere examples of the many limitations of formal justice mechanisms in responding to victims of mass human rights abuses. Consequently, the courts are severely limited in their capacity to deliver an effective remedy in a context of mass atrocities.

In recognition of these challenges, the international framework provides for the State to ensure the rights of victims through the adoption of administrative reparation programs.¹¹⁷ In situations similar to that of Uganda, States have adopted specialized stand-alone mechanisms to provide reparations to victims of gross human rights violations. Two current examples are that of Peru and Colombia, both of which experienced lengthy periods of internal conflict resulting in widespread violations and displacement.¹¹⁸ Such programs may be designed to respond to the specific and varying needs of victims, either on an individual and/or collective level. Specifically, reparations programs can more appropriately respond to the multiple, immediate and long-term effects of the violations, including in the personal (physical, emotional, health), social, and economic spheres, thereby contributing to the holistic recovery of victims of gross human rights violations.¹¹⁹ This approach therefore contributes to the all-important restoration of the self-esteem and dignity of victims, and their related reintegration into the community, as expressed by social workers.¹²⁰ Likewise, given the nature of the conflict in Uganda, the multiple categories of victims and degrees of harm suffered, a national reparations program may be the most appropriate mechanism to respond to the various needs of victims.

The financial aspect to adopting a reparations plan constitutes an obvious obstacle to its effective implementation, regardless of whether the award is in the form of monetary compensation or other forms of reparations. Accordingly, it is essential that a preliminary

¹¹⁷ UN Basic Principles (n 14 above).

¹¹⁸ See www.ictj.org

¹¹⁹ ICTJ (n 4 above).

¹²⁰ Interviews with ACTV, CRR, PVP, Gulu District, Uganda (October 2009).

assessment be conducted on the impact of the conflict on the population, with specific attention to evaluating the degree of harm caused and the particular recovery needs of victims and their communities.¹²¹ On this point, it is important to investigate how such schemes have been designed in other post conflict societies. The Inter-American Commission on Human Rights (IACHR) principle guidelines on a comprehensive reparations policy notes the importance of post-conflict States to match such measures with efforts to recuperate legal and illegal property and money belonging to the liable party; in the case of Colombia, the paramilitary groups.¹²² The key aim behind this is to recoup the fiscal cost invested in a national reparations program from the liable parties who also bear the burden of compensating victims. In Rwanda for example, a trust fund was established with start-up funds from the government and members of the international community.¹²³ Thereafter, a percentage of the annual national budget is allocated to the trust fund, while at the same time, a percentage of all taxpayers' income goes to the fund. While the State has the primary responsibility to finance such a mechanism, it does not prevent the international community to contribute to this effort, as is being done in Sierra Leone where the majority of the funds is derived from the UN Peacebuilding Fund.¹²⁴

However, in order for a reparations effort not to lose its significance to victims and in order for reparations efforts to contribute meaningfully to the country's national reconciliation process, such mechanisms are best funded by the concerned State and any other liable parties. Otherwise, such measures will not be seen to reflect a genuine acceptance of responsibility of the primary duty bearer, the State, which is essential for the success of any given reparations program and the related post-conflict reconciliation process. This was the popular sentiment by community based organizations in the Acholi region, whereby the credibility of the PRDP has been questioned due to the fact that seventy percent of the budget is funded by the international community. Moreover, the government has yet to make its due thirty percent contribution, thereby resulting in program with no national ownership. Due to this imbalance in the funding of the PRDP, residents in the North feel as if the government is not genuinely committed to recovery of the region. As a result, they continue to feel socially and economically excluded by the central government. As such, respondents overwhelmingly stressed the importance of the

¹²¹ Members of the population and community based organizations in Gulu District all indicated the need for the State to make an assessment of the damages as a first step in adopting measures to repair the harm.

¹²² Principal Guidelines for a Comprehensive Reparations Policy, IACHR, OEA/Ser/L/V/II.131 Doc.1, 19 February 2008.

¹²³ IN Zarifis "Reparations as a tool for Reconciliation?" Unpublished LLM paper, University of Pretoria, 2009.

¹²⁴ "Sierra Leone: Lack of Aid Funds for Amputees, Rape Survivors, War Widows" Integrated Regional Information Networks (IRIN) 23 February 2009.

State to take the lead in providing reparations to victims.¹²⁵ The key reason given for this was grounded in the fact that reparations measures adopted by the State would contribute to national reconciliation, and specifically, the mending of broken relations between residents in the North and the central government; the perception of which has long been negative.

3.5.3 Conclusion

Notwithstanding the challenges related to the granting of reparations to victims of the war in Uganda, the government has a history of setting up commission's of inquiry and of ordering reparations for past human rights violations. Specifically, under former President Idi Amin, a commission of inquiry was established in 1974 to investigate disappearances allegedly by Ugandan military forces.¹²⁶ The Commission report found the government liable however the report was never published and there was an absence of follow-up to the report recommendations.¹²⁷ Following the 1980-1985 civil war, President Museveni's NRM government established a reparations program for the victims of the Luwero Triangle conflict. At the time, the government agreed to provide limited compensation for property damage, however irreparable harm related to the loss of life and other abuses were not included in the scheme.¹²⁸ Nevertheless, payments continue to be made out to registered beneficiaries.¹²⁹ Further, following the mass expulsion of the Asian community during the Idi Amin regime, the former regime and the present government adopted a compensation scheme for these individuals. While both of these processes were not without flaws, they reflect the fact that the State has in the past recognized its duty to provide a remedy to victims of gross human rights abuses, and where it harbors the requisite political will to adopt such measures, they can be achieved through the appropriate allocation of government funds.

