

Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades

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Summary

Dealing with past human rights violations has become a common feature of societies that emerge from an atrocious past characterised by massive contraventions of human rights. Establishing a comprehensive version of the past is progressively being seen as vital, including dealing with issues of justice, truth, reconciliation, reparations and guarantees of non-repetition. The article examines the issue of reparations in the context of Uganda. It considers the right to reparations in international law. Through an analysis of international law, it is argued that the responsibility for the provision of reparations rests on the state of Uganda, even if the state was not directly responsible for the atrocities committed, although other actors may, and possibly should, assist in the provision of reparations, including the United Kingdom as the former colonial power. The article examines what reparations are, the types of reparations that can be provided, and the types of reparations that ought to be provided to the many victims in Uganda. The article examines the component parts of reparations and makes recommendations on the types of reparations that ought to be given to victims and the manner in which such a programme ought to be delivered. The violations that occurred in Uganda over a long period are examined briefly to provide a context to the discussion on the issues relating to reparations. The article studies urgent or interim reparations, collective and individual, symbolic and material types of reparations as well as the various types of reparations that could be provided in Uganda,

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looking at other countries to see what has been done elsewhere. The article recommends that urgent or interim reparations are paid in the short term, a truth-seeking mechanism provides recommendations on reparations in the medium term, and a full and comprehensive reparations process, instituted with a diverse and wide set of parameters, is established in the medium to long term. A variety of other recommendations are made throughout the article.

Key words: *Dealing with the past; reparations; transitional justice; human rights violations; Uganda; comparative approaches*

1 Introduction

Dealing with past human rights violations has become a common feature of societies that emerge from an atrocious past characterised by massive contraventions of human rights.¹ As Nelson Mandela noted:²

As ... countries recover from the trauma and wounds of the past, they have had to devise mechanisms not only for handling past human rights violations, but also to ensure that the dignity of victims, survivors and relatives is restored.

Establishing a comprehensive version of the past is progressively being seen as vital.³ The issues that are usually faced include whether to adopt or annul an amnesty law,⁴ whether to have criminal trials⁵ (and if so, who is to be prosecuted and how many people ought to be held accountable),⁶ and whether or not to have a truth commission or some similar process.⁷ Making those responsible for perpetrating crimes and to be accountable for their actions is critical to engender respect for a democracy, human rights and the rule of law.⁸ Enhancing respect for human rights and developing a human rights

1 NJ Kritz 'The dilemmas of transitional justice' in NJ Kritz (ed) *Transitional justice* (1995) xix-xxx.

2 N Mandela 'Foreword' in Kritz (n 1 above) xi.

3 J Sarkin 'Integrating transitional justice and demobilisation, disarmament and reintegration: The need to achieve rehabilitation, reintegration and reconciliation for child soldiers and child victims of enforced disappearances' in I Derluyn *et al* (eds) *Remember: Rehabilitation and reintegration of war-affected children* (2012) 77-104; LJ Laplante 'Transitional justice and peace building: Diagnosing and addressing the socio-economic roots of violence through a human rights framework' (2006) 2 *International Journal of Transitional Justice* 331-355.

4 This continues to be an important issue for Uganda. See 'To pardon or to punish? Current perceptions and opinions on Ugandan's amnesty in Acholi land' (2011) *Justice and Reconciliation Project*.

5 J Sarkin *Carrots and sticks: The TRC and the South African amnesty process* (2004).

6 L Mallinder 'Can amnesties and international justice be reconciled?' (2007) 1 *International Journal of Transitional Justice* 208-230.

7 M Mutua 'Beyond Juba: Does Uganda need a national truth and reconciliation process?' (2007) 13 *East African Journal of Peace and Human Rights* 142.

8 L Huyse 'Justice after transition: On the choices successor elites make in dealing with the past' in Kritz (n 1 above) 104-115 337-349.

culture are critical to prevent future violations. Promoting justice and accountability is helpful to deter similar acts in the future. It should assist in promoting peace and human rights.⁹

Reparations as a means to provide various types of redress for past violations¹⁰ are crucial¹¹ as they go¹²

to the very heart of human protection – it has been recognized as a vital process in the acknowledgment of the wrong to the victim, and a key component in addressing the complex needs of victims in the aftermath of violations of international human rights and humanitarian law.

In a report by the United Nations Secretary-General to the Security Council in 2004 entitled 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General', it was noted:¹³

States have the obligation to act not only against perpetrators, but also on behalf of victims – including through the provision of reparations. Programmes to provide reparations to victims for harm suffered can be effective and expeditious complements to the contributions of tribunals and truth commissions by providing concrete remedies, promoting reconciliation and restoring victims' confidence in the state.

As has been noted by Zalaquett:

To provide for measures of reparation and prevention, it must be clearly known what should be repaired and prevented. Further, society cannot simply block out a chapter of its history; it cannot deny the facts of its past, however differently these may be interpreted. Inevitably the void would be filled with lies or with conflicting, confusing versions of the past. A nation's unity depends on a shared identity, which in turn depends largely on a shared memory. The truth also brings a measure of healthy social catharsis and helps to prevent the past from reoccurring.

Processes to assure victims that their needs are important, such as exposing as much truth as possible, holding perpetrators accountable for their actions, and ensuring that on-going violations cease, can also have a reparative effect.¹⁴ Thus, steps to prevent non-recurrence should accompany reparations, as this tenders encouragement to victims that reparation is not a hollow promise or a temporary

9 M Mekenkamp *et al* (eds) *Searching for peace in Africa: An overview of conflict prevention and management activities* (1999).

10 A more extensive discussion on what reparations are and the types of reparations that can be provided occurs later in the article.

11 J Sarkin 'Colonial genocide and reparations claims in the 21st century: The socio-legal context of claims under international law by the Herero against Germany for genocide in Namibia, 1904-1908' (2009) *Praeger Security International*.

12 Draft Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2002).

13 UN Security Council 'The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General' UN Document S/2004/616, New York, 23 August 2004, paras 54-55.

