

UGANDA

Unredressed Legacy: Possible Policy Options and Approaches to Fulfilling Reparations in Uganda

Graham Carrington and Elena Naughton

December 2012



with funding from

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Acknowledgements

ICTJ acknowledges the contribution of the Austrian Development Agency for funding the research that provides the basis for this report. The authors would like to thank the Justice and Reconciliation Project for undertaking the research component on victim's views on reparations, led by Lino Owor Ogora, Boniface Ojok, Akullo Evelyn, Phillip Schulz, and Kate Lonergan, and the many victims groups and their representatives for sharing their knowledge and insights. ICTJ's Ruben Carranza and Cristián Correa provided their expertise in reparations as well as extensive comments during the drafting process. The text also benefited from input by Lisa Magarrell, now at Open Society Institute, and ICTJ's Paul Seils. Michael Otim and Sarah Kihika Kasande in ICTJ's Uganda office first recognized the need for this report and provided essential knowledge of legal and government structures in Uganda. OHCHR, UNWOMEN, civil society, and government contributed insights in interviews and at a validation meeting held in Kampala.

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About ICTJ

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit www.ictj.org

About JRP

The Justice and Reconciliation Project is a nonprofit organization based in Gulu, northern Uganda. JRP has played a key role in transitional justice in Uganda since 2005 through seeking to understand and explain the interests, needs, concerns, and views of victims regarding their justice. For more information, visit www.justiceandreconciliation.com

CONTENTS

1. Introduction	1
2. Approaches to Defining a Comprehensive Ugandan Reparations Policy	3
The Legal Framework	3
Reparations for Violations Committed by the LRA and Other Nonstate Actors	3
Defining Victims and Beneficiaries in Reparations Policy	5
Possible Components of an Urgent Reparations Program in Uganda	6
Measures Forming Part of a Comprehensive Reparations Program in Uganda	9
Administering reparations Policy in Uganda	13
Lessons Learned from humanitarian, Recovery, and Development Program Implementation	14
Challenges that May Be Anticipated	15
3. Other Policy Considerations	17
Which Victims and From What Periods?	17
Should a Truth Commission Come First?	18
4. Recommendations	20
Table 1. Categories, Definition, and Description of Particularly Vulnerable Victims	7
Table 2. Components of a Comprehensive Reparations Program	9

ACRONYMS

ALP	Accelerated Learning Programs
CCDH	Conseil Consultatif des droits de l'Homme
CMAN	La Comisión Multisectorial de Alto Nivel
DDR	Disarmament, Demobilization and Reintegration
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IDP	Internally displaced persons
ISIS-WICCE	ISIS-Women's International Cross-Cultural Exchange
IRP	Interim Relief Program
JLOS	Justice Law and Order Sector
LRA	Lord's Resistance Army
NGO	Nongovernmental Organization
NRA	National Resistance Army
NUSAF	Northern Uganda Social Action Fund
OHCHR	Office of the High Commissioner for Human Rights
PBF	UN Peacebuilding Fund
PRDP	Peace Recovery and Development Plan for Northern Uganda
PWD	Persons with Disabilities
RLP	Refugee Law Project
TFV	Trust Fund for Victims of the International Criminal Court
TRC	Truth and Reconciliation Commission
UHRC	Uganda Human Rights Commission
UPDF	Uganda People's Defense Force
UPE	Universal Primary Education
VSLA	Village savings and loans associations
WFP	World Food Program
WHO	World Health Organization

1. Introduction

There is now an opportunity to design and implement a reparations program for victims of human rights and humanitarian law violations in Uganda.

As with other countries emerging from conflict, the contours of a Ugandan reparations policy have been the subject of extended debate and generated high expectations. Since the government committed to “promoting redress” in the Juba Agreement on Accountability and Reconciliation in 2007,¹ transitional justice processes and mechanisms, including reparations, have been a part of the national dialogue. Key stakeholders, including those representing victims, have long been engaged. Still, only some nominal cash payments have been distributed by government on an ad hoc basis to small groups of victims in a few locations.²

While the government has embarked on several reconstruction, recovery, humanitarian, and development programs for the north and other conflict-affected parts of the country, these programs were explicitly motivated by stabilization, development, and poverty-reduction objectives, rather than justice and reparations goals.

In 2006, prior to the Juba Agreement, the Refugee Law Project (RLP), within Makerere University School of Law, drafted a National Reconciliation Bill that focused primarily on truth telling, but also included reparations measures;³ however, it was never taken up by government. Later in 2007, the Justice Law and Order Society (JLOS) undertook a comprehensive study to collect baseline data on transitional justice across twelve districts in the north. That study identified as “priority” areas “individual and community reparations especially restitution” and “start up incentives for economic wellbeing.”⁴ Its field findings articulated the “need for compensation at various levels . . . forgiveness, rehabilitation and vetting of justice delivery institutions in the north.”⁵

In July 2012, JLOS released its Report of the Study on Traditional Justice, Truth-Telling and National Reconciliation (Study Report), which recognizes many of the attributes of meaningful reparation programming (e.g., the “primary” role of government, the importance of victim participation and

¹ See Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement (29 June 2007), and Annexure to the Agreement on Accountability and Reconciliation (19 February 2008) (Juba, Sudan) (Juba Agreement), www.jlos.go.ug/uploads/Agreement_on_Accountability_And_Reconciliation.pdf

² Payments to survivors of the Mukura massacre are one example. See JRP-IJR Policy Brief, “Pay Us So We Can Forget: Reparations for Victims and Affected Communities in Northern Uganda” (2011), 6.

³ See “The Coalition for Reconciliation in Uganda: Important lessons for Proactive Civil Society Engagement in Catalysing Transitional Justice Discourse” (paper presented at the African Transitional Justice Research Network Workshop “Advocating Justice: Civil Society and Transitional Justice in Africa,” Johannesburg, South Africa, August 30-31, 2010), 5-6, www.insightonconflict.org/wp-content/uploads/2010/09/Stephen-Oola_TJ-Advocacy-in-Uganda.pdf

⁴ JLOS, “Transitional Justice in Northern Uganda, Eastern Uganda and some Parts of West Nile Region” (2007), 6, www.jlos.go.ug/uploads/Transitional%20Justice%20Study%20Report%202007.pdf

⁵ *Ibid*

consultation, the value of avoiding restrictive definitions of “victims,” and the consideration of “direct and indirect harm”).⁶

Detailed proposals are now needed about how best to formulate an approach to reparation programming that will address victims’ needs in a practical, meaningful, and feasible way.

This report will examine approaches for identifying and categorizing victims, defining benefits and beneficiaries, and sequencing the delivery of reparations, offering guidance in assessing how the needs of the most vulnerable victims can be met and what long-term capacities must be put in place to implement a comprehensive reparations program. The paper concludes by highlighting some of the challenges that can be anticipated and offering recommendations.

⁶ JLOS, Report of the Study on Traditional Justice, Truth-telling and National Reconciliation, Draft Recommendations, (2012), 299, 313-315, www.jlos.go.ug/page.php?p=curnews&id=90. The Study Report recommends that an overarching framework on traditional justice (not national legislation) be prepared to establish guidelines on all manner of issues, including “compensation.” Truth-telling committees are suggested across different levels of government with local, village, parish, sub-county and district truth-telling bodies entrusted to “deal with the peculiar conflicts that have occurred in the various communities in Uganda,” while regional truth-telling bodies might be considered for “inter tribal and inter regional conflicts.” A national truth seeking function might be added to the mandate of an existing national structure (e.g. UHRC or Amnesty Commission). On reparations, it recognizes some important fundamentals, saying that the government “should take responsibility of being the primary bearer for the delivery of reparations and drive the process,” while acknowledging that “the participation of affected communities and elders, local community, traditional and religious leaders is vital.” It also accepts as a general proposition that “reparations should be determined and delivered based on the nature of harm suffered and prioritize the most vulnerable victims” and that the definition of victims should not “be restrictive.” However while it makes a few specific suggestions – for example, that reparations may include direct and indirect harm and may be collective, and that the “provision of psychosocial support to victims is critical” – it does not go into detail about how reparations can be implemented. It proposes a “stand-alone reparations program,” a recommendation that impacts on the sequencing of reparations with other TJ mechanisms, particularly truth-telling. It also explicitly proposes that a Ugandan reparations program should “encompass measures of redress for harm caused by both State and non-State actors,” a recommendation that, as discussed later, has implications on the ways in which victims are identified, categorized, registered and offered specific reparations benefits.