¹²⁵ Interviews with Human Rights Focus, Northern Uganda Transitional Justice Working Group, Gulu District NGO Forum, Gulu District, Uganda (October 2009).

¹²⁶ P Hayner *Unspeakable Truths: Confronting State Terror and Atrocity* (2001) 51-52.

¹²⁷ As above.

¹²⁸ Interview with Acholi War Debt Claims Association, Gulu District, Uganda (October 2009).

¹²⁹ As above.

Chapter IV: Identifying Appropriate Remedies for Harm Caused to Victims in Uganda

4.1 Regional and National framework on Right to a Remedy

The principle of the right to a remedy in the African human rights system is reflective of international standards on the right to a remedy. In the landmark case, *Jawara v. The Gambia*, the African Commission established that the remedy must be “available, effective and sufficient.”¹³⁰ Accordingly, a remedy is considered available if the petitioner can pursue it without impediment; it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint.¹³¹ Specifically, the Commission held that, “the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness.”¹³² In such cases, remedies are deemed unavailable if the victim refrains from seeking justice for fear for his life or those of his relatives. As party to the African Charter on Human and Peoples’ Rights, Uganda is bound by its obligations under the Charter to ensure the right to an available, effective and sufficient remedy to victims of human rights violations.¹³³

At the national level, the Constitution protects the right to remedy and provides for compensation in the case of human rights violations.¹³⁴ This article has been invoked before the National Human Rights Commission, which has issued decisions against the State for compensation for human rights violations by State actors during the conflict.¹³⁵ Compliance with these decisions however has been dismal, and most compensation awards remain outstanding to date.¹³⁶ Further, the Agreement on Accountability and Reconciliation of the Juba Peace Accords includes provisions on reparations to be delivered to victims of gross human rights violations, both at the individual and collective levels.¹³⁷ For its part, traditional justice mechanisms and practices also include the concept of reparations as a means to achieve

¹³⁰ CH Heyns and M Killander “Compendium of Key Human Rights Documents of the African Union” 210 citing *Jawara v. The Gambia* (2000) AHRLR 107 (ACHPR 2000) 31.

¹³¹ Heyns (n 130 above) 32.

¹³² Heyns (n 130 above) 35.

¹³³ Uganda ratified the African Charter on Human and Peoples’ Rights on 10/05/1986, info obtained from http://www.iss.co.za/static/templates/tmpl_html.php?node_id=2264&slink_id=4490&slink_type=12&link_id=3893 on October 20, 2009.

¹³⁴ Constitution of the Republic of Uganda (1995) Article 50.

¹³⁵ Interview with National Human Rights Commission, Gulu, Uganda; the human rights cases received to date have largely dealt with torture, the right to life and the right to liberty; See also www.uhrc.org

¹³⁶ Interview with National Human Rights Commission, Gulu, Uganda.

¹³⁷ Agreement on Accountability and Reconciliation, Agreement between Government of Uganda and Lord’s Resistance Army (29 June 2007), Section 5.3, 6.4, 9.1-9.3.

reconciliation between the parties.¹³⁸ While such practices were not designed to respond to mass human rights violations, it is possible that traditional practices could be adapted to include delivery of symbolic reparations by the liable parties for such acts. However, it is unclear whether all categories of violations, such as acts of sexual violence, can be adequately repaired via these processes.

4.2 Key Considerations: Victim's Expectations for Reparations

4.2.1 'Adequate' and 'Effective' remedy

The UN Basic Principles, which provides the relevant framework on a victim's right to a remedy stipulates that the remedy provided to victims must be 'adequate and effective' to repair the harm, however the instrument does not indicate what would constitute 'adequate' and 'effective' in a post-conflict setting. The Inter-American Court on Human Rights has developed a body of jurisprudence on the right to reparations for victims of serious violations perpetrated during armed conflict, which can provide guidance on the nature and scope of this requirement.¹³⁹ The Inter-American Commission on Human Rights (IACHR) has found that reparations,

should consist of measures that tend to make the effects of the violations committed disappear. Their nature and amount will depend on the damage caused both at the pecuniary and non-pecuniary levels. Reparations cannot involve enrichment or impoverishment of the victim or his or her heirs.¹⁴⁰

On this point, the IACHR determined that,

access to reparations for victims of crimes against humanity in Colombia must never be subject exclusively to determination of the criminal liability of the perpetrators...but that one of the State's objectives must be to redress the harm caused by paramilitary violence, applying the standards of international human rights law with a view to providing low-cost, streamlined administrative avenues by which to access economic reparations programs.¹⁴¹

In short, the IACHR has concluded that victims' right to adequate and effective reparations should be comprehensive in nature and should not limit victims to solely seeking judicial remedies, but should also allow victims to pursue administrative reparations as well,

¹³⁸ Interview with Ker Kwaro Acholi, Gulu District, Uganda (October 2009)

¹³⁹ I/A Court H.R. *Case of Mack Chang*, Judgment of November 25, 2003, paras 236-237; *Case of the Cracazo*, Reparations, Judgment of January 22, 1999, Series C No.48, para 31-32; *Suarez Rosero Case*, Reparations, Judgment of January 20, 1999, Series C No.44, para 41.

¹⁴⁰ Principal Guidelines for a Comprehensive Reparations Policy, IACHR, OEA/Ser/L/V/II.131 Doc.1, !9 February 2008.