14 J Sarkin & E Daly *Reconciliation in transitional societies: Finding common ground* (2007).

stopgap.¹⁵ Reparations, however, cannot be a substitute for justice and prosecution. They need to be part of any transitional justice strategy together with strategies to obtain truth, justice and reconciliation.¹⁶

2 Overview

Uganda has suffered massive human rights violations over the last few decades. As will be examined later, many thousands of people have been killed, tens of thousands of people have been injured and suffered a variety of abuses, and many thousands have lost land and other property at the hands of a variety of rebel groups, including the Lord's Resistance Army, but also at the hands of government security forces. Presently, the government of Uganda is examining what to do about the past and specifically what to do about reparations. A government inter-ministerial working group dealing with transitional justice matters has been established to determine how these issues ought to be dealt with. It is important to acknowledge that the previous conflict-affected areas in Uganda are currently experiencing relative peace. This means that a reparation process can and should begin relatively easily and quickly.

This article, therefore, examines the issue of reparations in the context of Uganda. It examines the right to reparations in international law. It examines what reparations are, the types of reparations that can be provided and the types of reparations that ought to be provided to the many victims in Uganda. The article examines the component parts of reparations and makes recommendations on the types of reparations that ought to be given to victims and the manner in which such a programme ought to be delivered. It is argued through an analysis of international law that the responsibility for the provision of reparations rests on the state of Uganda, even if the state was not directly responsible for the atrocities committed, although other actors may, and possibly should, assist in the provision of reparations, including the United Kingdom as the former colonial power. The violations that occurred in Uganda over a long period are examined briefly to provide a context to the discussion on the issues relating to reparations.

Reparation is but one of five pillars of transitional justice, the others being truth, justice, reconciliation, and guarantees of non-repetition.¹⁷ A comprehensive and workable process has component

15 See further R Mani 'Reparation as a component of transitional justice' in K de Feyter *et al* (eds) *Out of the ashes – Reparation for victims of gross and systematic human rights violations* (2006) 67.

16 J Sarkin 'Achieving reconciliation in divided societies: Comparing the approaches in Timor-Leste, South Africa and Rwanda' (2008) 3 *Yale Journal of International Affairs* 11-28.

17 Sarkin (n 11 above) 184.

parts of each. They are mutually supporting and, in fact, at times overlap. While Uganda has had such processes before, including two truth commissions – the Oder Commission established in 1974 and the Odoki Commission created in 1986 – they were not successful for various reasons, including that they were not open, transparent, credible, accepted or able to play the role that such bodies ought to.¹⁸

Establishing a reparations programme in Uganda will be a difficult and complex process. It will be fraught with the politics of the present and the politics of dealing with the past. There will be major questions that need to be addressed, such as how much resources the state will be willing to allocate. Will this programme be done at the expense of the development processes that government presently is carrying out? Who will be covered in such a process? Will it benefit the whole country? Which types of victims will be covered; will it also cover victims of government abuses? Will it be done on the basis of application wherein the applicant must prove when and by whom the loss occurred? Will the definition of victim include former combatants, including child soldiers who are accused of participating in the commission of atrocities? If yes, how will the impact of the proposed reparations vary from that of the amnesty packages which were misconceived by some victims as rewards to perpetrators for the crimes committed?¹⁹

Regardless, in Uganda reparations ought to be given in stages, with interim or emergency relief being given to those in dire need more quickly. Interim or emergency reparations ought to be paid to those in urgent need as soon as possible as those with medical and other immediate needs should not have to wait for years while all the other processes occur and a definitive reparations process is worked out. Longer term and full reparations can then be given after a truth process which makes full and comprehensive recommendations on a reparations process and its methodology.

This article addresses some of these issues and considers the types of reparations that should be paid. It therefore studies urgent or interim reparations, collective and individual, symbolic and material types of reparations, as well as the various types of reparations that could be provided, looking at other countries to see what has been done elsewhere. Recommendations are made throughout the article.

18 See JR Quinn 'Dealing with a legacy of mass atrocity: Truth commissions in Uganda and Chile' (2001) 23 *Netherlands Quarterly on Human Rights* 383.

19 See C Blattman & J Annan 'Child combatants in northern Uganda: Reintegration myths and realities' in R Muggah (ed) *Security and post-conflict reconstruction: Dealing with fighters in the aftermath of war* (2008) 11-12.

3 Human rights violations in Uganda

Uganda has a long history of human rights violations.²⁰ During the colonial period many violations were committed. That period saw the beginnings of the rifts between the northern and southern parts of the country. Divisions between the north and the south have been a critical aspect of the conflicts that have occurred over the last few decades.²¹ Thus, it needs to be recognised that the legacy of the colonial period is a factor in the violations that have been committed, including those in the more recent past. While reparations should take into account the colonial period, it may be difficult to compensate for violations that occurred before independence. Nevertheless, understanding the effect of colonialism and dealing with its consequences are necessary to avoid future conflict. The issues related to non-recurrence as a part of reparations will be examined later.

Uganda's post-independence period has seen massive human rights abuses.²² Tens of thousands were killed in the 1960s and 1970s. While there have been a number of rebel groups that have caused human rights violations, it is the hostilities between the government of Uganda and the Lord's Resistance Army (LRA), which began in the 1980s, and that have continued to occur for three decades, which has seen the most casualties. UN Under-Secretary-General for Humanitarian Affairs, Jan Egeland, in 2003 pronounced the conflict in Uganda as 'the biggest forgotten, neglected humanitarian emergency in the world'.²³ As a result of the conflicts, possibly two million people were displaced.²⁴ Many tens of thousands of civilians were killed and abducted.²⁵ The insurgency caused massive destruction with large numbers of civilians suffering a variety of violations. In just the period between 2008 and 2011, when the conflict was waning, about 2 500 people were killed by the LRA. In the same period, about 3 500 individuals were abducted by the LRA in the Central African Republic

20 B Afako *Northern Uganda: Justice in conflict* (2000).

21 M Mamdani *Imperialism and fascism in Uganda* (1983).

22 EK Baines 'The haunting of Alice: Local approaches to justice and reconciliation in Northern Uganda' (2007) 1 *International Journal of Transitional Justice* 91-114.

