

Reparations for Victims of Gross human rights violations in Uganda.

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1. Introduction

Good afternoon Rt. Honorable Speaker, Honorable Members of Parliament, distinguished guests, ladies and gentlemen all protocol observed. It is an honor for me to address you on the topic of Reparations, which constitutes a fundamental right of all victims of human rights violations. In 2013 ICTJ published a report *'Unredressed Legacy: Possible Policy Options and Approaches Fulfilling Reparations in Uganda'* which explores approaches for the implementation of reparations in Uganda. My presentation will draw from the observations and recommendations made in the report.

2. Background

Since independence Uganda has experienced different episodes of violent conflict and human rights abuses across successive political regimes. The most protracted and brutal of these conflicts was the two decade conflict in the northern Uganda between the Lord's Resistance Army (LRA) and the government forces, during which gross human rights violations and serious violations of international humanitarian law were perpetrated against individuals, families, and communities. Examples of serious crimes that were committed include: abduction and enforced disappearance; killing; torture; cruel, inhuman or degrading treatment; forced recruitment; slavery and forced marriage; mutilation and war injuries; sexual violence; psychological harm; looting; and destruction of property.

With the cessation of hostilities and the return of relative peace, the government of Uganda has embarked on drafting a transitional justice policy which will establish a framework to address accountability for serious crimes and provide redress to victims who have suffered harm during past conflicts and periods of repression. The draft transitional justice policy proposes the establishment of reparations program for victims.

3. What are Reparations and who is responsible for providing reparations?

Simply defined Reparations are sets of measures that provide redress to victims of gross violations of international human rights law, serious violations of international humanitarian law.

Reparations are provided by the State as a result of acts or omissions of its officials which constitute gross violations of international human rights law or serious violations of international humanitarian law. A State is also obliged to provide reparations if it fails to take reasonable steps to protect the human rights of its citizens from being violated.

Non state perpetrators serious crimes are also liable to provide reparations to victims in certain circumstances. Absent those circumstances they are liable as normal under national law for criminal and civil damages. Where the reality is that no such reparations are likely to be made, Government is strongly recommended to recognize the harm caused to victims, at a minimum in terms of solidarity. We believe at ICTJ that, aside from the value of solidarity, it makes abundant good sense in terms of the objectives of accountability and transitional justice that Government steps in where non-state actors are unwilling or unable to make reparations for which they are liable..

4. Who is entitled to reparations?

According to The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2005, Reparations should be made to victims who have suffered physical, mental and psychological harm or economic loss due to gross violations of International Human rights law or serious violations of International humanitarian law are entitled to reparations. “Victims” may also include the immediate family or dependents of the direct victim regardless of whether the perpetrator of the violation is identified, or has been convicted.

The Basic Principles is an especially important document that took fifteen years to produce. It was adopted by the Un General Assembly by consensus in 2005, that is all the States accepted it without further debate, including Uganda. The Principles are not a source of new obligations but rather explicitly set out that they present a statement of existing obligations. It is therefore the clearest expression to date of the content of international law and related procedures to ensure they are respected.

5. Objectives of Reparations

Reparations seek to provide some redress for rights that have been trampled, for harms suffered, for indignities endured in order restore the victim to the situation which would, in all probability would,

have existed if that violation had not been committedⁱ. Reparations also seek to provide recognition and acknowledgement for the harm suffered. They also promote reconciliation between victims and perpetrators and restore trust in government.

6. Legal basis for reparations

Uganda is a party to a number of international and regional legal instruments which form the legal basis of victims' right to remedy and reparation. As noted above these obligations derive from customary and treaty law, as well as general principles. The underlying obligations are set out in the Basic Principles. This provides:

- i. **“ The UN 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 of 2005** (hereinafter referred to the Basic Guidelines)assert that victims of human rights abuses have a right to prompt, adequate and effective reparation through restitution compensation, rehabilitation, and satisfaction.

Among others, treaty obligations arise from:

- ii. **The International Covenant on Civil and Political Rights**, which obliges states to provide an effective remedy to those whose covenant rights have been, violated (Art 3.)
- iii. **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (Art. 14).
- iv. **The Rome Statute of the International Criminal Court (ICC), (domesticated by the ICC Act of 2010)** Stipulates in Article 75 (2) that the "Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation to victims .
- v. **The African Charter for Human and People's rights**, whose provisions have been interpreted to include te right to an effective remedy.
- vi. **The Protocol to the African Charter on Human and People's Rights on the rights of women** explicitly requires states to provide appropriate remedies to any woman whose rights or freedoms have been violated

Additional strong support for the right to reparations can be found in

vii. **Nairobi Declaration on the Right of Women and Girls to Remedy and**

Reparation2007: “Reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women’s and girls’ lives”.