2. Approaches to Defining a Comprehensive Ugandan Reparations Policy

To determine an appropriate method to meet the challenge of a large-scale reparations program in Uganda, various preliminary matters have to be addressed. These include establishing the legal framework and determining: the degree to which it will be determinative, whether a broader policy is necessary and appropriate, the framework of such a policy, and the various processes needed to implement the policy.

The Legal Framework

Any approach to reparations in contexts of massive and systematic violations must take into account international standards that have evolved from the practice of other post-conflict and post-dictatorship situations.⁷ These standards have been articulated by the UN General Assembly in its Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Guidelines).⁸ The UN Basic Guidelines speak of a victim's right to an effective remedy,⁹ including a right to "adequate, effective and prompt reparation" and "access to relevant information concerning violations and reparation mechanisms."¹⁰ Of particular relevance in Uganda is the principle that states should "endeavor to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations."¹¹

Prior to a determination of what steps the state must take, a legal and policy analysis must be carried out. While the government has taken steps to ameliorate some of the effects of the conflict in the north through recovery and development programs, it has not always been clear or explicit that these steps were meant to recognize the state's responsibility to redress violations of human rights, rather than being a generalized response to the destruction and tragedy caused by conflict.

Reparations for violations committed by the LRA and other nonstate actors

The obligation of government to take formal responsibility for human rights violations arises from the actions of state actors. State responsibility may also arise from omission or "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."¹² As "the final guarantor of physical safety" over those under

⁷ See OHCHR, "Rule-of-Law Tools for Post-Conflict States: Reparations Programmes" (2008), <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>

⁸ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) [hereinafter UN Basic Guidelines], www.unhcr.org/refworld/docid/4721cb942.html

⁹ Which derive from the obligation established by article 2.3 of the International Covenant on Civil and Political Rights, to which Uganda is a signatory.

¹⁰ Id. at ¶ 11.

¹¹ Id. at ¶ 16.

¹² HRC, General Comment 31. Nature of the General Legal Obligations on States parties to the Covenant, U.N. Doc. HRI/GEN/1\

its territorial jurisdiction,¹³ the state is the primary duty bearer for guaranteeing human rights, pursuing accountability, and delivering justice and reparation to victims. The duty to provide reparations is clear when the violations are attributable to the state,¹⁴ including where the government has failed to exercise due diligence to protect victims from violations committed by nonstate actors, such as the LRA in the north or even other nonstate groups elsewhere in Uganda during previous periods of conflict or massive violence. In this respect, Uganda has already acknowledged a general responsibility it owes to victims.¹⁵

For any reparations program to meet the objectives of acknowledging victims as rights holders entitled to redress and restoring trust in the institutions of the state, there has to be clarity about exactly which rights are being respected and what trust is being restored. It makes little sense for the government to acknowledge a general responsibility one day only for the matter to become disputed the next as to what exactly the government has accepted responsibility for.

The state is responsible for acts of state agents. This is the simplest issue for any reparations program to address. The more complicated matter is to define the nature of the state's responsibility for failure to prevent acts committed by nonstate actors. The obligation on the state is not absolute, but will depend on the means and opportunities that were available to it in order to determine the appropriateness of any particular course of action. The more complex the situation, the wider the margin of appreciation may be in respect to a chosen strategy to prevent potential abuses. This is of course a highly relevant matter, for example, for the conduct of the conflict between the state and the LRA, particularly in light of the displacement policy.

Having conducted an appropriate legal analysis of the scope of violations that the state is responsible for, either as a matter of commission or omission, the issue will then be whether a legal approach in the context of the violations and abuses that occurred is appropriate.

Even where the state may not be legally liable for acts committed by nonstate actors or the harm caused by these actors as a matter of international human rights law or Ugandan law, there may be a compelling case to devise a policy that allows the state to include victims of such conduct or harm within a reparations program.

In Peru, for example, notwithstanding the fact that a large number of violations committed during the conflict were carried out by nonstate armed groups,¹⁶ the truth commission argued that the state's obligation to guarantee equal access to civil and political rights as well as social, economic, and cultural rights for all victims meant that it should, as a matter of policy, offer reparations to victims of state agents and nonstate armed groups. This, according to the commission, affirms the dignity of all victims and sends the message that they are part of society.¹⁷ One of the purposes of reparations is to help facilitate victims' integration in society and to make them feel that the rest of society cares about

Rev. 8 at 233 ¶ 8 (Mar. 29, 2004) ("States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3."). For additional discussion of the due diligence principle, see Arturo J. Carrillo, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, p. 511, in Pablo de Greiff ed., *The Handbook of Reparations* (Oxford University Press 2006); CEDAW, General Recommendation 19: Violence against women, 11⁹ session, 1992, U.N. Doc. HRI\GEN\1\Rev. 1 at 84 (1994), ¶ 9 ("Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."); Inter-American Court of Human Rights Case of González et al. ("Cotton Fields") v. Mexico, Judgment of November 16, 2009).

¹³ Pablo de Greiff, "A Normative Conception of Transitional Justice," in Melissa Williams et al (eds.), *Transitional Justice*, (NYU Press 2012), 31.

¹⁴ UN Basic Principles, ¶ 15.

¹⁵ See e.g., JLOS, "The Amnesty Law (2000) Issues Paper: Review by the Transitional Justice Working Group," p. 3 (April 2012) (Amnesty Issues Paper). [http://www.jlos.go.ug/uploads/JLOS-Amnesty%20Issues%20Paper%20\[public%20report\].pdf](http://www.jlos.go.ug/uploads/JLOS-Amnesty%20Issues%20Paper%20[public%20report].pdf)

¹⁶ According to the CVR, 46% of victims were affected by actions taken by Sendero Luminoso, 30% by state agents and 24% by other actors, including self-defense groups, paramilitary groups, MRTA, unidentified actors, or were caused during armed confrontation. See Comisión de la Verdad y Reconciliación, "Informe Final" (Lima, 2003) (in Spanish), Annex 2, 13, www.cverdad.org.pe/ifinal/index.php

¹⁷ Id. For example, the reasoning provided by the Peruvian Truth and Reconciliation Commission in regards to granting reparations to victims of both state agents and subversive groups (Vol. I, Chapter 4, about the legal dimension of the violations investigated).

what happened to them by providing some kind of redress. It is also a way to distribute across society the costs of providing redress for harm.¹⁸

However, to meet the purposes of rights recognition and trust restoration, both legal and political clarity have to be established. If a decision is taken at a policy level to provide reparations in these circumstances, it is important that the policy, in turn, is carefully framed and that the victims who receive reparations as a result of that policy do so as a matter of right, *within the framework of that policy*, and not as a favor or as an issue of government largesse. Such an approach is likely to politicize the process, delegitimize it, and ultimately strip it of its potential to strengthen solidarity and enhance respect for all victims and trust in the state as an impartial guarantor of fundamental rights.

Moreover, many victims are unable to identify the perpetrator of the crimes they have suffered, not because of some failing on their part, but because of circumstances specific to the events that occurred or the violations that were committed. It has been argued that “basic fairness to victims” dictates that (a) where the violations were massive and systematic and (b) where the crimes remain uninvestigated and perpetrators are unidentified, at large, or dead, the state should provide reparation “regardless of who the perpetrator is.”¹⁹

Given the history and length of the conflict in the north and the impossibility of determining and allocating blame in every case, the state should adopt a policy that embraces not only responsibility for commissions and omissions, but that also prescribes as a matter of right reparations derived as a matter of solidarity where no state responsibility can be established. Uganda’s reparations program should, therefore, extend to victims of the LRA and other armed groups, the Uganda People’s Defense Force (UPDF) and other government security institutions, and other actors, such as cattle rustlers/raiders, whose activities have led to widespread violence and conflict. For Uganda, such an approach would promote equality and nondiscrimination among victims of the same types of violations and between victims who can identify perpetrators and those who cannot.