23 Agence-France Presse 'War in Northern Uganda world's worst forgotten crisis: UN' 11 November 2003 <http://reliefweb.int/report/uganda/war-northern-uganda-worlds-worst-forgotten-crisis-un> (accessed 18 April 2008).

24 UN Department of Public Information 'United Nations to step up support for Uganda's 2 million displaced people' 21 November 2005 <http://www.un.org/News/Press/docs/2005/afr1290.doc.htm> (accessed 18 April 2008). See also M Boas & A Hatloy 'Poor, terrorised and internally displaced: The humanitarian situation in Northern Uganda' (2006) 36 *Humanitarian Exchange* 21-22.

25 Human Rights Watch 'Uprooted and forgotten: Impunity and human rights abuses in Northern Uganda' (2005) 17 *Human Rights Watch* 1-75.

(CAR), in the Democratic Republic of the Congo (DRC), and in South Sudan, including 1 500 children.²⁶

By 2007, research conducted indicated that between 24 000 and 38 000 children²⁷ and between 28 000 and 37 000 adults were abducted in Uganda.²⁸ Thus, the total of abductions that have occurred over the whole period is thought to be between 30 000 and 40 000 people. The number of internally-displaced persons (IDPs) caused by the fighting is believed to be about 1,7 million in Uganda alone in the period 1986 to 2007. Other countries also suffered as a result of the conflicts. Thus, there have been about half a million refugee IDPs in the DRC, CAR, and South Sudan.²⁹ This has had critical negative consequences on the lives of the people concerned.³⁰ As these are Ugandans, they need to be allowed to return if they have not done so already. However, finding ways of assisting people affected in these countries who are not Ugandans would also be helpful. It is, however, unlikely that Uganda will take responsibility for such people. The United Nations Refugee Agency (UNHCR) and others can play a role on this regard. Critically, violence against women (including girls)³¹ has occurred on a massive scale in

26 'Torture tops 2012 human rights violations as complaints of human rights violations reduce' African Centre for Treatment and Rehabilitation of Torture Victims, <http://www.actvuganda.org/index.php?q=story/torture-tops-2012-human-rights-violations-complaints-human-rights-violations-reduce> (accessed 30 September 2014).

27 See further J Annan *et al* 'The state of youth and youth protection in Northern Uganda. Findings from the survey for war-affected youth' (2006) Report for UNICEF Uganda.

28 P Pham *et al* 'Abducted: the Lord's Resistance Army and forced conscription in Northern Uganda' (2007) Berkeley-Tulane Initiative on Vulnerable Populations.

29 See 14 December 2010, Oxfam, 'Ghosts of Christmas past: Protecting civilians from the LRA'; December 2009, HIU State Department, 'Conflict without borders: Lord's Resistance Army reported attacks (December 2008-November 2009), Displacement and peacekeepers'; June 2010, Ledio Cakaj, 'On the heels of Joseph Kony: The untold tragedy unfolding in the Central African Republic'; 25 November 2010, OCHA CAR 'Records of LRA attacks in CAR in 2010'; December 2010, Action Humanitaire en Province Orientale, 'Rapport mensuel et bilan annuel partiel 2010'; 16 October 2007, Institute for War and Peace Reporting (IWPR) 'Can traditional rituals bring justice to Northern Uganda'; 11 August 2010, Human Rights Watch 'CAR/DR Congo: LRA conducts massive abduction campaign: New regional strategy needed to protect civilians and rescue children'; 25 November 2010, OCHA CAR 'Records of LRA attacks in CAR in 2010'; 2007 SWAY Report 'The state of youth and youth protection in Northern Uganda'; February 2004, UNOCHA 'Child soldiers at centre of mounting humanitarian crisis'; 25 January 2012, OCHA 'LRA regional update: Central African Republic, DR Congo and South Sudan: January-December 2011'; 14 October 2011, US Department of State 'Fact Sheet: US support to regional efforts to counter the Lord's Resistance Army'; 10 March 2011, UNOCHA 'DRC: ERC Amos calls for better security in LRA-affected areas' <http://theresolve.org/key-statistics> (accessed 30 September 2014).

30 T Allen & M Schomerus 'A hard homecoming: Lessons learned from the reception centre process on effective interventions for former "abductees" in Northern Uganda' (2006) *Management Systems International, Washington DC*.

31 See J Annan *et al* *The state of female youth in Northern Uganda: Findings from the survey of war affected youth: Survey for war affected youth* (2008).

Uganda.³² Tens of thousands of women and girls were raped and had to endure other forms of sexual violence.³³ Those women and girls who have been so violated need to be assisted by providing counselling, support, medical treatment and other forms of reparations that are discussed below.

While the number of violations has decreased over the last three or four years, it was still estimated that there were 278 attacks in 2011.³⁴ However, the overwhelming majority of victims have not attained their right to reparation, as will be discussed below. Consultations with people in Northern Uganda have continuously revealed that reparations are seen by victims as a meaningful form of justice,³⁵ one that holds those responsible accountable by requiring them to adopt reparative measures that directly impact on victims' lives.

It is also important to understand the socio-economic³⁶ effects of the war.³⁷ Living conditions generally, and in the IDP camps in particular, have been harsh.³⁸ Access to food, water, shelter and sanitation has not been possible for countless people as a result of the war. Families and communities have been broken up. Land occupation and possession have been affected dramatically as a result of people fleeing the war.³⁹ These issues must be taken up in a reparations programme, but also in government development programmes. Reparations must allow people to return to their lives as before. Thus, such issues need to be taken up by the state, in addition to the injuries that people have suffered. Without dealing with such issues, there will be continued discontent which may lead again to conflict at some point in the future. In fact, unequal service delivery has been a cause of previous uprisings in the country. Thus, these matters should be issues that government, and particularly the specific government ministries, should watch carefully and deal with as much as possible, taking into account a scarcity of resources. However,

32 AM de Brouwer 'Reparation to victims of sexual violence: Possibilities at the International Criminal Court and at the trust fund for victims and their families' (2007) 20 *Leiden Journal of International Law* 207-237.