At the national level the right to remedy and reparation is anchored in the Constitution of Uganda 1995, which in Article 20 imposes an obligation on the State to protect, promote, fulfill, respect and uphold rights, of all individuals. When the State fails to take reasonable steps to fulfill the foregoing obligation it is required to provide an effective remedy to the aggrieved party. Article 50 (1) of the Constitution stipulates thus:

‘[A]ny person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation’

The Uganda Human Rights Commission established under Article 51 of the constitution, has the mandate to order compensation and any other legal remedy or redress in cases where an infringement of a fundamental right or freedom has been proved.

The Juba Agreement on Accountability and Reconciliation of 2007 signed between the government of Uganda and the LRA expressly provides that reparations are to be delivered to victims of gross violations of human rights, both at the individual and collective levels.

7. Forms of reparation

Reparations take various forms which include:

- a. **Symbolic:** E.g. official commemorative events (e.g. Martyrs day, Soweto youth uprising day) memorials Naming and renaming of public places Offering scholarships and health services in the name of victims and apologies.
- b. **Material or non-symbolic:** These may include individual and or collective forms such as provision of cash or non-cash -projects like, livelihood projects, reconstructive surgery for the war wounded, education support, and access to health care services among others.

The UN Basic Principles recognize five general forms of reparations:

- a. **Rehabilitation:** This refers to the provision specialized services to victims who have suffered physical injuries and psychological harm. The services offered may include reconstructive surgery, treatment of scars, artificial limbs, physical therapy, fistula surgery, and psychological care. It may also include job and skills training.
- b. **Restitution:** This measure seeks restore the victim to the original situation before or if the gross violations of international human rights law and serious violations of international humanitarian law.” Restitution may include restoration land and property rights, economic and political rights.
- c. **Compensation:** This refers to the monetary award offered to victims for the economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. Compensation programs serve to publicly acknowledge wrongdoing, restore survivors' dignity, and raise public awareness about the harms victims have suffered.
- d. **Satisfaction:** This includes full public disclosure of the truth pertaining to the atrocities that were committed, official apologies, memorialization, searching for, identifying, and turning over the remains of dead and disappeared, judicial or administrative sanctions for perpetrators and judicial rulings that establish the dignity and reputation of the victims.
- e. **Guarantees of non-repetition:** These include institutional reforms that bring military and security forces under more effective civilian oversight and control, improve law enforcement, and promote human rights standards.

8. Implementing Reparations programs

The initial step in implementing a reparations program is the identification and categorization of victims. Given the limited resources, it is recommended that categorization of victims be based on vulnerability of victims, or seriousness of the violations committed. Uganda has many vulnerable victims in need of special or urgent care. Vulnerability may arise from an illness or disability, resulting from mutilation, burning, gunshot wounds, shrapnel injuries, beatings, sexual violence; including trauma. These may include child mothers, families of the disappeared, child-headed

households, orphans, street children, traumatized children, widows, female-headed households, persons with disabilities, persons living with HIV/AIDS and the elderly. It is important for the Ugandan government to provide urgent reparations to these victims the interim as it prepares to roll out a comprehensive and long-term reparations program.

9. Judicial Reparations

i. Reparations under the International Criminal Court

Under Article 75 of the Rome Statute, the International Criminal Court is empowered to award material or symbolic reparations; order seizure of property and/or assets of perpetrators. The court may order a perpetrator , upon conviction to make restitution, provide compensation or otherwise contribute to a victim's rehabilitation. The Court may also order the award of reparations to be made through the Trust Fund for Victims.

The Trust fund for Victims is established under Article 79 of the Rome Statute which stipulates that: "A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims." The TFCV has two mandates under jurisdiction of the ICC:

- a. Implementing Court-ordered reparations awards against a convicted person when directed by the Court to do so.
- b. General Assistance to victims: using voluntary contributions from donors to provide victims and their families in situations where the Court is active with physical rehabilitation, material support, and/or psychological rehabilitation.

Rule 85 of the ICC Rules of Procedure and Evidence defines victims that are eligible to receive funds from the TFCV to include "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court" and "may include organizations or institutions that have sustained direct harm to any of their property.