Defining Victims and Beneficiaries in Reparations Policy

The UN Basic Guidelines offer a definition of “victims” that provides general guidance. 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.²⁰

Borrowing from this definition, the Juba Agreement defines “victims” to include “persons who individually or collectively have adversely suffered harm as a consequence of crimes and human rights violations committed during the conflict,”²¹ while providing that “priority shall be given to members of vulnerable groups.”²² The agreement specifically mentions “appropriate reparations for children”²³ and commits to a gender-sensitive approach “to prevent and eliminate any gender inequalities that may arise” during implementation.²⁴ In addition, the agreement provides that reparations may be “collective as well as individual”²⁵ or may also be “ordered to be paid to a victim as part of penalties

¹⁸ Id.

¹⁹ Lisa Magarrell, *Reparations in Theory and Practice* (2007), 11, <http://ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf>

²⁰ UN Basic Principles, ¶¶ 8, 9

²¹ Juba Agreement, Definitions.

²² Id. at ¶ 9.1

²³ Id. at ¶ 12(v)

²⁴ Id. at ¶ 10

²⁵ Id. at ¶ 9.2

and sanctions in accountability proceedings.”²⁶ Anticipating the costs involved, the policy provides that “the Government shall establish, a special fund for victims, out of which reparations shall be paid, including reparations ordered to be paid by an institution established pursuant to the Agreement on Accountability and Reconciliation.”²⁷

However, peace agreements like the one signed at Juba rarely provide a full picture of victims’ needs and interests. Most often signed outside the presence of victim advocates and under the pressures and imperatives of ongoing conflict, they frequently embody different priorities than those underpinning reparations.²⁸

Thus, although the Juba Agreement provides a starting point, more specificity is now required. Broadly worded categories such as “conflict-affected” or “poor and vulnerable” are unlikely to suffice; they invite ambiguity into the policymaking process and create unrealistic expectations that can lead to incoherent implementation. Those who were more tangentially affected by the conflict will entertain expectations of receiving benefits equal to those who were directly harmed. In Nepal, for example, guidelines for the government’s Interim Relief Program (IRP) employed the term “conflict-affected persons.”²⁹ It offered compensation for victims of some violations, such as killing and disappearances, but not for other violations, such as rape and torture, creating imbalances among victims of violations that are equally serious.

A reference to “poor and vulnerable” victims might help in terms of prioritizing among beneficiaries, but it should not become the sole criterion to determine entitlement to reparations. In the end, the definition of victims entitled to reparations must be founded on recognizing reparation as a right as defined by the overall policy adopted. In situations of massive violations, the poverty of a group may be a consideration in prioritizing those eligible for certain forms of reparations, such as health care or housing, but it should not otherwise exclude those who are not poor and vulnerable from their right to reparations, at least in regards to symbolic forms of reparations or rehabilitation programs.

A definition that allows the government to provide symbolic acknowledgement to as many victims as possible, but which offers specific material forms of reparations and prioritizes those who need them more than others, may be the most-prudent approach.³⁰

Possible Components of an Urgent Reparations Program in Uganda

A possible starting point could be the implementation of an urgent reparations program for victims in the north. Initially, the government will have to either refer to or carry out a mapping of victims and violations in the region with the participation of victims groups and their communities. For violations that took place during the most recent conflict in the north, much of the mapping work has already been done. Reference may be made, for instance, to the categories outlined in the Office of the UN High Commissioner for Human Rights (OHCHR) report “The Dust Has Not Yet Settled: Victims’ Views on the Right to Remedy and Reparation.”³¹ For other time periods, additional work may be required to define specific categories of violations and the periods when they occurred. This may require revisiting the archives of earlier truth-seeking initiatives, studying previous attempts at providing compensation administratively or through courts, and understanding and applying lessons learned from humanitarian and development programs carried out in the same conflict-affected regions and communities.

In some countries, like Peru, a comprehensive reparations program offered a common package of compensation, health care, and education to victims of the most serious violations and then offered certain

²⁶ Id. at ¶ 9.3

²⁷ Implementation Protocol to the Agreement on Comprehensive Solutions, ¶ 28 (2007), http://northernuganda.usvpp.gov/uploads/images/Yu8DB4YOS2gJURx1jdaNqQ/lra_signedfeb22o8.pdf

²⁸ See Suliman Baldo and Lisa Magarrell, “Reparation and the Darfur Peace Process: Ensuring Victims’ Rights,” November 2007.

²⁹ Ruben Carranza, “Relief, Reparations, and the Root Causes of Conflict in Nepal” (2012); ICTJ, “From Relief to Reparations: Listening to the Voices of Victims” (2012).

³⁰ See Canadian Common Experience Payment Approach, www.ainc-inac.gc.ca/ai/rqpi/cep/index-eng.asp.

³¹ OHCHR, “The Dust Has Not Yet Settled: Victims’ Views on the Right to Remedy and Reparation” (2011), www.ohchr.org/Documents/Press/WebStories/DustHasNotYetSettled.pdf

forms of reparation to those who suffered other harms requiring more specific responses, such as housing for those whose houses were destroyed or civil identity documentation for those who were rendered undocumented in the conflict.³² Separately, communities affected by the conflict and organizations of displaced people that resettled elsewhere are also eligible under a collective reparations program.³³

In some contexts, the concept of vulnerability has been used as the basis for defining categories of victims. Vulnerability has been based on the severity of *present* economic, social, and physical challenges that the victim is enduring. That the severity or longevity of these challenges was a result of the violation is not necessarily a consideration or requirement; old age, for instance, is considered vulnerability, even as the loss of limbs due to the conflict is similarly regarded. Reparations implemented or recommended in Sierra Leone and Timor-Leste took vulnerability into account.³⁴ In Sierra Leone, the government acknowledged the sufferings of all Sierra Leoneans but offered compensation and a social services package for only five categories of “vulnerable” victims.³⁵ In Timor-Leste, an interim reparations program offered limited compensation to the “most vulnerable” victims identified by its truth commission.

In Uganda, similar categories of vulnerable victims in need of special or urgent care may likewise be identified—and given the momentum that already exists, this approach can be tested in the north. In the Agreement on Comprehensive Solutions, signed in May 2007, the government mentions the following “vulnerable groups”: “child-headed households, orphans, street children, unaccompanied minors, traumatized children, widows, female-headed households, persons with disabilities (PWDs), persons living with HIV/AIDS and the elderly.”³⁶ Other possible categories are highlighted in the table below; however, these categorizations are not necessarily definitive.

Table 1: Categories, Definitions, and Descriptions of Particularly Vulnerable Groups

CATEGORY	DEFINITION AND DESCRIPTION
Those suffering from ongoing health concerns and disabilities due to physical injuries	During the conflict in northern Uganda the civilian population was subjected to severe forms of physical violence, including mutilation, deliberate burning, gunshot wounds, shrapnel injuries, and beatings. Work undertaken by a team from the Canadian Network for International Surgery, the Injury Control Center Uganda, the World Health Organization (WHO), and Makerere University in Gulu in 2006 found that the annual death rate due to injury was over 8 times higher per 1,000 people than among a reference population in a part of the country that had not recently suffered conflict. Further, 77.1% of injuries sustained were identified as having been caused intentionally.* As well as the physical pain and hardship endured, disability has potentially serious impacts on victims’ economic well-being and that of their families. In some cases, victims have been severely mutilated and require complex reconstructive surgery. There have been

³² http://cman.pcm.gob.pe/index.php?option=com_content&view=article&id=70&Itemid=55

³³ Forthcoming briefing paper from ICTJ.

³⁴ In East Timor, the truth commission said that “all East Timorese people have been touched and victimized by the conflict in one way or another. However, in the course of its contact with many communities the Commission became acutely aware of those among us who still suffer daily from the consequences of the conflict and whose children will inherit the disadvantages their parents face as a consequence of their victimization. They include those who live in extreme poverty, are disabled, or who – due to misunderstandings – are shunned or discriminated against by their communities. We are all victims but not all victims are equal. We must acknowledge this reality and lend a hand to those who are most vulnerable.” From *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste*, Part 11, 35, www.cavr-timorleste.org/en/cheгаReport.htm.