33 P Sooma 'Despair and disdain: A tale of sexual abuse against internally-displaced women in Northern Uganda' (2006) 12 *East African Journal of Peace and Human Rights* 91. See also Human Rights Watch Report (n 22 above).

34 IRIN News 'Security- questions over progress against the LRA' 24 February 2012 <http://www.irinnews.org/Report/94941/SECURITY-Questions-over-progress-against-the-LRA> (accessed 19 February 2014).

35 Human Rights Watch *Justice for serious crimes before national courts: Uganda's international crimes division* (2012).

36 I Muvingi 'Sitting on powder kegs: Socio-economic rights in transitional societies' (2009) 3 *International Journal of Transitional Justice* 163-182.

37 L Arbour 'Economic and social justice for societies in transition' (2007-2008) 40 *Journal of International Law and Politics* 1-27.

38 See generally on IDPs TJ Harris & S Rimmer 'Reconceiving refugees and IDPs as transitional justice actors' (2010) United Nations High Commissioner for Refugees, Geneva.

39 On Zimbabwe, see A Magaisa 'The land question and transitional justice in Zimbabwe: Law, force, and history's multiple victims' 30 June 2010 Oxford Transitional Justice Working Paper Series.

equality of the provision of such services is necessary, but so is dealing with past marginalisation of some communities, especially in the northern part of the country.

4 Defining reparations

Providing reparations to the victims of massive and systematic human rights violations is usually complex for a variety of reasons.⁴⁰ It is very challenging because there are many issues that need to be dealt with. Reparations are also not merely financial but contain a range of other possibilities, as will be discussed below.⁴¹

Reparation can encompass a variety of issues, including compensation, damages, redress, rehabilitation, restitution and satisfaction.⁴² Although these concepts are often used generally and interchangeably to mean reparations in general, each has a different meaning. Each describes different types of remedies that are available to a victim.

The term 'reparation' or 'compensation' is used, although other terms can and have been used. Reparations are in fact a slightly broader-based form of compensation. Whereas restitution and compensation are typically for a particular wrong committed, reparations are typically from a government that takes responsibility for a policy or set of policies or actions. Thus, reparations represent a kind of moral accounting, where the payment represents the *fact* that harm was done, but not the amount of suffering or loss that was endured. For those who believe that the moral injustice needs to be corrected, reparations can assist in a variety of ways, including by ways of symbolic means, as will be discussed below.

Reparation as compensation typically refers to measures that seek to quantify and make up for harms suffered. This includes usually serious harms other than purely economic losses, such as physical, mental⁴³ and even moral injuries. However, questions on the extent of reparations programmes and to what extent they cover all harm suffered are affected by the extent of harm suffered and whether the state is able and willing to cover all harms.

How reparations are implemented depends on how all relevant issues, including the political, economic and social processes, affect the determination of whether and how to grant reparations. Generally, reparation is a series of actions expressing acknowledgment

40 See further P de Greiff 'Chapter 12 – Justice and reparations' in P de Greiff (ed) *The handbook of reparations* (2006).

41 De Feyter *et al* (n 15 above).

42 M Schotsmans 'Victims' expectations, needs and perspectives after gross and systematic human rights violations' in De Feyter *et al* (n 15 above) 160.

43 LJ Laplante & MR Holguin 'The Peruvian Truth Commission's mental health reparations: Empowering survivors of political violence to impact public health policy' (2006) 9 *Health and Human Rights* 136-163.

and acceptance of the responsibility that falls to the state due to actions that have resulted from gross violations. Reparations as a term is derived from the word 'repair'.⁴⁴ It is often seen to be the making of amends by providing recompense to persons who suffered some type of loss or harm. There are different means by which reparations can be given,⁴⁵ including through litigation in the courts.⁴⁶ Where the claimants are many, reparations systems by states are often the favoured route.⁴⁷

Reparations are critically important for victims because the provision of reparations can have various effects. It provides financial assistance to victims so that they can better deal with the pecuniary dispossession they have had to suffer. Secondly, reparations allow an official acknowledgment of what occurred. It assists to restore the dignity of victims by allowing them to see that the state recognises their suffering and is assisting them. Reparations also should have an effect on levels of impunity. It can also play a dissuasive role by ensuring that perpetrators see that they may be responsible for their actions and thus have a deterrent effect.

Reparations can assist the process of grieving. It can assist in processes of recovery by ensuring that people focus on their grief. It can have this effect as victims are taken up by the processes, which aids in healing.

There are many component parts of reparations. These include individual and collective, symbolic and material. There are also reparations to be granted on a once-off basis or continually.⁴⁸ Each of these will be discussed and what they could contain in the Ugandan context.

5 Reparations in international law

Paying reparations for past human rights abuses has been recognised as a principle of international law for many years.⁴⁹ The right to reparations has also been recognised for a long time.⁵⁰ The Permanent Court of International Justice (PCIJ) in 1928 noted that 'reparation must, as far as possible, wipe out all consequences of the

44 See further S Vandeginste 'Reparation' in D Bloomfield *et al* (eds) *Reconciliation after the violent conflict: A handbook* (2003) 145-162.

45 B Hamber 'Narrowing the micro and macro: A psychological perspective on reparations in societies in transition' in De Greiff (n 40 above) 578.

46 As above.

47 P de Greiff 'Reparation efforts in international perspective: What compensation contributes to the achievement of imperfect justice' in E Doxtader & C Villa-Vicencio (eds) *To repair the irreparable: Reparation and reconstruction in South Africa* (2004) 321.