¹⁴¹ As above.

given that judicial and administrative reparations are not mutually exclusive and complementary.¹⁴² On this point, the IACHR has held that victims should be able to choose which avenue to pursue to ensure they receive comprehensive reparations.

While a standard for this requirement has been established under international law, the particular conditions and context of the violations and their impact on victims will dictate the measures necessary to repair the harm. In the case of Uganda, respondents seemed to agree that an 'adequate and effective' remedy for victims requires the remedies to be holistic, prompt, empowerment-focused and genuinely delivered.¹⁴³ Service providers and community based organizations in particular stressed the importance of reparations being holistic and comprehensive, given the broad impact of harm on victims' personal lives. In cases of torture and rape for example, victims' suffer physical, emotional and psychological health problems that can affect their ability to function normally in society, including maintaining a job and a household.¹⁴⁴ Further, those who have been physically maimed require medical services, rehabilitation, possible restoration of limbs and assistance with maintaining their livelihood. In addition to providing holistic reparations to victims, respondents agreed that the approach to reparations must foster victim empowerment, self-reliance and aim to build their capacity, so that victims' situation of vulnerability and dependency comes to an end.¹⁴⁵ Beyond the immediate physical harm suffered, victims experience a loss of dignity, low self confidence and depression linked to the abuse; thus, assistance designed to promote victims' empowerment will allow victims to transcend their state of victimhood.

4.2.2 Forms of Reparations

The UN Basic Principles identifies five forms of reparations as the following:

- (1) Restitution – restoration of the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred;
- (2) Compensation – a remedy for any “economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstance of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law.” (ie-lost opportunities, loss of earnings and moral damage);
- (3) Rehabilitation – includes “medical and psychological care as well as legal and social services”;

¹⁴² As above.

¹⁴³ Interviews with victims, CBOs and service providers, Gulu, Uganda (October 2009).

¹⁴⁴ Interview with ACTV, Gulu District, Uganda (October 2009).

¹⁴⁵ Interview with ACTV, Gulu District Peace & Reconciliation Team, CARITAS. Empowering Hands.

- (4) Satisfaction – “broad category of measures, ranging from those aiming at a cessation of violations, to truth-seeking, the search for the disappeared, the recovery and reburial of remains, public apologies, judicial and administrative sanctions, commemoration and memorialization and human rights training”;
- (5) Guarantees of non-repetition – broadly, this may include an array of preventative measures ranging from “institutional reforms tending towards civilian control of military and security forces, strengthening judicial independence, the protection of human rights workers, human rights training, the promotion of international human rights standards in public service, law enforcement, the media, industry and psychological and social services.”

In this respect, victims in Northern Uganda expressed interests in receiving both individual and collective reparations. Due in part to the strong sense of community in Acholi culture, many respondents preferred reparations to be delivered to the communities for onward distribution to individuals.¹⁴⁶ This would allow communities themselves to come together and decide how to allocate resources, balancing between community and individual reparations. This proposal would potentially serve to prevent corruption in the execution of government projects, which is believed to be the main obstacle to the effective implementation of government programs on the ground.¹⁴⁷ Yet those who suffered direct physical harm often expressed interest to receive individual reparations as well.¹⁴⁸

As to the forms of reparations, a majority of victims expressed an interest in various forms of restitution, rehabilitation and satisfaction, but very few felt that monetary compensation would be an appropriate remedy for their loss.¹⁴⁹ This view was supported by community based organizations, who believed that money awards would be less meaningful or capable of generating sustainable change in the lives of victims'.¹⁵⁰ Restitution in the form of housing, land, employment or job skills training and income generation activities were amongst the most common requests from victims. These demands reflect the fragility and urgency of their situation, many of them struggling to pay monthly rent and maintain some kind of income generating activities. For those who lost family members or who had family members disappeared, there was an expressed interest in identifying the remains and returning them to the family for proper burial. For those who experienced physical violence for which they continue to experience poor health, there was a great interest to receive medical services and

¹⁴⁶ Interviews with victims, Gulu District, Uganda (October 2009).

¹⁴⁷ As above.

¹⁴⁸ As above.

¹⁴⁹ As above.

¹⁵⁰ Interviews with community based organizations, Gulu District, Uganda (October 2009).

psychosocial counseling for the trauma related to acts of torture, rape and other forms of cruel and unusual treatment.

An overwhelming interest of youth victims was to return to school and receive assistance with the payment of school fees.¹⁵¹ Opportunities to attend school were largely lost due to children having been abducted, or having lost family members who were responsible for them. In addition, a number of children were left orphaned by the war and face persistent challenges in securing housing and adequate care. The loss of family life related to the loss of one's parents represents moral harm that is difficult to repair. Further, for those children who were abducted, they not only experience trauma related to the abduction, but continue to suffer from social stigmatization and rejection by their communities.¹⁵² This dimension of harm requires that reparations target not only individual victims but also affected communities in an effort to mend social, community relations, which many respondents agreed had been destroyed during the war.¹⁵³

Meanwhile, those who had been living in IDP camps confirmed that they received no substantial assistance or support with the return to their communities. Forced displacement and return implies a multiplicity of violations for which a variety of measures need to be adopted to ensure the proper restoration of their situations to the status-quo ante. This could include the restoration of housing, land and compensation for the loss of property and earnings for the period during which they were prevented from carrying on their regular livelihood.