³⁵ These categories are: (1) amputees: victims who lost their upper/lower limb(s) or both as a result of the conflict, (2) “other war-wounded” or victims who have become temporarily or permanently physically disabled and have experienced a 50% or more reduction in earning capacity, (3) victims of sexual violence, including women and girls who were subjected to rape, sexual slavery, mutilation of genital parts or breast or forced marriages, as well as boys and men who experienced sexual violence, (4) “war widows” or women who lost husbands as a direct result of human rights abuses and (5) children who suffered either as victims of physical and/or psychological violence and children who are dependents of eligible victims.

³⁶ Agreement on Comprehensive Solutions Between the Government of the Republic of Uganda and Lord’s Resistance Army/Movement ¶12.2 (Juba, Sudan) (May 2, 2007), http://www.fides.org/eng/vita_chiesa/uganda_040507.html

	<p>interventions made by nongovernmental organizations supported by a number of donors, including the ICC Trust Fund for Victims (TFV), but statistics suggest that this group requires further systematic investigation by government and both immediate and long-term support for their rehabilitation and care.</p> <p>* RR Lett et al, "Burden of Injury during the complex political emergency in northern Uganda," <i>Canadian Journal of Surgery</i>, 49(1): 51-57 (2006 February).</p>
Victims of sexual violence	<p>Sexual violence has been a feature of conflict in Uganda, with violations carried out predominantly by combatants, but also by others where normal protective social structures were either absent or had broken down as a consequence of mass displacement. A study carried out on behalf of ISIS-WICCE in two locations in Kitgum Districts in 2005 found that 28.6% of women and 6.7% of men who were screened reported having suffered at least one form of war-related sexual violence.* While it has to be noted that the locations chosen for the research had witnessed particularly severe violence and the sampling was done as part of a medical screening exercise, the results suggest that there are significant numbers of victims who suffered sexual violence, some of whom are likely to be experiencing ongoing impacts. The long-term health consequences of sexual violence are well documented and include increased risk of exposure to HIV/AIDS, reproductive health issues, problems requiring surgical intervention, and psychological impacts. Both immediate and long-term support for victims' rehabilitation and care needs to be provided while not increasing the levels of stigma that these victims already face.</p> <p>* E. Kinyada et al, "War related sexual violence and its medical and psychological consequences as seen in Kitgum, Northern Uganda: A cross-sectional study," 2010, <i>BMC International Health and Human Rights</i>, 10:28 (2010), www.biomedcentral.com/1472-698X/10/28.</p>
Those suffering from severe psychological trauma	<p>To a certain extent the needs of these victims have been recognized, with specialized psychosocial trauma units established in both Kitgum and Gulu and the PRDP II identifying the need for specialized counseling services to be established at sub-county level. However, there are likely to be significant ongoing needs that will need to be met with additional services that are adequately resourced for several years. It has been shown that among populations exposed to protracted violence there is a higher prevalence of severe psychiatric disorders requiring complex care and management.*</p> <p>* Florence Baingana and Ian Bannon, "Integrating Mental Health and Psychosocial Interventions into World Bank Lending for Conflict-Affected Populations," (2004), http://siteresources.worldbank.org/INTMH/Resources/Toolkit-Final.pdf</p>
"Girl (child) mothers"	<p>During the conflict in northern Uganda, thousands of young girls were abducted and forcibly conscripted by the LRA, becoming victims of sexual and other forms of violence. They were forced to carry out a range of roles that included domestic labor, combat, and being "forced wives." Many gave birth to children while in the bush. In addition to these past traumas, some of these girls and women have faced problems reintegrating into community on their return. Stigmatised and frequently denied shelter or access to land or property, these victims and their children require targeted assistance. The needs of these victims are complex and diverse, going beyond helping them to deal with the immediate consequences of violence. They also require support to help them successfully reintegrate, both socially and economically.*</p> <p>* Kaari Betty Murungi, "Bearing Witness, Girl Mothers of Gulu District," FIDA-UGANDA (2011).</p>
Families of the disappeared	<p>During the course of the various conflicts in Uganda, substantial numbers of children and adults disappeared. Many remain unaccounted for. Reasons for enforced disappearance included abduction by rebels and arrest and detention by security agencies, as well as violent incidents or rapid population displacement that left people unaccounted for. A 2007 study by the University of California, Berkeley</p>

	<p>estimated that 52,000–75,000 people had been abducted in the period up to 2005, of whom half were 18 years old or younger.* A community canvassing project carried out by the Concerned Parents Association suggested that among those who disappeared in the period of 1986–2001 approximately 37% of disappeared children and 27% of disappeared adults remain unaccounted for.† The fate of the disappeared is of immense importance to their families and communities. A number of NGOs and victims’ groups hold records, but these have never been formally collated. Systematic and wide-scale inquiries or investigations held by the appropriate authorities are essential.</p> <p>* “When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda,” (2007), 15, http://ictj.org/sites/default/files/ICTJ-Uganda-Justice-Attitudes-2007-English_o.pdf</p> <p>† “Genetic Tracing, Disappeared Children and Justice,” Innocenti Working paper (2010).</p>
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Any reparations policy should include a definition of how to consider past benefits provided by the state to victims, individually or collectively. In defining this, the government should consider to what degree those measures were provided as reparations, humanitarian assistance, or part of development policies. If reparations are an expression of acknowledgment, it is difficult to argue that what was given as immediate relief or humanitarian assistance should be discounted from what is owed as reparations.

Measures Forming Part of a Comprehensive Reparations Program in Uganda

Measures included in a reparations program tend to be arrayed along a continuum, from the purely symbolic to the mostly material. Some that address urgent needs, like those outlined above, may be implemented immediately; others may be defined and developed over time. The scale of harms suffered and the overwhelming number of victims affected makes it important to offer victims various forms of reparations that can be combined or sequenced according to the resources and priorities set by the government. Examples along the continuum may include a range of potential interventions, some of which are highlighted and described in the table below.

Table 2: Components of a Comprehensive Reparations Program

COMPONENT	DESCRIPTION AND ISSUES FOR CONSIDERATION
Rehabilitation of those who suffered physical harm	<p><i>Description and rationale:</i> The nature of injuries sustained and suffered by victims has been well documented. They include physical mutilation and sexual abuse leading to sexual and reproductive health problems and permanent disability. There have been a number of programs supported by NGOs and international organizations that have attempted in part to respond to the needs of victims. There have also been concerted attempts to restore and improve the overall functionality and quality of basic health services over the last few years. However, given the scale and extent of the harms suffered in conflict-affected areas, additional specialized services are likely to be required for a protracted period. This fact was documented and described by the research conducted by the Uganda Human Rights Commission (UHRC) and OHCHR. It is important that this is recognized by government and that measures are put in place to mount an appropriate response.</p> <p><i>Potential delivery modalities:</i> The establishment or strengthening of specialized services at referral hospitals in the affected districts addressing reconstructive surgery and rehabilitation needs, including services that meet the needs of victims of sexual violence. Capital funding to establish these could be made from within planned PRDP II expenditures through the Ministry of Health in the form of specific programs and earmarked funding for health conditional grants. Delivery through NGOs or specialized providers, like the ones implemented by the TFV,</p>