48 OHCHR *Rule-of-law tools for post-conflict states: Reparations programmes* (2008).

49 M du Plessis & S Pete *Repairing the past? International perspectives on reparations for gross human rights abuses* (2007).

50 D Shelton *Remedies in international human rights law* (2005) 60.

illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'.⁵¹ In the years after World War II, the practice of providing reparations has evolved dramatically. There is a consciousness that the numerous human rights abuses, including war crimes, crimes against humanity, genocide, disappearances, torture, and other violations of human rights, need to be addressed, and reparation is one way of doing so.⁵²

The right to reparations is now contained in a range of human rights treaties.⁵³ Several of these instruments require state parties to the relevant instrument to afford 'effective remedies' for acts violating human rights, or to provide for the 'right to be compensated' where acts have occurred that violate fundamental rights.⁵⁴ Such instruments include the Universal Declaration of Human Rights (Universal Declaration) (article 8); the International Covenant on Civil and Political Rights (ICCPR) (articles 2(3)(a), 9(5) and 14(6));⁵⁵ and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 14(1) of CAT states:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

Uganda is a state party to several of the key international and human rights and humanitarian law treaties that incorporate victims' rights to remedy and reparations for serious violations. Uganda has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1980); ICCPR (1995); the International Covenant on Economic, Cultural and Social Rights (ICESCR) (1987); the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1985); CAT (1986); the Convention on the Rights of the Child (CRC) (1990); the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2002); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1995); and the Convention on the Rights of Persons with Disabilities (2008). Uganda signed the International Convention for the Protection of All Persons from

51 PICJ case concerning the factory at Chorzow, 1927 PCIJ (Ser A) No 9

52 I Bottiglieri *Redress for victims of crimes under international law* (2004).

53 M du Plessis 'Reparations and international law: How are reparations to be determined (past wrong or current effects), against whom, and what form should they take?' (2003) 22 *Windsor Yearbook of Access to Justice* 41-69.

54 J Edelstein 'Rights, reparation and reconciliation: Some comparative notes' Seminar paper 6 Johannesburg: CSV, 27 July 1994 2-4.

55 E Klein 'Individual reparation claims under the International Covenant on Civil and Political Rights: The practice of the Human Rights Committee' in A Randelzhofer & C Tomuschat (eds) *State responsibility and the individual: Reparation in instances of grave violations of human rights* (1999) 27.

Enforced Disappearance in 2007. Uganda acceded to the Rome Statute of the International Criminal Court, and domesticated it in 2010.⁵⁶ Reparations will also be relevant for Ugandan victims from the International Criminal Court (ICC)⁵⁷ if those indicted by the Court stand trial and are found guilty, as reparations are then provided by the ICC Trust Fund.⁵⁸ Already the Trust Fund is engaged with certain projects in Uganda.

The right to reparations is also contained in a range of regional human rights instruments and mechanisms. It is found in international humanitarian law and international criminal law, and in various constitutional provisions in a number of countries around the world. However, the most important text dealing with reparations is the 2005 UN Basic Principles and Guidelines on Remedy and Reparations, which now sets the international standard for the provision of reparations around the world.⁵⁹ Although these Principles are soft law, they are seen to be the principles that states ought to comply with as far as reparations are concerned. They elucidate the basic standards applicable internationally and domestically for reparations. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law was adopted by the UN General Assembly in 2005.

The Basic Principles and Guidelines establishes state responsibility for the provision of reparation to victims. It provides that states are responsible for human rights violations even if perpetrated by non-state actors. The basis in law for the responsibility of states for human rights violations in any case flows from a breach of a human rights instrument or for violating a norm of customary international law.⁶⁰ While states have responsibilities to protect, respect, fulfil and promote human rights, the question of whether a state is obligated to provide reparations for violations committed by others has, at times, been controversial. However, a variety of institutions have found that states are possibly liable for the activities of non-state role players in

56 ICC Act of 2010.

57 A di Giovanni 'The prospect of ICC reparations in the case concerning Northern Uganda: On a collision course with incoherence?' (2006) 25 *Journal of International Law and International Relations* 27.

58 On the role the Court could play in Uganda, see J Sarkin 'Enhancing the legitimacy, status and role of the International Criminal Court by using transitional justice or restorative justice strategies' (2011-12) *Interdisciplinary Journal of Human Rights Law* 83-102. The first decision by the ICC awarding reparations to victims was the *Lubanga* decision in 2012, *Prosecutor v Thomas Lubanga Dyilo*, judgment pursuant to art 74 of the Statute, ICC-01/04-01/06, TCh I, 14 March 2012.

59 Adopted by the UN General Assembly in December 2005, published on 21 March 2006, A/RES/60/147.

60 Shelton (n 50 above); C Rose 'An emerging norm: The duty of states to provide reparations for human rights violations by non-state actors' (2010) 33 *Hastings International and Comparative Law Review* 307.

various circumstances, even if the state had no role in the violation.⁶¹ Nonetheless, as a state has a duty to prevent others from committing violations, in other words a duty to protect, it is responsible where it does not do so even if it cannot. Thus, the African Commission on Human and Peoples' Rights (African Commission) has held in circumstances applicable to the situation that occurred in Uganda:⁶²

Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

Thus, state responsibility is the obligation of a state to make reparation when it has not complied with a requirement placed on it by international law. Thus, the International Law Commission has noted that states discharge their responsibilities for a breach of an international obligation by making good the harm by providing reparation for the injury caused.⁶³ Various other institutions, including the UN's Human Rights Committee and the Inter-American Court of Human Rights, have developed substantial jurisprudence on reparations and state responsibility, which provides that states are obligated in many circumstances to provide reparations.⁶⁴ The Basic Principles therefore provide that the state should establish a national programme for reparations. It is also provided that reparation ought to be provided in proportion to the gravity of the violation.