In Uganda the TFCV 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.ⁱⁱ

In August 2012 the ICC issued a historic decision on Reparations in the case of **Prosecutor vs. Thomas Lubanga**ⁱⁱⁱ. In its decision the Trial Chamber affirmed that victims of war crimes, crimes against humanity, and genocide have a fundamental right to receive reparations, and it outlined principles to guide the process of issuing reparations to victims in the DRC. The trial chamber further observed that reparations “go beyond the notion of punitive justice, towards a solution which is more inclusive, encourages participation and recognizes the need to provide effective remedies for victims.

ii. Reparations through Domestic courts

It is in very limited circumstances that criminal courts in Uganda will issue compensation in addition to imposing a sentence for injury resulting from criminal acts. The Trial on Indictment Act stipulates that “The court may, in its discretion and in addition to any other lawful punishment, order a convicted person to pay to that other person such compensation as the court deems fair and reasonable when it appears from the evidence that a person, whether or not he or she is the complainant or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed^{iv}”, Section 129 B of the Penal Code Act Cap 120 as amended provides for the award of compensation in cases of defilement.^v In determining the amount of compensation the court is expected to take into account the extent of harm suffered, by the victim of the offence, the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence.

The award of reparation upon conviction for serious crimes such as War Crimes, Crimes against humanity and Genocide has been incorporated in Uganda’s legal system with the domestication of the Rome Statute of the I.C.C. Article 64 of the International Criminal Court Act of 2010 requires government to enforce the international criminal court’s orders for victims’ reparations.

10. Reparations and truth seeking process.

A comprehensive reparations program need not be but can be linked to official truth-seeking processes, which may be conducted at the national or community level. However it may be necessary to put reparations ahead of truth-seeking because postponing reparations until truth-seeking can take place may have unintended and unwanted consequences for victims.

11. Source of funding for reparations

Sources of funding for reparations programs include State budgets, international community and donors, international financial institutions and assets recovered from perpetrators?

12. Reparations and development programs

The government of Uganda has embarked on several reconstruction, recovery, humanitarian, and development programs for the north and other conflict affected parts of the country, and these include the Peace Recovery and Development program, Northern Uganda Social Action Fund. . These programs were designed to support stabilization, development, and poverty-reduction objectives in the war ravaged region rather than justice and reparations.

This represents a very central dilemma in the reparations debate. Traditionally human rights law insists on a nexus between a violation and reparation. Where assistance or development is provided without acknowledgment of the the harm suffered and recognition of appropriate responsibility, that nexus is lost and its role in respecting the violated citizen as a rights-holder diminished. In a context of scarce resources it may well be that human rights practice will have to accommodate the role of development in a broader rubric of reparations, but at the same time, it should be possible to ensure that such programs are provided in a context of acknowledgment of rights violated.

13. Challenges

Planning and implementing a reparations program will be a long and difficult process because of the many political, practical, and financial challenges. But these challenges can be identified and anticipated.

The Ugandan government has to work within a limited budget and respond to many other priorities. Not everyone will receive what they want or expect. The number of victims who will demand reparations and the extent of their economic loss, physical harm, and emotional suffering may be too great to be addressed by reparations alone. The government will also have to consider other

transitional justice efforts, like a truth commission or the prosecution of important perpetrators, in order to satisfy demands for justice.

Conclusion.

To provide comprehensive reparations for victims Uganda will have to establish a coherent legal and policy framework which should provide for the establishment of a reparations fund and an independent institution which is legally mandated to implement reparations. The government should also prioritize urgent reparations for vulnerable victims especially those who still have physical injuries, psychological harm and victims of sexual violence as it prepares to roll out a comprehensive reparations program. It is of utmost importance that platforms be provided to enable victims to participate in the design and implementation of reparations. As legislators you have a fundamental role to play in ensuring that adequate resources are allocated for the reparations program and you should monitor the implementation of the reparations program.

ⁱ Permanent Court of Arbitration, Chorzow Factory Case (Ger. V. Pol.), (1928) P.C.I.J.,

ⁱⁱ ICC Trust fund for Victims : “Empowering victims and communities toward social change.” Programme Progress Report (2012),

ⁱⁱⁱ The Prosecutor v. Thomas Lubanga Dyilo ICC-01/04-01/06

^{iv} The Trial on Indictments Act, 50 (TIA) Cap 23 S. 126