Women were especially affected by the conflict given the widespread practice of sexual violence against women and girls. The impact of harm manifests in the personal realm (physical, psychological, emotional) requiring the provision of necessary health services, but also has strong repercussions on the victims' families and communities. Women who have been raped or who have contracted HIV are socially ostracized, and bear the sole economic burden of supporting their children. As such, women victims of sexual violence require an ensemble of measures to ensure their full restoration and social reintegration. In so far as they continue to suffer from emotional harm from social rejection, reparations must also involve a community approach aimed to increase community understanding and acceptance of these victims.

¹⁵¹ As above.

¹⁵² Interviews with youth victims and service providers, Gulu District, Uganda (October 2009).

¹⁵³ Interview with CARITAS, Gulu District, Uganda (October 2009).

4.2.3 Defining the Victim: Reparations for Whom?

According to residents in the Acholi subregion, everyone is considered a victim of the war because everyone's life has been affected in one way or another by the conflict. The UN Basic Principles sets forth a definition that provides important guidance on this point, it states that victims are:

persons who, individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.¹⁵⁴

Similarly, Colombia, which recently adopted a reparations policy for victims of the armed conflict in that country, adopted a broad definition like this one that favors victims' interests.¹⁵⁵ Given the widespread and systematic nature of the human rights violations perpetrated against civilians in Uganda, the definition above appears broad enough to encompass all potential beneficiaries in the Ugandan context. It is important to note that the right to a remedy is determined by the human rights violation perpetrated and not by the character of the victim or his actions prior to the violation.¹⁵⁶ As such, it follows that those youth who were abducted by the LRA and stayed on to commit abuses themselves would be eligible, according to international law to receive reparations for the initial abduction. However, this does not suggest absolution of individuals from criminal accountability for atrocities committed following their abduction; as in the case of Sierra Leone, former child combatants were subjected to a truth telling process rather than prosecutions by the Special Court for Sierra Leone, given that they were not deemed to constitute the 'most responsible' for atrocities perpetrated during the conflict.¹⁵⁷

4.2.4 Liable parties: Who will pay?

A state's duty to repair is intimately linked with a legal duty to exercise due diligence, or "to take reasonable steps to prevent human rights violations and to use the means at its

¹⁵⁴ UN Basic Principles (n 14 above) Principle 8.

¹⁵⁵ See www.ictj.org.

¹⁵⁶ A Carrillo *The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in P deGreiff (ed) *Handbook on Reparations* (2006) 511.

¹⁵⁷ IN Zarifis *Sierra Leone's Search for Justice and Accountability of Child Soldiers* Human Rights Brief, American University (2002).

disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.¹⁵⁸ Hence, a State's failure to exercise due diligence to prevent harm or to respond adequately to investigate and punish those responsible triggers the duty to repair even when the perpetrators are non-State actors.¹⁵⁹ Specifically, the IACHR landmark case, *Velasquez Rodriguez v. Honduras*, established the principle that human rights abuses committed by private, non-state or unidentified actors may under certain circumstances give rise to state responsibility and thus the duty to provide reparations to the victims of those abuses."¹⁶⁰ Accordingly, States have the negative duty to refrain from causing harm as well as the positive duty to prevent harm perpetrated by other actors. In the case of Uganda, even where many of the atrocities were perpetrated by the rebel group, the Lord's Resistance Army (LRA), this does not absolve Uganda from its duty to repair the harm.

According to the UN Basic Principles, the liable parties have the duty to pay compensation to victims, however if they are 'unable or unwilling' to do so, the State must endeavor to adopt a national program on reparations to ensure the right to remedy of victims.¹⁶¹ Reading this provision together with the IACHR established principles on the right to comprehensive reparations holding that victims should not be limited to one particular avenue to secure their rights, it follows that even if judicial remedies may be awarded through court processes, this does not preclude the State from developing an administrative reparations program to guarantee the rights of all potential beneficiaries. For example, in the case of Uganda, to date there is no evidence that the liable parties or direct perpetrators, namely the LRA and Ugandan government soldiers, are able or willing to pay compensation to victims. The Amnesty law constitutes the main legal obstacle to securing compensation from the perpetrators. Nevertheless, the State's obligation to ensure a remedy to victims persists. Therefore, a specialized mechanism or administrative reparations program should be adopted to ensure that all potential beneficiaries receive an adequate remedy. When posed this question, all respondents concluded that the State, as primary duty bearer, has the primary duty to grant reparations to victims.¹⁶²

¹⁵⁸ Carrillo (n 156 above).

¹⁵⁹ As above.

¹⁶⁰ As above.

¹⁶¹ UN Basic Principles (n 14 above) Principles 15, 16.

¹⁶² Interviews with respondents, Gulu District, Uganda (October 2009).

Finally, as mentioned earlier, the IACHR's principle guidelines on a comprehensive reparations policy notes the importance securing contributions from other liable parties who also bear the burden to compensate victims.¹⁶³ Accordingly, Uganda may impose a financial burden on the LRA or other liable parties to offset the costs of a reparations program for victims.