	<p>provide relevant experience and knowledge about specialized services, particularly in regards to reconstructive surgery or other time-limited forms of care or inter-vention. This of course, in turn, would need careful budgetary and audit control. While the processes of starting up and monitoring may be labor-intensive, it is still almost-certainly more effective than government-administered processes. However, if the needs are of a long-term or permanent nature or cover extensive areas of the country, a project-based approach is not enough. What is needed is a policy that could guarantee broad coverage using the public network, learning from the experience of specialized providers, but that also provides ongoing long-term support and services where needed.</p> <p><i>Steps required to move forward:</i> Despite widespread recognition that as a result of the conflict there are acute needs in this area, the scale of the problems and the responses required have not been systematically investigated or documented. As a first step, a thorough assessment should be conducted that leads to evidence-based decision making and resource allocations. Some urgent measures to respond to critical conditions, such as life-threatening injuries, prosthetic services to those disabled, and fistula surgery, may need to be implemented immediately. They need not wait for the definition of a comprehensive health care reparations policy.</p> <p><i>Potential lead institutions:</i> Ministry of Gender, Labour and Social Development, Ministry of Health with support from international partners like WHO and specialized health agencies.</p>
<p>Psychosocial support</p>	<p><i>Description and rationale:</i> The psychosocial impact of exposure to violence are well documented, with evidence suggesting that up to 30% of people suffer from enhanced anxiety and other symptoms associated with psychological disturbance as a result of exposure to traumatic events.* A smaller but significant proportion of these people are likely to go on to develop a recognized psychiatric disorder as a result of their experiences. The prevalence of significant numbers of people suffering from psychological distress is recognized at the community level in northern Uganda. There have been concerted attempts to scale up the provision of psychological and psychiatric care with specialized centers established at Gulu and Kitgum government hospitals, the only ones of their kind outside Kampala. However, the ability of these services to conduct and perform adequate outreach in rural areas remains limited. In addition, the broader impact of violence on the families of victims and the need for psychosocial support for intergenerational survivors as well as direct victims needs to be recognized.</p> <p><i>Potential delivery modalities:</i> Strengthening existing services provided by the Ministry of Health and the Community Health Department. PRDP II recognizes the need for strengthened provision of counseling and support services at community level.</p> <p><i>Steps required to move forward:</i> The development of clear plans and resource allocations through both special programs and sector budgets in health.</p> <p><i>Potential lead institutions:</i> District local government, Ministry of Health.</p> <p><small>* Florence Baingana and Ian Bannon, "Integrating Mental Health and Psychosocial Interventions into World Bank Lending for Conflict-Affected Populations," (2004), http://siteresources.worldbank.org/INTMH/Resources/Toolkit-Final.pdf</small></p>
<p>Education</p>	<p><i>Description and rationale:</i> As a consequence of the protracted conflict, a large number of young people have missed out on educational opportunities or have been unable to continue them. While in theory those that failed to complete primary education can return to school under Universal Primary Education (UPE), in practice it is often difficult for them to do so. Research suggests that certain</p>

	<p>groups in particular face specific and ongoing disadvantages as a result of educational opportunities missed during the conflict. For example, a study of those who had received support from the Amnesty Commission found that only one third of women who had been abducted or held in captivity by the LRA were fully literate, as opposed to two thirds of women who had not been.* Education has also been consistently stressed as a priority by many victims.</p> <p><i>Potential delivery modalities:</i> While there have been considerable efforts to reestablish the basic education infrastructure, including in areas that have seen the large-scale return of internally displaced persons (IDPs), the scale and nature of the issues faced by many victims who missed educational opportunities warrants special measures. This may include a range of measures, such as Accelerated Learning Programs (ALP) and the expansion of Functional Adult Literacy. ALP and other initiatives have been developed and are being rolled out by NGOs in northern Uganda (for example, by the Norwegian Refugee Council), but scaling up to meet the needs would require greater engagement from and resourcing by government and greater flexibility in their approach to allow victims of different ages, levels of educational background, and social situations (including those with children) access to programs that match their needs. In addition, education for children should not be left unattended. If efforts to ensure access for child victims to UPE have proven insufficient, improvements may include scholarships or conditional cash transfers for attending school for children of a certain age.†</p> <p><i>Steps required to move forward:</i> The development of clear plans and resource allocations through both special programs and ongoing sector budgets in education.</p> <p><i>Potential lead institutions:</i> Ministry of Education; Ministry of Gender, Labour and Social Development; and local district governments.</p> <p>* Uganda Demobilization and Reintegration Project Beneficiary Assessment Report, World Bank (2011). † For example, Juntos, a development program in Peru that targeted poor, rural communities for conditional cash transfers included as a criterion for eligibility “the degree to which populations were affected by the internal conflict during the 1980s and 1990s, establishing a link between Juntos and the Integral Plan of Reparations to victims of political violence proposed by CVR.” See Rosana Vargas Valente, “Gendered risks, poverty and vulnerability in Peru: A case study of the Juntos programme,” October 2010, www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6246.pdf</p>
<p>Provision of individual material and financial support</p>	<p><i>Description and rationale:</i> In addition to forms of symbolic reparations, educational services, and health care, victims of the most serious crimes should also receive some form of financial reparation. The determination of these categories may be based on a number of criteria that may include an assessment of the extent of victims’ physical or mental disability as a result of the harms suffered, the social consequences that result from the stigmas associated with crimes suffered, and the attendant level of dependency.</p> <p><i>Potential delivery modalities:</i> Usually, financial reparations are seen through the lens of judicial compensation, as if a broad reparation program directed to thousands of victims could establish a proportional amount equivalent to the harm suffered by each victim. Massive reparations need to provide something sufficient to contribute to a better life for victims, and they need to be possible to budget for and implement. One-time payments are generally not advised. Payments delivered in installments over a longer period of time may provide better support, as would pensions for life in the case of spouses, parents, and direct victims and for children until they reach a certain age. Payments delivered over several years are also easier to budget. They do not have such a heavy impact on any one fiscal year.</p>

	<p><i>Steps required to move forward:</i> The development of objective criteria and evidentiary thresholds would require extensive discussion and work. While criteria need acceptance and support. The establishment of such mechanisms may be informed by ongoing work in Uganda regarding social safety nets at the national level. Once criteria have been developed, an early estimation of the potential numbers of people that may benefit from such measures will need to be made, as this will be critical to ascertaining likely resource requirements.</p> <p><i>Potential lead institutions:</i> Ministry of Gender, Labour and Social Development; and local government community services departments.</p>
Apologies	<p><i>Description and rationale:</i> These forms of reparation would need to include clear and consistent statements and messages by political leaders and other key individuals (for example, in state security agencies) acknowledging and expressing regret for harms suffered during the conflict. While apologies to some extent have already been a feature of some political discourse, messages and statements are often mixed and contradictory.</p> <p><i>Potential delivery modalities:</i> Various. These could include the media and public meetings. A solemn apology by the head of state could be a strong message, though it would need to be followed by additional steps to guarantee consistency. In addition, apologies by the head of the armed forces, accompanied by policies guaranteeing non-repetition, could provide meaning to the apologies delivered by the head of state.</p> <p><i>Steps required to move forward:</i> As an initial step, further dialogue is required within government to build consensus and political support for the development and delivery of consistent messages and statements. This should include engagement with senior government representatives, including at the executive level. At the conceptual level, it should also involve recognition by the government that some of the current issues affecting communities, like land disputes, are a result of the harms they suffered during the conflict. This recognition should feed into the consistent application of approaches to ongoing development that are conflict sensitive and seek to fully include the community in the identification of appropriate solutions to the problems they face.</p> <p><i>Potential lead institutions:</i> Office of the President, Ministry of Justice and Constitutional Affairs, and the Office of the Prime Minister.</p>
Memorialization	<p><i>Description and rationale:</i> Memorialization and commemorations have been identified as important by victims. Substantial interventions have already been made in this area by a number of actors. Memorials and associated processes and events have been assessed as having had positive impact, including individual and communal healing and improved inter-communal relations. However, it has also been recognized that victims themselves must be at the center of the development of plans to decide on the nature and scope of memorials, and that they should not be politicized.</p> <p><i>Potential delivery modalities:</i> Various. It will be important to recognize that many initiatives may come from the local and community level, and not just through large-scale, national efforts. The government must support local initiatives, including through funding and the use of its facilities and resources, such as schools, streets, and communal meeting places.</p> <p><i>Steps required to move forward:</i> The potential value of memorialization should be taken into account during the design of any reparations program. However,</p>

	<p>Lessons learned from previous experiences and best practice need to be taken more fully into account.</p> <p><i>Potential lead institutions:</i> They are various, including the Office of the Prime Minister. Civil society, traditional and religious institutions, and local governments have an important role to play in ensuring that local communities are at the center of the planning and implementation processes.</p>
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In addition to the effective identification and tasking of lead institutions, it is vital that the Ministry of Finance, Planning and Economic Development is engaged in discussions as policy is developed. In the end, they will be tasked with ensuring that reparations can be funded from the national budget and they will set sectoral allocations across line ministries.