Uganda is a state party to the African regional human rights instrument, the African Charter on Human and Peoples' Rights (African Charter). The African Charter has been interpreted in a number of cases to provide for the right to reparations. In 1995, in the case of *Embaga Mekongo v Cameroon*,⁶⁵ the African Commission held that the victim who had complained to the Commission was entitled to reparations for the prejudice he had suffered, but that the valuation of the amount of such reparations should be determined in accordance with the laws of Cameroon.⁶⁶ In *Malawi African*

61 See further M Ssenyonjo 'Accountability of non-state actors in Uganda for war crimes and human rights violations: Between amnesty and the International Criminal Court' (2005) 10 *Journal of Conflict and Security Law* 405. See also Rose (n 60 above) 307.

62 *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995) para 22.

63 Text and Commentary Article 6 *bis*, Part Two, in Report of the International Law Commission on the work of its 45th session, 3 May-23 July 1993, General Assembly, Official Records, 48th session, Supplement 10 (A/48/10) 143.

64 N Roht-Arriaza 'Reparations decisions and dilemmas' (2003-2004) 27 *Hastings International and Comparative Law Review* 157-220.

65 (2000) AHRLR 56 (ACHPR 1995).

66 As above.

Association & Others v Mauritania, the African Commission ordered remedies against the state of Mauritania.⁶⁷ Along with other remedies, the Commission ordered the Mauritanian government to pay compensatory benefits to the widows and other dependents of the victims.⁶⁸

As for dealing with the violation of women's and girls' rights, noted above, various documents are important. In the African context, and applicable in the Ugandan context, is the Nairobi Declaration on Women's and Girls' Right to Reparations.⁶⁹ There is also the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) that ensures that women are provided with reparations (article 4). It also obligates the state to design processes that increase the participation of women in the development, preparation and implementation of reconstruction and rehabilitation practices (article 10).

Thus, the legal basis for reparations for victims of human rights and humanitarian abuses is well established and has been applied in a number of situations.

6 Reparations in Uganda

The Ugandan Constitution of 1995⁷⁰ in article 50 notes that '[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 Agreement on Accountability and Reconciliation agreed to in 2006 by the government of Uganda and the LRA contains various principles for transitional justice processes, including the right to reparations. It recognises individual and collective reparations measures in various forms. It finds that reparations shall not occur in one form only and that formal and alternative justice mechanisms require reparations. It prioritises reparations for vulnerable groups, with special requirements for the handling of women and children, and calls for the active and significant participation by victims in all processes. The Agreement provides that the government is liable for reparations for victims. The Agreement also provides that the government must work out a reparations policy and then implement it.

67 (2000) AHRLR 149 (ACHPR 2000); S Gumedze 'Bringing communications before the African Commission on Human and Peoples' Rights' (2003) 3 *African Human Rights Law Journal* 118-148.

68 *Malawi African Association & Others v Mauritania* (n 67 above).

69 C Valérie 'The Nairobi Declaration: Redefining reparation for women victims of sexual violence' (2007) 1 *International Journal of Transitional Justice* 444.

70 HB Hansen & M Twaddle (eds) *From chaos to order: The politics of constitution making in Uganda* (1996).

The Implementing Protocol to the Agreement on Comprehensive Solutions, agreed to during the peace talks in 2007 between the government and the LRA, identified the government of Uganda as responsible for meeting the reparations needs of victims. It also provided that the Ugandan government shall develop and implement a policy for the support and rehabilitation of the victims of the conflict. In 2010, Ugandan President Yoweri Museveni undertook to pay monetary compensation to victims of the war between the LRA and the government.⁷¹ Victims have also filed suit against the government for reparations which, together with the lack of a legal framework for the delivery of reparations that have been claimed, are the reasons for the delay of the provision of reparations.⁷²

As far as developing a transitional justice process is concerned, in 2008 the Ugandan Justice and Law and Order Sector (JLOS), a cross-government department body, responsible for moving justice issues forward, but also for dealing with the past, established the Transitional Justice Working Group (TJWG). This was done to ensure the implementation of the provisions of the Juba peace agreements.⁷³ The TJWG has been entrusted with developing a transitional justice policy for the country. It has embarked on a process to study and understand attitudes and positions on transitional justice mechanisms, including reparations mechanisms and needs. A number of processes have occurred and studies undertaken to determine the views of victims on the issues of transitional justice and reparations in particular. The Office of the High Commissioner for Human Rights (OHCHR) in Uganda issued its first thematic report on transitional justice, *Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda*.⁷⁴

In the report *The Dust Has Not Yet Settled*, the OHCHR conducted research amongst victims. One thousand seven hundred victims were surveyed on their views of justice, reconciliation and other transitional justice options for the country. The research indicated that victims saw reparations and truth as the most important processes that were needed to compensate the violations that they had suffered.

On 25-27 July 2012, JLOS and the Uganda Human Rights Commission convened a workshop on Reparations Policy and Programming. The purpose of the workshop was to assist the development of a reparations component of the National Transitional

71 IRIN News 'Uganda: LRA victims rap compensation delay' 13 July 2012 <http://www.irinnews.org/report/95638/uganda-lra-victims-rap-compensation-delay> (accessed 19 February 2014).

72 As above.

73 M Otim & M Wierda 'Justice at Juba: International obligations and local demands in Northern Uganda' in N Waddell & P Clark (eds) *Courting conflict? Justice, peace and the ICC in Africa* 21.

74 OHCHR 'Making peace our own: Victims' perceptions of accountability, reconciliation and transitional justice in Northern Uganda; 14 August 2007 <http://reliefweb.int/report/uganda/making-peace-our-own-victims-perceptions-accountability-reconciliation-and> (accessed 20 February 2014).

Justice Policy. The workshop built on the findings and recommendations of various JLOS reports, including the National Report on Traditional Justice, Truth-telling and Reconciliation, which found that a reparations policy and programme was needed for Uganda. The workshop followed a February 2012 Reparations Conference hosted by the Uganda Human Rights Commission, OHCHR and UNWomen. Thus, there have been a number of processes and studies focusing on reparations and the needs of victims in Uganda.