4.2.5 Gross Violations of International Human Rights Law: Nature and Scope

The UN Basic Principles stipulates reparations for victims of gross violations of human rights and serious violations of international humanitarian law. On this point, no definition exists for gross violations of international human rights law however it is understood to reflect a context whereby acts of violence threatening the right to life, liberty and/or violating one's physical and moral integrity are perpetrated on a widespread and systematic scale.¹⁶⁴ Serious violations of international humanitarian law include genocide, crimes against humanity and war crimes.¹⁶⁵ As such, due to the systematic and widespread nature of the abuses perpetrated during the course of the conflict in Uganda, it follows that many of the violations fall within this categorization. Further, it is important to note that displaced persons qualify as victims of gross human rights violations with the right to remedy, according to the UN Basic Principles.¹⁶⁶ Similarly, the IACHR has held that,

given the complexity of the issue of internal displacement and the broad array of human rights it affects, and given the especially vulnerable and defenseless status of most displaced persons, they could be deemed to have, de facto, no protection. Under the American Convention, this would oblige States to grant them preferential treatment and take active measures to reverse the effects of their weak, vulnerable and defenseless status.¹⁶⁷

Accordingly, the reparations programs of Peru and Colombia both provide for specialized measures to repair the harm to individuals who were subjected to displacement during the respective conflicts.¹⁶⁸

4.2.6 Forum for Granting Reparations and the Duty to repair 'promptly'

¹⁶³ IACHR (n 140 above).

¹⁶⁴ UN Basic Principles (n 14 above) Principle 4.

¹⁶⁵ Rome Statute of the International Criminal Court (2002).

¹⁶⁶ UN Basic Principles (n 14 above) Principle 19.

¹⁶⁷ IACHR (n 140 above) citing I/A Court H.R. Case of the Ituango Massacres, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No.148, para.210.

¹⁶⁸ See www.ictj.org

Currently, there are a number transitional justice mechanisms being contemplated to respond to the conflict in Uganda, but it is not clear how any of these mechanisms or a combination of them will be able to provide comprehensive reparations to victims of human rights violations. Firstly, the ICC bill contemplates the creation of a war crimes division in the High Court, however there is no provision therein for honoring the right to reparations for victims.¹⁶⁹ Victims are likely to resort to normal procedures of seeking compensation in a separate judicial process, which puts them at a significant disadvantage.¹⁷⁰ As was recognized by the IACHR, the circumstances of most victims of gross human rights violations perpetrated during conflict are precarious, as they lack the resources and accessibility to the courts.¹⁷¹ Further, they often fail to meet strict evidentiary requirements for judicial proceedings. Moreover, this suggests that the onus of receiving a remedy is on the victim and not on the State, the primary duty bearer.

In addition, the National Reconciliation bill calls for the establishment of a truth-seeking body with the mandate to investigate the abuses perpetrated during the conflict and satisfy victims' right to information and truth about events that took place.¹⁷² At most, this body may recommend measures to repair victims but is not designed to grant reparations itself. Thus, while reparations may constitute a by-product of the truth-seeking process, it is not central to the mandate and there is no guarantee that reparations will be delivered pursuant to this process. As in several other cases, truth commissions are limited to making recommendations and oftentimes measures to repair the harm to victims are rarely followed through. Finally, traditional justice practices are also being contemplated to promote accountability and reconciliation. While reparations are contemplated in these practices, the ability to ensure reparations to all potential victims is limited. For example, participation in these practices is voluntary and only those adhering to traditional cultural practices will likely participate, leaving out other potential beneficiaries.

In short, none of the mechanisms contemplated above have the exclusive objective of repairing harm to victims. Reparations, at most, may constitute a by-product of prosecutions, a truth-seeking body, or traditional justice practices; yet their mandates fail to address reparations comprehensively as stipulated in international law on the right to reparations for gross human

¹⁶⁹ International Crimes Bill 2008, Uganda.

¹⁷⁰ IACHR (n 140 above) 4.

¹⁷¹ As above.

¹⁷² National Reconciliation Bill, 2009, Uganda.

rights violations. Further, the UN Basic Principles stipulates that reparations must be 'prompt', signifying a sense of urgency and timeliness of the measures.¹⁷³ In light of these requirements, a specialized, stand-alone mechanism with the goal to provide holistic reparations to all potential beneficiaries is in order.

While no program will be able to satisfy all the needs of all potential victims of gross human rights abuses, a mechanism exclusively designed to benefit victims proves much more effective to satisfy the rights of victims.¹⁷⁴ On this point, the IACHR has held that, "a comprehensive reparations program must function as State policy to give it stability and to enable it to sustain itself over the course of time."¹⁷⁵ On this point, Rwanda's reparations efforts over the past fifteen years provide a good example of how a country in the region responded to the varied needs of victims, including the provision of housing, education grants, free access to medical and psycho-social counseling services, income generation grants, as well as exhumations and re-burials. Rwanda's efforts further included a series of institutional, policy and legal measures aimed at preventing the recurrence of genocide.¹⁷⁶

4.2.7 Long-term measures: Guarantees of Non-Repetition

In line with the law on reparations, community based organizations and human rights advocacy organizations in Northern Uganda emphasized the importance of reparations to include preventative measures that guard against the recurrence of violent conflict. Many respondents expressed concern with Uganda's failure to address the root causes of conflict and its exacerbating factors, indicating that such a failure would condemn Uganda to falling into conflict once again. As to the sources of conflict, respondents pointed to the lack of good governance and the failure to guarantee equal representation and participation of all the regions in government. Others pointed more specifically to the central government's intended policy to exclude the North politically, socially and economically in retaliation to the North's longstanding domination of political power. These responses suggest deep-seated institutional and structural problems that must be adequately addressed in order to prevent the recurrence of violent conflict in the country.

¹⁷³ UN Basic Principles (n 14 above) Principle 2(c).

¹⁷⁴ ICTJ (n 4 above) 4.

¹⁷⁵ IACHR (n 140 above) 2.

¹⁷⁶ Zarifis (n 157 above).