Administering Reparations Policy in Uganda

Formulating reparations policy will require deciding *who* should administer the reparations program(s) and laying down *how* administrators will engage with victims, including outlining how victims can participate in the course of the entire process. Proper implementation can reduce secondary stigmatization, significantly prevent fraud, increase the likelihood that the process will be seen as inclusive and transparent, and help to build civic trust.³⁷ Thus, consideration needs to be given to the creation of an effective coordinating mechanism (at the very least) or a distinct government agency (at most) that has the political and administrative mandate to ensure cross-sectoral coherence among different agencies and commitment from political leaders. Without these political and administrative mandates, it will be difficult to ensure that line ministries and other government agencies will remain focused on their roles in the delivery of reparations. Table 2 above highlights the cross-cutting and multisectoral nature of responses that are likely to be required to deliver a comprehensive reparations program. Others will need to be considered.

Comparative experiences offer different models, with different degrees of success. In Peru, a high-level multisectoral commission, La Comisión Multisectorial de Alto Nivel (CMAN), oversees the implementation of various programs that make up the comprehensive reparations program.³⁸ Chaired by the Prime Minister and administered under the Council of Ministers, CMAN consists of representatives of the various ministries responsible for defining the details of the different programs and implementing them as well as representatives of victims’ organizations and civil society. In Morocco, implementation, including the monitoring of reparations measures by other agencies, is the responsibility of the Advisory Council on Human Rights (Conseil Consultatif des droits de l’Homme or CCDH), which is now the National Human Rights Council, an autonomous institution, created under the Paris Principles of Human Rights Institutions, and is the equivalent of the UHRC. In Peru, changes in the national political leadership left CMAN dependent on the changing views on reparations of succeeding presidents. In Morocco, implementation by the national institution meant to monitor the fulfillment of human rights has meant that reparations implementation has not been subject to further oversight. In general, the problem of deciding how reparations is to be implemented is not so much about what kind of agency implements it—a ministry, a coordinating body, an ad hoc task force—as about whether that entity is backed by the government’s political will and can mobilize the capacity and resources needed for implementation.

While JLOS has spearheaded the development of a transitional justice policy, engagement across several government ministries is required to ensure that a reparations program is holistic and its components are appropriately linked. JLOS is a multi-sectoral agency and may have the experience needed to coordinate several aspects of reparations implementation; however, its focus is on access to justice and rule-of-law promotion. There is a risk that reparations will become merely one of several transitional justice or even general justice-related areas that JLOS manages.

³⁷ Pablo de Greiff, “Justice and Reparations,” in *The Handbook Of Reparations* (Oxford University Press, 2006), 451-477.

³⁸ See http://cman.pcm.gob.pe/index.php?option=com_content&view=frontpage&Itemid=20

Care needs to be taken to ensure that reparations are neither superseded by other transitional justice initiatives nor effectively localized or merely integrated into broader rule of law, development, or economic objectives. If JLOS is to succeed in formulating a meaningful reparations program, it cannot be rooted in development structures nor merely integrated into them. In addition to the above, it is also important that the Parliament of Uganda be kept informed of developments in order to enlist the appropriate political and legislative support required.

Communities and local governments must also be directly involved. Under the Local Government Act of 1997, local governments already have wide-ranging powers and responsibilities for planning and service delivery. While the capacity of local government is often limited, decentralized structures have increased the potential for local communities to be more closely involved in decision making and holding government more accountable. Given the likely responsibilities that local governments will have in implementing a national reparations program, it is vital that they should be represented in any coordinating mechanism and closely consulted. The involvement of individuals and groups in whom the community expresses a high degree of trust and confidence will be important, but it must be balanced by efforts to insulate the process from being appropriated by partisan political agendas. In the past in Uganda the involvement of political figures in benefit-distribution processes has raised expectations to almost unmanageable levels, leading to claims of inclusion or exclusion based on patronage networks.

The process of identifying, registering, and validating applications by victims and beneficiaries will require political support and resources at both the national and local levels, but this should be supervised at the community level by technical government staff, instead of local political figures. For example, existing networks of community development officers employed by local governments can be tapped in reparations implementation. They are present in every subcounty. They also already have responsibility for ensuring that the needs of vulnerable groups and individuals are taken into account in planning and allocating resources.

Lessons Learned from Humanitarian, Recovery, and Development Program Implementation

As discussed earlier, reparations are a response to human rights violations and must come with the state's recognition of its responsibility for the causes and consequences of those violations. That goal distinguishes reparations programs from humanitarian assistance and development programs, even though the forms they take may overlap and the persons and communities they benefit can be the same. Uganda is in a unique position to draw on the experience of those involved in the design, targeting, and delivery of relief measures during the humanitarian phase of the crisis and thereafter in the north. They are likely to be important repositories of knowledge on lessons learned from targeting beneficiaries and the registration processes for delivering benefits in the area. For example, the experiences of those who were involved in the World Food Program's (WFP) delivery of humanitarian assistance to vulnerable communities would be invaluable. They carried out distribution of relief goods at the community level throughout the conflict and during periods of displacement. The ICC Trust Fund for Victims (TFV)³⁹ is another example, particularly with respect to working with community-based partner organizations. The local context of its experience and that of its partners in the financial, logistical, and outreach aspects of the TFV's assistance program will be helpful, for instance, in designing an urgent reparations program that is broader than what the TFV could provide.

The government may also have to rely on and seek access to records and documentation collected by community and civil society organizations, including war victims' associations. There will undoubtedly be issues of trust and security that the government must handle, but this is plainly part of the trust-

³⁹ The Trust Fund for Victims operates under the legal framework of the ICC Statute, Rules of Procedure and Evidence, and Regulations of the Assembly of States Parties (ASP). See Rome Statute, Article 79, [http://untreaty.un.org/cod/icc/statute/english/rome_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf); ICC-ASP/1/Res.6 "Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims." In March 2008, Pre-Trial Chamber II approved proposed TFV activities in Uganda, see Decision on Notification of the Trust Fund for Victims Situation in Uganda, No. ICC-02/04 (19 March 2008), www.iccklamberg.com/Caselaw/Uganda/PTCII/ICC-02-04-126-ENG.pdf

building process that any government reparations program has to go through. Government must also engage in practical, constant dialogues with existing service providers, both state and nonstate, who are aware of the needs and challenges faced by specific individuals and groups at the community level. Some of the most practical solutions to dilemmas faced by reparations programs elsewhere have come from local school teachers, hospital administrators, and social workers.

Overall, programs that have been developed over many years to eradicate poverty and deliver essential services as well as the humanitarian and post-conflict recovery responses that have been made, not only in the north but in other parts of Uganda, are likely to provide useful experiences and preclude the waste of resources and delays resulting from failures that have affected reparations programs in some countries. Uganda's policymakers will be more familiar with these programs, but a few examples can be named. First of all, Uganda's Peace Recovery and Development Plan for Northern Uganda (PRDP) and related programs, such as the Northern Uganda Social Action Fund (NUSAF), have worked on reestablishing essential services in conflict-affected areas. When considering mechanisms for the potential provision of cash payments or other material benefits for individual victims, lessons from emerging social protection instruments in Uganda should be sought. Relief programs that undertook large-scale distributions of relief items, such as food and shelter materials, may provide some useful insights on registration processes in terms of both best practice and challenges as well as practical logistical requirements. The network of victims' and civil society organizations that have emerged to address victims' needs, in the absence of a comprehensive reparations program, offer not only practical guidance but also documented and field-based evidence of what may or may not work in different local or regional contexts.