6.1 The types of reparations that could be given to victims in Uganda

This section of the article considers the types and kinds of reparations that can, and should be, awarded in the Ugandan context.

The first part of this section considers the categories of reparations, including compensation, guarantees of non-restitution, rehabilitation, restitution and satisfaction. The second part of this section examines urgent/interim reparations, collective and individual, and symbolic and material types of reparations, what they are and why they ought to be granted in Uganda. What has been done in a variety of other countries is also examined, to see what lessons can be learnt and applied in the Ugandan context.

6.2 Categories of reparations

There are various kinds of reparations that ought to be awarded. These include: *Compensation* is often used to describe money that is granted to a victim by a court or other institution for injury that has been caused.⁷⁵ Compensation is given for economically-quantifiable impairment brought about by human rights violations, including bodily injury, emotional distress, pain, suffering, lost prospects, that include education, impairment to a person's property or their business. This can include lost profits, injury to reputation, loss or impairment of dignity, reasonable legal fees and other costs associated with getting expert assistance to attain the remedy.⁷⁶ Compensation is aimed at ensuring that victims can deal with the financial aspects of their loss.⁷⁷ Individual financial allocations assist in bringing speedy financial respite to victims and allow them to obtain their basic needs. In many cases, monetary reparations in the form of monthly payments are essential for the victim's survival. There are various kinds of compensatory damages.

- nominal: a small amount of money awarded to symbolise the vindication of rights;

75 Sarkin (n 11 above) 24.

76 Adopted by the UN General Assembly in December 2005, published on 21 March 2006, A/RES/60/147.

77 R Mani 'Reparation as a component of transitional justice' in De Feyter *et al* (n 15 above) 67.

- pecuniary: amounts aimed at representing the best possible monetary amount that equates best to the loss or harm suffered;
- moral: compensation for dignitary violations, including fear, humiliation, mental distress or harm to a person's status or dignity; and
- punitive: an amount that aims not to punish but to deter others from committing other such acts.

These can be a one-time cash payment or may be several payments over time. It may be an initial cash payment followed by a pension according to fair criteria. This could occur along these lines in Uganda. Obviously, the amount to be given would be determined by the number of victims and the resources available.

Restitution is the return of the situation to what was the case before the harm was caused.⁷⁸ It is about returning what has been lost, for instance, documents (identity cards) and land. Restitution is aimed at re-establishing the situation, as best as is possible, to the circumstances that was prevailing before the human rights violations occurred. For this to be done in Uganda, a survey would need to be undertaken of what is needed. Some processes would be easier than others, such as documents that need to be replaced. The land issue would be more complex and be much more costly. However, these should not be barriers to this being done.

Rehabilitation. The right to attain redress also comprises the means to as complete rehabilitation as possible.⁷⁹ This includes legal, medical, social, psychological care and other services. It also includes measures to restore the dignity and reputation of victims. A reparation programme should also take into account gender issues and be cognisant of the needs of women.

Guarantees of non-repetition. Reparations are not only about specific transitional justice issues, but also about a broader set of issues, including democracy, good governance, and so on. Reparations are also about building an inclusive political community. It includes recognition, acknowledgment of violations and state responsibility. It can contribute to structural transformation. Reparations are not only financial in nature. States should implement various legislative and other processes to allow victims to claim compensation. The guarantee against non-repetition requires an end of the abuses and violations in order to close the book of the past and to start the healing process. If violence or the threat of violence continues there will be no confidence in the state and its authorities. The concept of a guarantee against repetition can be seen within the values of restorative or transitional justice. Some form of guarantee against the repetition of an offence is necessary before the process of healing for all parties can begin. To ensure non-repetition, a state must implement steps not just to remove the continuing instances of the

78 Sarkin (n 11 above) 24.

79 As above.

human rights violations, but must work to remove the conditions that led to the violations to occur. This will attempt as far as is possible to ensure that similar events do not occur again in the future.

The government should therefore expend significant resources and energy on demilitarisation and reintegration programmes, including for children. This should include both material assistance to help people relocate from place to place and to allow the establishment of homes again, as well as psychological assistance to help the returnees and ex-combatants reintegrate into the daily life of the community and to help the villagers accept the returnee. These programmes will differ, depending on a number of variables: whether there are a significant number of returnees to a particular locale or just a few; whether the returnee was a victim, a perpetrator, or both; whether the village is open or not to the person's return; whether the returnee is a child or an adult; whether there is a family within the village willing to assist in the reintegration process, among other things. The process of non-repetition should also ensure that there is effective oversight of the military and the security forces in general, limiting the jurisdiction of military tribunals at the expense of civil courts, and working to strengthen and capacitate the independence of the courts. It must also mean working to promote and protect the legal profession as well as human rights defenders and ensuring that human rights education and training are provided to the society as a whole, particularly to the forces.

In reality, all issues concerning the prevention and rebuilding are to try and guarantee the non-repetition of human rights violations.

Satisfaction as a human rights remedy includes the stopping of the violence and the halting of continued violations.⁸⁰ One possible guarantee against repetition is institutional change. This can take the form of the establishment or restoration of rights, the creation of new types of institutions, the return of land or belongings or the establishment of processes of restitution. Officers of state institutions need to be taught the principles of human rights and their need to desist from torture and cruel, inhumane and degrading treatment. They also need to be shown what the consequences will be should they fail to desist from carrying out such practices. As a means to check impunity, and to safeguard against the possibility that future violations will occur, there is a need to effectively and with vigour prosecute and discipline those perpetrators of human rights abuses in the employ of the state. Even those who have retired ought to be prosecuted. A vetting process also ought to be embarked upon to ensure that the security forces do not contain individuals who have committed past offences and to ensure suitability for continued service. Various measures to strengthen good governance, anti-corruption and the rule of law ought to be adopted, and methods adopted to ensure the full and effective functioning of all state

80 As above.

institutions. All security forces should have effective and independent civilian oversight. Assistance can include the rebuilding of schools and community centres to training and hiring programmes to provide free psychological counselling and medical assistance.