As in the cases of Rwanda and South Africa, long-term institutional, legal, policy and administrative measures were adopted to mark the transition from a society steeped in discrimination, socio-political exclusion and exploitation of one group to the benefit of the other. In short, institutional and policy reforms were adopted to ensure equal representation in public affairs and non-discrimination.

While a majority of the respondents identified the complex and historical nature of the sources of conflict in Uganda, few were in a position to propose specific measures to guarantee the non-repetition of conflict. One respondent however recommended the introduction of peace education into school curriculums. Nevertheless, additional consultations should be conducted on this subject in order to design a reparations program that incorporates preventative measures in the form of institutional reforms aimed at addressing the sources of conflict in Uganda.

4.3 Design and Execution of a Reparations program

Respondents stressed the importance of broad consultations by the government with affected communities in order to assess the nature and scope of the damage on victims. This was considered an essential first step to determine what measures would be adequate and feasible to repair the harm. As to execution of a reparations program, the majority of victims and community members expressed a strong interest in a decentralized reparations program, one which would include meaningful participation from local leaders, community members and victims themselves.¹⁷⁷ This structure is expected to prove beneficial for several reasons, including promoting public accountability for the allocation of funds or assistance; and enabling victim/community participation in matters that directly affect them, thereby promoting their ownership of the process and related empowerment, critical to the healing and recovery process of victims and their communities.¹⁷⁸ One victim suggested that funds for reparations should be channeled to the communities and decisions about their allocation should be made at the community level in consultation directly with the beneficiaries. This proposal would allow each community to decide which forms of assistance would be most appropriate given the interests and needs of victims and their communities. This scheme would also allow each community to balance the interests and needs of victims and their communities by granting a combination of individual and collective reparations as deemed appropriate.

¹⁷⁷ Interview with Gulu District Peace & Reconciliation Team, Gulu, Uganda (October 2009).

¹⁷⁸ Interview with Center for Reparations and Rehabilitation, Gulu, Uganda (October 2009).

4.3.1 Victim Participation

“Victims and other sectors of civil society should play a meaningful role in the design and implementation of such programs. Concerted efforts should be made to ensure that women and minority groups participate in public consultations aimed at developing, implementing, and assessing reparations programs. Exercise of the right to reparation includes access to applicable international and regional procedures.” (principle 32, Principles on Impunity)

The merit of directly consulting potential beneficiaries on the most appropriate form of reparations can not be sufficiently emphasized as a critical aspect to the design of an adequate and effective reparations program that will be meaningful to victims. The experience of violence and harm vary amongst victims, so will their interests for available forms of reparations. Nevertheless, there was a common interest by the majority of victims and community based organizations providing services to victims that the form of reparations must contribute to victims’ empowerment, self-reliance and capacity building. Given the reality of the conflict and the high demands on humanitarian assistance over the past two decades, there was a common recognition that affected persons and communities must now be equipped with the means to develop their own livelihood and economic independence.¹⁷⁹

Consultations on reparations require certain conditions. Firstly, consultations should be broad in order to include all potential victims. Secondly, victims need to receive basic information about their right to reparations and the various forms of reparations that are available to them.¹⁸⁰ Thirdly, in order for victims to feel comfortable expressing their needs and interests, they need to feel adequately safe, thus re-establishing security in the communities is necessary. For example, perpetrators have not been apprehended in most cases, they may continue living within their communities, they may have been reintegrated into the UPDF, but they generally circulate freely, which could put victims at renewed risk if they are to seek justice and reparations for the violations that were committed. Finally, due to having been the target of violence, victims often experience trauma, fear, anxiety and shame associated with the harm they suffered, and which constitutes an obstacle to obtaining victims’ views on reparations. On this point, the role of civil society is critical in that it can serve to conduct critical outreach and

¹⁷⁹ Interviews with Empowering Hands, ACTV, Gulu District Peace & Reconciliation Team, Peoples Voices for Peace, Gulu District, Uganda (October 2009).

¹⁸⁰ Many victims were not familiar with the right to reparation and the duty of the state to provide a remedy for the harm suffered.

support to victims so as to enable them to engage meaningfully in the process of designing a reparations program that would best suit their needs.

4.3.2 Civil Society Participation

Any effort to grant reparations must involve civil society consultations and participation. This is important for two key reasons. Firstly, local civil society organizations are the ones that have been working with affected communities throughout the conflict, thus, they have an intimate familiarity with the conditions of victims and their communities, and they have developed an expertise in service delivery as well as understanding the causes of conflict, the factors driving the conflict and the social, cultural effects on victims and their communities. Further, community based organizations can best express the link between reparations and reconciliation in the socio-cultural and traditional setting. Accordingly, they can provide critical insights into what forms of reparations would be most beneficial to repair the harm to victims and their communities, but also to identify the forms of reparations that would most effectively promote reconciliation at the community level. Moreover, at the logistical and administrative level, a comprehensive, national reparations program would be much more effective if it were to include civil society (service providers and community based organizations particularly) as partners in the process. Where the government lacks sufficient financial and human resources, or the adequate infrastructure and facilities to provide necessary reparations to victims, civil society organizations already providing such services can serve as key partners to channel assistance to the communities. Finally, by partnering with local civil society organizations, a national program on reparations would benefit from their established relationship of trust with beneficiaries, and these organizations' pre-existing infrastructure and facilities to promise a more efficient, effective and prompt implementation of such a program.