In the past, the line between development initiatives and reparations has sometimes been blurred, sowing confusion among victims and communities.⁴⁰ As a general matter, to the extent that emergency relief efforts and "recovery and development" initiatives implemented under the PRDP and NUSAF focus on infrastructure repair, governance reform, and livelihood enhancement, they are compatible with reparations programming. They may alleviate suffering for some victims, improve access to justice mechanisms for a broader population of Ugandans, and address the social inequities that may have helped to stoke the conflict originally. They cannot, however, be a substitute for reparation. By nature these recovery and development programs are no different from services available to citizens by virtue of their citizenship, as, indeed, their expansion to areas outside of those directly affected by conflict show. This is not to say that humanitarian and development programs have no relevance to reparations implementation. Likewise, assistance programs that straddle the line between economic assistance and reparative justice have also been provided, in some cases by external institutions such as the TFV and in other cases by civil society and victims themselves through their own initiatives.⁴¹ Some of the benefits were clearly reparative in impact, even if the intention was to simply offer assistance. Nevertheless, the lessons learned from these programs, including in the identification and registration of victims and approaches to delivering services and information, are lessons that can be applied in reparations implementation as well.

Challenges that May be Anticipated

At every stage, the realities of implementation will challenge a state's political will, administrative capacity, and economic resources. These challenges are inevitable, but they can also be identified and anticipated. In Uganda, the most important and complicated challenges will likely be similar to those faced elsewhere by developing countries emerging from conflict, where reparations for victims have to

⁴⁰ In June 2012, ICTJ, with funding from the OHCHR, held two-day training seminars in the districts of Kitgum and Gulu with victims' and civil society groups, members of district peace committees, local government, and religious leaders. For a more complete discussion, see ICTJ Briefing Paper, "Reparations for Northern Uganda: Addressing the Needs of Victims and Affected Communities" (2012), <http://ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reparations-Uganda-2012-English.pdf>

⁴¹ The TFV has supported 18 "integrated victim support" projects in northern Uganda, including those whose primary focus has been on physical rehabilitation and others that have provided vocational training, psychological counseling, community reconciliation and the establishment of income generation and village savings and loans associations (VSLA). Projects were implemented through intermediary organizations or groups. As of mid-2012, the TFV estimates that 38,900 victims in Uganda had benefitted from its assistance program. Greater details are offered in the TFV's Programme Progress Report (Summer 2012), entitled "Empowering victims and communities toward social change."

compete for resources with other government obligations to its citizens and where transitional justice is entangled with deeper-rooted disputes over land, identity, and social inequality.

- **Legacy of internal displacement:** Perhaps the most devastating impact of the conflict in northern Uganda was the mass displacement of nearly two million people.⁴² Uganda adopted its own IDP Policy in 2004 and established a Joint Monitoring Committee to oversee an emergency action plan for the north in 2006. While the vast majority of IDPs have now returned home, the legacy of displacement has left complex issues and continuing unmet needs. These include disputes over access to land; demands for the restocking of cattle; and the restitution of property and other means of production on which many subsistence and agricultural communities in the north rely.
- **Economic cost:** Government has to work within a limited budget and respond to many competing priorities. Given the number of victims and the magnitude of economic losses incurred, a reparations program that tries to compensate for economic losses will be impossible to fulfill. Hence, government should consider narrowing the types of violations, limiting the amount of compensation to what it can afford to deliver over time, and give priority to noncompensatory forms of reparations.
- **Precedent and expectations:** Reparations policy and its programmatic components would need to be potentially expandable to other parts of Uganda that experienced massive or systematic human rights violations. Victims in those parts will complain of discrimination if they are excluded and only the north is given attention. Policymakers and citizens can legitimately have expectations that the government's mobilization of political will and resources for a post-conflict reparations program ought to be just as possible in other situations involving mass casualties or population displacement caused by natural disasters or other calamities (for example, in response to the landslide that occurred in the Bududa District in 2010).
- **The right of a victim to reparations cannot be withheld simply because he or she may also be characterized as a perpetrator.** Victims of human rights or international humanitarian law violations are not required to come with "clean hands." There may certainly be other reasons not to provide reparations to an individual victim, such as the prioritization of those determined to have more urgent needs or a policy to provide collective rather than individual reparations, or even the fact that a victim already received reparations from other sources, like a court. Many victims in the north may also have been perpetrators at other times. This does not preclude a policy that clarifies the extent to which such victim-perpetrators will be entitled to reparations benefits and whether assistance that was already received, for instance, through disarmament, demobilization, and reintegration (DDR) programs, ought to be taken into account.
- **Ensuring that victim's voices are heard and taken into account:** Victims' groups and individual victims continue to say that they feel excluded from consultative and decision-making processes. At the same time, it is important that mechanisms to do this are inclusive and take into account the fact that there is considerable diversity among and between victims and the groups that have emerged to represent them. Doing so while implementing a transitional justice mechanism that will have to exclude many victims and disappoint beneficiaries who expected more will require transparency, fairness, and constant communication from reparations implementers.

⁴² For a fuller analysis of transitional justice, and displacement in the context of Uganda and the Great Lakes region of Africa, see Lucy Hovil, "Gender, Transitional Justice and Displacement: Challenges in Africa's Great Lakes Region" (2012), www.brookings.edu/~media/Projects/idp/tj%20case%20studies/Hovil%20Gender%20Great%20Lakes.pdf

3. Other Policy Considerations

Which Victims and From What Periods?

Following independence from British rule, Uganda suffered a number of military coups, dictatorships, and armed rebellions that claimed the lives of almost one million people as a direct result of the violence or its aftermath. These include political repression and violence under the first government of Milton Obote, the Idi Amin regime, the second period of Milton Obote rule, the National Resistance Army (NRA) Bush War (1981-85), and the post-1986 period in which the current government has been in power, marked by rebellions involving over 28 armed groups in the east, west, and north of the country. Of these, the activities of both the Holy Spirit Movement and the LRA in the north and the Allied Democratic Front (ADF) in the west are the most prominent.⁴³ Two of these episodes of violence have already been the subject of truth-seeking exercises.⁴⁴

Any approach to transitional justice planning, and by extension reparations planning, will need to take account of these different periods, the respective victims, and the legacy of unredressed violations. The inclusion or exclusion of certain episodes of massive and systematic violations would impact reparations planning at every stage. To move forward, decisions will need to be made about which categories of victims should receive which forms of reparations and to what degree victims of various periods of violence will participate, if at all. For instance, should all victims receive some form of material reparations? Or should only certain temporal classes or categories of victims receive material benefits, while others receive only symbolic measures? At every stage, three requirements will need to be balanced: (1) reparations should provide something meaningful, symbolically and materially, to victims; (2) the state must have a real capacity to provide reparations and fulfill whatever promises it makes to victims; and (3) reparations should encourage reconciliation, specifically by not increasing grievances or divisions between different groups in society, while guaranteeing a perception of legitimacy.

Much of the attention regarding transitional justice in Uganda has been focused on the north. As a result, far more is known about the victims of the conflict in the north, including the types of violations they suffered and their reparative needs and demands. There is an argument for designing a reparations program for this group of victims ahead of other groups. Many victims of the conflict in the north who were victimized from 1986 onward are still in need of urgent attention. Making them wait for a more comprehensive nationwide reparations program, or a truth commission, may only aggravate their situation as well as heighten their current sense of not having been officially or sufficiently recognized.

⁴³ Bill Berkeley, *The Graves Are Not Yet Full: Race, Tribe, and Power in the Heart of Africa* (2001).

⁴⁴ The Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971 was established by Idi Amin in reaction to strong public opinion demanding that inquiries be conducted into disappearances, many believed to be attributable to the security forces. The Commission of Inquiry into Violations of Human Rights (1962-1986) was set up by the NRA government that came into power in 1986, led by President Museveni, to investigate human rights violations committed under past governments.

However, in adopting such a sequence that prioritizes the north, it would be important to anticipate that pre-1986 victims may seek material reparations equivalent to those offered to victims of the conflict in the north. This is particularly likely for those who may be legally barred from seeking other forms of redress through the judicial system, due to the passage of time or the death of known perpetrators. Some victims of earlier episodes of violence may feel particularly aggrieved because their wait has been much longer. Prioritizing one group of victims means that the government will need to manage not just the expectations of those who have been prioritized but also those of others who feel that they deserve reparations as well.

Should a Truth Commission Come First?