V. Conclusion

A number of conclusions may be made from the analysis above. Firstly, the UN Basic Principles serve as a critical reference to post-conflict States on the nature and scope of the duty to repair the harm to victims of gross human rights violations. However, given the unique circumstances of each conflict and that of victims, application of the instrument, the form of reparations, the modalities of delivery, and the identification of the beneficiaries will vary. However, such determinations should always be made in the interest of the victims, who should constitute central actors to the process.

In this connection, reparations should be conceived of as an essential aspect of justice and accountability to victims within transitional justice processes. Restorative justice, which aims both to restore victims to the *status quo ante* and to prevent future harm to victims, encompasses a variety of short and long-term, curative and preventative measures that aim to redress the direct harm caused to individuals or communities, but also to introduce institutional measures to address the underlying, structural causes of conflict. While reparations constitute a critical component to the overall justice and reconciliation process, reparations to date have been treated as secondary and incidental to other national interests, tending to leave victims without a remedy. In order for transitional justice processes to maintain their integrity in the eyes of victims, their interests should be prioritized in transitional justice processes by adopting specialized mechanisms, such as administrative reparations programs, designed to repair the harm to all potential beneficiaries. In so doing, it is important to consider the interests of all victims with special attention paid to the situation of vulnerable groups, so as to ensure the design of an adequate and effective reparations policy. Finally, in order to assist victims to transcend their situation of vulnerability and dependency, reparations should foster victim empowerment and contribute to their self-sufficiency and full recovery.

Beyond providing a direct remedy to victims, reparations promises to have a significant impact on the promotion of reconciliation at the personal, community and national levels. With respect to victims, this will help to restore their dignity and promote reintegration into their communities. At the national level, respondents agreed that reparations measures adopted by the government would contribute to restoring North-South relations. Moreover, a comprehensive reparations program should include measures to guarantee non-repetition of harm, which can take the form of institutional, legal, policy and other reforms with the aim of addressing structural issues contributing to conflict. Uganda could benefit from adopting similar initiatives to embrace a new dispensation, as has been done in other post-conflict societies, such as South Africa and Rwanda.

As yet, Uganda has not adopted specialized measures to repair the harm to victims. Even when the PRDP is meant to contribute to reconstruction of the North, this does not address the individualized harm to victims and does not reflect official recognition of wrongs or the acceptance of State responsibility to repair victims, which constitute core aspects of the state's duty to repair. Despite the inherent challenges, whether Uganda adopts a reparations policy for victims of gross human rights violations will ultimately depend on the government's

political will and commitment to assume its responsibility to repair the harm to victims, accompanied by sufficient, corresponding budgetary allocations.

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Bibliography

A. Books

Bassiouni, C. (2002) *Post-Conflict Justice* Transnational Publishers.

Dolan, C. (2009) *Social Torture: The Case of Northern Uganda 1986-2006*, Berghahn Books.

de Greiff, P (2006) *Handbook on Reparations* Oxford.

Heyns CH & Killander M (2007) *Compendium of Key Human Rights Documents of the African Union* Pretoria University Press.

P Hayner *Unspeakable Truths: Confronting State Terror and Atrocity* (2001) Routledge.

Shelton, D (2005) *Remedies in International Human Rights Law* Oxford.

Strang, H (2004) *Repair and Revenge: Victims of Restorative Justice* Oxford.

Villa-Vicencio, C. & Savage, T. (2001) *Rwanda and South Africa in Dialogue: Addressing Legacies of Genocide and Crimes Against Humanity*.

B. Articles in Books

A Carrillo *The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in P deGreiff (2006) *Handbook on Reparations* Oxford.

C. Articles

Gloppen, S 'Review Essay: Reparatory Justice- a road to reconciliation? On the role of reparations in transitional justice theory' (2001) *Human Rights in Development*.

Laplante, L 'Bringing Effective Remedies Home: Inter-American system on Human Rights, Reparations and the Duty of Prevention' 22 *Netherlands Quarterly of Human Rights* 347.

Mulisa, G 'Right to Effective Remedy under the African Charter' (2005) 6 *African H.R. Journal*

Mutua, M 'Beyond Juba: Does Uganda need a National Truth and Reconciliation Process?' (2007) 13 *East African Journal of Peace and Human Rights* 142.

Sarkin, 'Coming of Age of Reparations' *SUR-International Journal on Human Rights*.

“Sierra Leone: Lack of Aid Funds for Amputees, Rape Survivors, War Widows” *Integrated Regional Information Networks* (IRIN) 23 February 2009.

Sooma, P ‘Despair and Disdain: A Tale of Sexual Abuse against Internally Displaced Women in Northern Uganda’ (2006) 12 *East African Journal of Peace and Human Rights* 91.

Young, G.K. ‘Amnesty and Accountability’ *The Regents of the University of California* (2002) 35 U.C. Davis L. Review 427.

Zarifis, IN ‘Sierra Leone’s Search for Justice and Accountability of Child Soldiers’ *Human Rights Brief*, American University (2002).

Zarifis, IN “Reparations as a tool for Reconciliation?” Unpublished LLM paper, University of Pretoria, 2009.

D. Reports and Other Materials

“A Quick Look at Reconciliation Work in Rwanda” National Commission on Unity and Reconciliation, Kigali, Rwanda (April 2009).

Atim, P. “Critically Reviewing the Legal Regime Governing Sexuality and Gender Based Violence: A Case Study of Pajule IDP Camp, Pader District”, Law, Gender & Sexuality Research Project, Working Paper No.5, University of Makerere, Uganda (January 2008).

Hoyle C “Can International Justice be Restorative Justice?” in Can International Courts do Justice? Conceptions of Justice in Responding to Conflict Working Papers University of Oxford (January 2009).

‘IDP’s: Global Survey’ Norwegian Refugee Council.

Magarell L “Reparations in Theory and Practice” ICTJ, Reparative Justice Series, available at www.ictj.org.

Mahmood Mamdani lecture, University of Makerere, Kampala, Uganda (Aug 25, 2009).

Reiff S, Servaes S and Zupan N “Development and Legitimacy in Transitional Justice” Working Group on Development and Peace (June 2007).

“The Hidden War: The Forgotten People” HURIPPEC, Univeristy of Makerere and Liu Institute for Global Issues (October 2003).

“Violence, Exile and Transitional Justice” Beyond Juba Briefing Note No.3, Refugee Law Project (August 2009).

“War as Normal: The Impact of Violence on the Lives of Displaced Communities in Pader District, Northern Uganda” RLP Working Paper No.5 (June 2002).

Mamdani, M ‘When does Reconciliation turn into a Denial of Justice?’ (1998) HSRC Publishers.

“When the War Ends” Human Rights Center, University of California, Payson Center for International Development, Tulane University, International Center for Transitional Justice (December 2007).

Quinn, J ‘Constraints: The Undoing of the Ugandan Truth and Reconciliation Commission’ (2004) 26 *Human Rights Quarterly* 401.

E. Documents from International Organizations

“Independent Study on Best Practices, including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat all Aspects of Impunity” by Diane Orentlicher United Nations Commission on Human Rights E/CN.4/2004/88 (27 February 2004).

“Making Peace Our Own: Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda”, OHCHR (2007).

Principal Guidelines for a Comprehensive Reparations Policy, IACHR, OEA/Ser/LV/II.131 Doc.1, 19 February 2008.

“Rule of Law Tools for Post-Conflict States: Reparations Programmes” United Nations High Commissioner for Human Rights (2008).

“The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” Report of the U.N. Secretary General S/2004/616* (23 August 2004).

F. National Legislation

Agreement on Accountability and Reconciliation, Agreement between the Government of Uganda and the Lord’s Resistance Army (29 June 2007)

Constitution of the Republic of Uganda (1995)

International Crimes Bill, 2008, Uganda

National Reconciliation bill, 2009, Uganda.

G. International Instruments

African Charter on Human and Peoples’ Rights

Inter-American Convention on Human Rights

U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of Humanitarian Law A/RES/60/147 (21 March 2006)

Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, United Nations Commission on Human Rights E/CN.4/2005/102/Add.1 8 February 2005.

H. Cases from International Courts

Blake v. Guatemala, I/A Ct (Judgment of January 1999).

Case of Mack Chang, I/A Ct (Judgment of November 25, 2003).

Case of the Cracazo, Reparations (Judgment of January 22, 1999).

Chorzow Factory Case 1927, P.C.I.J (Ser.A) No.9 at 21.

Jawara v. the Gambia (2000) AHRLR 107 (ACHPR 2000).

Suarez Rosero v. Ecuador, I/A Ct. (Judgment January 20,1999).

I. Interviews conducted in Kampala and Gulu District, Uganda

	Person Interviewed	Position	Organization	Date
1	Joseph Ankweny	Coordinator	ICC Coalition & UVF (legal consultant)	Sept.17
2	Lawrence Twanyze	Registrar	War Crimes Division, High Court of Uganda	Sept.22
3	Bernard	Program officer	RLP-Gulu	Sept.24
4	Otema Jimmy Fred	Admin officer	Terra Renaissance	Sept.29
5	David Okello	Psychosocial support coord.	CARITAS	Sept.29
6	Sophie Agwoko	Program associate	Ker Kwaro Acholi	Sept.29
7	Boniface Ojok	Coordinator	TJ Working Group	Sept.30
8	Nyeko Paulins	Secretary	Acholi War Debt Claimants Assoc	Oct.1
9	Peace Avola	Social Worker	ACTV (Af. Center for Torture Victims)	Oct.1
10	Melody Ginama	Lawyer	NHRC	Oct.1
11	Dennis Martins Okwir	Coordinator	Empowering Hands	Oct.1
12	Boniface Ojok	Coordinator	TJ Working Group	Oct.2
13	Rosalba Oywa	Chair	Peoples Voices for Peace	Oct.2
14	Margaret Ojok	Executive Director	Center for Reparations and Rehabilitation of Victims	Oct.2
15	Owor Lino Ogora	Research Officer	Gulu District NGO Forum	Oct.2
16	Individual Interviews	Members of	Luo Talent Center	Oct.3

	with (12) youth victims	Gulu Theater Artists		
17	Anama Grace	Program Officer	Concerned Parents Association	Oct.5
18	Goretti Okech	Coordinator	Gulu District Peace & Reconciliation Team	Oct.6
19	Tolit Charles Atiya	Secretary, TJ NGO Working Group	Justice & Peace Commission and TJ NGO Working Group	Oct.7
20	Individual Interviews with (2) women victims	Beneficiaries of social assistance	Luo Talent Center	Oct.7
21	James Otto	Executive Director	Human Rights Focus	Oct.8
22	Individual Interviews with (5) women victims	Beneficiaries of social assistance	Luo Talent Center	Oct.8
23	Group interview with (3) women victims	PVP members	Peoples Voices for Peace	Oct.8
24	Individual Interviews with (5) youth victims	Members of Gulu Theater Artists	Luo Talent Center	Oct.9