Several approaches have been put forward that combine truth seeking and reparations.⁴⁵ One approach proposes truth telling at the local, district, or sub-regional level. The other contemplates a national effort carried out within an existing national structure, such as the Amnesty Commission, UHRC, or an independent truth-seeking body. However, these proposals have not been presented in enough detail to assess which approach could better address victims' reparative needs, nor do they address other outstanding questions about whether Uganda should establish a truth commission that only covers post-1986 episodes of massive and systematic violations or continue the work of previous truth commissions to address episodes of human rights abuse that predate 1986.

Truth commissions can perform the important role of listening to victims and conveying society's recognition of their experiences, but they have the equally important function of mapping the types and magnitude of human rights violations that took place and their impact on victims, their families, and their communities. A truth-seeking process can indicate what victims may need. Truth commissions with a mandate to recommend the parameters of a future reparations policy (or in some cases, even provide services that are reparative in effect) can set the stage for victim participation in reparations policymaking. However, in some cases, despite comprehensive recommendations made by a truth commission, reparations have either been delayed or left unimplemented years after the end of truth seeking.⁴⁶ A truth commission's archive and database can also become the starting point for a registry of victims.

The recommendations on which the design of a reparations program may be based can come from a truth commission (and there are cases in which the law establishing a truth commission also lays the basis for a reparations program), but the establishment of the program itself is not generally dependent on the establishment of a commission. The actual establishment of a reparations program is often dependent on political and financial factors prevailing years after a truth commission has ceased operating.

In some countries reparations have preceded truth-telling mechanisms. For example, in Brazil, an earlier reparations program that was limited to families of missing persons was the result of discrete, independent legislative initiatives sustained by self-standing reparations commissions or procedures,⁴⁷ and only recently was a national truth commission created.⁴⁸ In other contexts, a reparations program and truth commission were the concurrent outcomes of litigation, like Canada's Indian Residential

⁴⁵ 2012 JLOS Study Report.

⁴⁶ Reparations recommended by the commission in Timor-Leste have not been implemented, and the ones recommended by the commissions of Sierra Leone, Guatemala, and Peru have been only partially implemented, after 8, 13 and 9 years respectively. In South Africa, the reparations recommended by the Truth and Reconciliation Commission (TRC) have mostly been ignored by the government, which has instead implemented its own policy of paying a uniform, one-off amount as compensation to victims who were able to register with the TRC itself. In Sierra Leone, registration for a reparations program funded by the UN Peacebuilding Fund (PBF) only started four years after the release of the truth commission report, and the limited form of reparations delivered for those registered are insignificant when compared with the comprehensive program recommended by the commission. In Liberia, no reparations policy has been drawn up four years after the submission of the truth commission's report to the country's president. The availability of funding and the state's commitment to providing reparations were certainly factors in the length of time it has taken to commence reparations programs, but these experiences also suggest that victims may have to wait long (or in futility) before truth commission recommendations lead to reparations implementation.

⁴⁷ The Comissão Especial sobre Mortos e Desaparecidos Políticos was created by law and issued a report recognizing 479 cases of missing persons. Later in 2001, an Amnesty Commission was created by executive decree to grant "political amnesty" to victims of political persecution and financial compensation. See Ignacio Cano and Patrícia Salvá Ferreira, "The Reparations Program in Brazil," in Pablo de Greiff (ed.), *The Handbook of Reparations*, 102-153.

⁴⁸ www.cnv.gov.br/

Schools Assessment Process.⁴⁹ In Morocco, a royal decree established a reparations program, the Independent Arbitration Panel on reparations,⁵⁰ which was later followed by a truth commission that recommended more comprehensive individual and community reparations programs.⁵¹ More recent experiences, such as in Tunisia and Nepal, where compensation and financial assistance for education and medical expenses have been offered ahead of the establishment of a truth commission, suggest that post-transition governments can address some of the more urgent physical and financial needs of victims more immediately, even as they deal with the political and legal challenges involved in establishing a truth commission.

In Uganda, the design, implementation, and scope of a reparations program can certainly benefit from the work of a credible truth commission, but there are considerations that may make it necessary to put reparations ahead of truth-seeking. Postponing reparations until truth-seeking can take place may have unintended and unwanted consequences for victims. Delays may result in physical suffering or even death for certain classes of victims (for example, the elderly and those with serious injuries). It can lead to despair and even resentment, especially when victims perceive that ex-combatants are prioritized and receive benefits through DDR programs or alleged perpetrators are able to extract guarantees of impunity or of amnesty.⁵² Putting reparations at the end of a presumed transitional justice continuum—where reparations programs are put off until truth seeking or even criminal prosecutions can be done—may whittle away support for investing state funding and resources in victims' needs later. These considerations may well justify implementing reparations ahead of truth seeking in Uganda, whether with respect to victims in the north or at a national level.

⁴⁹ www.residentialschoolsettlement.ca/settlement.html

⁵⁰ www.usip.org/files/file/resources/collections/commissions/Morocco-Charter.pdf

⁵¹ ICTJ, "The Rabat Report: The Concept and Challenges of Collective Reparations" (2009), <http://ictj.org/publication/rabat-report-concept-and-challenges-collective-reparations>

⁵² In South Africa, even as perpetrators immediately benefited from amnesty applications during the TRC process, only minimal interim reparations were given to victims, many of them elderly, who had to wait during the 7 ½ years that the TRC was operating, before the government would act on any reparations recommendations. Even so, the government has only provided a one-time lump sum payment of 30,000 SA rand to approximately 23,000 beneficiaries who are in a list of TRC-registered victims that has been closed to any other victims who failed or, for various reasons, could not participate in the truth-seeking process.

4. Recommendations

1. Develop a coherent approach that defines both legal and policy frameworks.

2. The Government should adopt a broad-based policy providing as a matter of right reparations to victims even where state responsibility cannot be established as a matter of law.

3. Immediate steps should be taken to agree on a timetable and coherent plan for implementing symbolic measures both nationally and locally that are consistent in content and approach.

4. Establish an urgent reparations program for victims in northern Uganda.

We recommend that an urgent reparations program for those classes of victims mentioned in this paper as particularly vulnerable be implemented in northern Uganda and serve as the pilot program for a more-comprehensive reparations program nationwide. The lessons learned from humanitarian relief and development programs in the north should be taken into account in its implementation.

5. Implement comprehensive reparations program and truth seeking.

A comprehensive reparations program should be implemented within two years from the start of the urgent reparations program in the north, taking into account not only the lessons learned in northern Uganda but comparative experiences elsewhere. This comprehensive reparations program should ideally be accompanied by official truth-seeking processes, which may be done at the national or community level.

6. Establish a Fund for reparations.

A special reparations fund should be established and funds set aside in the national budget, preferably over a multiyear period, clearly earmarked and publicly acknowledged, to be used for both urgent and comprehensive reparations measures.

7. Create an effective and politically supported mechanism for reparations implementation.

Whether JLOS is designated to coordinate and monitor reparations implementation or new institutional arrangements are established, the government's priority should be to ensure that any arrangement or institution is invested with the legal authority and political support to bring together people across, within, and even outside government.

8. Integrate traditional justice mechanisms.

Communities in which traditional justice can have a constructive and reparative role should be encouraged to integrate those mechanisms in symbolic reparations and memorialization initiatives. The government should support these initiatives materially and officially, while recognizing that they need to retain a degree of independence to maintain their legitimacy and value.

9. Incorporate reconciliation and define the role of individual perpetrators.

Only after significant progress has been made in delivering urgent reparations in the north, acknowledging victims of violations in other regions and periods, and designing the parameters of a national comprehensive reparations program should the government incorporate measures toward reconciliation, at both the national and local levels. Institutions, through their leadership, as well as individual perpetrators, including former members of the LRA, including those who may have availed of amnesty, should be given the space to acknowledge their acts; however, no distinction between victims of one perpetrator or the other should be made in the registration process or in the delivery of reparations.

10. Ensure victim participation at all stages of the process.

The participation of victims in the design, implementation, and monitoring of reparations programs should be incorporated in policy. The participation of women, in particular, should be ensured, including at both national and local levels of implementation.

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