6.3 Methodology and types of reparations

The process to provide reparations in Uganda should be done in phases and with various types of reparations being provided. Those in dire, urgent, emergency need ought to be assisted as quickly as possible. This is considered below. In the longer term, a combination of individual and collective, material and symbolic is a useful methodology to consider.

The crucial issue is how much will be allocated to each of the various components. How much will be allocated to the loss of livestock, or the restoration of land rights? That needs to be determined in relation to the amount to be allocated to those who suffered mental and physical harm. The question of individual versus collective must also be looked at. A hand-out of \$100 might not have long-term benefits, so is there a better way to achieve impact and sustainability? Reparations should be premised on the economic transformation of victims so that they can endure the worst consequences of the violations. For cash, there ought to be an assessment on how much it will have for the victims. Access to land as a form of reparation may be easier and have longer term sustainability. Land reform and reparations could go hand in hand. It is important to remember that land in much of Uganda is customarily owned. Therefore, it would be practical for reparations to take into account these actualities and, therefore, it would be easier to deal with these matters.

Regardless, these issues need to be dealt with in Uganda as there have been land disputes in the war-affected areas which are largely attributed to issues of demarcation of boundaries, ownership and usage.⁸¹ These ought to be dealt with to avoid future conflict.

6.3.1 Urgent or emergency reparation

Urgent or emergency reparations should be paid out quickly and seamlessly to those in desperate situations in Uganda. In South Africa, the reparations process gave interim reparations for emergency medical and psycho-social care.⁸² What is most important is that medical rehabilitation is provided and the needs are addressed. It will take much longer for a whole-scale reparations process to be implemented and thus immediate programmes can be implemented. This programme should be developed quickly for individuals in dire

81 J Vaughan & T Stewart *Land disputes in Acholi: A conflict and market assessment* (2011) 4.

82 E Daly 'Reparations in South Africa: A cautionary tale' (2003) 33 *University of Memphis Law Review* 367.

need, to provide them the services and facilities they need as quickly and appropriately as possible. Funding should be made as quickly and fettered by as few bureaucratic obstacles as possible to facilitate easy access. Physical and mental health should be prioritised. Legal aid could also be provided in communities, in particular for land conflicts⁸³ which are emerging as people return home. It would provide basic legal advice and support to communities on land issues so as to prevent conflict. This process could also include education for young children and community dialogues.

The critical issue is to provide support for those in dire need. Categories of need could be established to determine who is covered. Certainly a range of health needs should be covered as well as categories of persons who need this kind of reparation, such as children, those in critical need of medical attention, the elderly, those severely affected by certain types of trauma, and so on.

6.3.2 Individual reparation grants

It is frequently difficult for the state to provide direct financial compensation to every victim commensurate or proportional to what they suffered. Governments often have limited resources.⁸⁴ There are also many competing demands for the resources of the state. However, each individual victim of a gross human rights violation ought to receive a pecuniary amount that is fairly determined on the basis of various published, transparent and credible criteria.

Such criteria should take into account the actual nature and extent of atrocities committed. For example, numerous victims were repeatedly abused.⁸⁵ Women and girls were sexually abused in horrific ways which have had a dramatic effect on their lives.

The amount ought to be paid to the person possibly over a period of time, possibly a number of years, either as a grant or a pension. As far as levels of reparations are concerned, the South African Truth and Reconciliation Commission (TRC) proposed a six-yearly grant of US \$2 700 per year.⁸⁶ However, the state decided to make a once-off payment of about US \$4 000. It did this by using the average annual household income in South Africa for a family of five people. The difference between what the TRC had offered and what the government paid caused a great deal of resentment. It should be remembered that in the United States in the 1980s, the state provided US \$20 000 per person to the Japanese-Americans who were interned

83 DI Abu-Lughod 'Failed buyout: Land rights for contra veterans in post-war Nicaragua' (2000) 27 *Latin American Perspectives* 32.

84 S Vandeginste 'Legal norms, moral imperatives and pragmatic duties: Reparation as a dilemma of transitional governance' in Doxtader & Villa-Vicencio (n 47 above) 88.

85 T Olsen 'Violence against civilians in civil war: Understanding atrocities by the Lord's Resistance Army in Northern Uganda' Working Paper 8 (2007).

86 Sarkin (n 5 above).

during World War II. Brazil gave US \$100 000 to the families of those who had died in police custody. Chile offered a monthly pension. Thus, comparative amounts paid ought to be looked at, but which amounts are seen to be appropriate will have to be domestically assessed. The danger is that the amounts promised are not delivered. Thus, consulting and determining the appropriate amount need to be carefully done.

In many states large amounts have been paid to victims. In Chile, the state has paid thousands of families over US \$5 000 per year in reparations;⁸⁷ in Argentina, the state committed three billion dollars in such payments.⁸⁸ In Czechoslovakia, the government spent US \$840 000 000 for reparation programmes;⁸⁹ in Hungary, US \$10 000 was paid to the victims for loss of life; and in Germany, over \$100 billion was paid in cash to victims and to families of those killed in the Holocaust.⁹⁰ Germany considered itself liable to provide such assistance even to people mostly no longer living in Germany.⁹¹ It instituted one of the most far-reaching and comprehensive reparations programmes, enacted restitution laws and indemnification laws.

In Ghana, reparation payments ranged from about US \$217 to US \$3 300 per person. The amount paid by the state depended on the extent of the violation. These were paid after the National Reconciliation Commission (NRC) recommended payments to thousands of Ghanaians who suffered abuse.⁹²

In Sierra Leone, over 30 000 victims have been registered for reparations and each victim has received on average about US \$80.⁹³ Hundreds of victims have also received surgery and other types of emergency treatment. Reparations have also been recommended in Kenya by that country's Truth, Justice and Reconciliation Commission (TJRC) in its report of May 2013. Reparations are being discussed in Togo and other African countries that have been dealing with their past as well.

These are important lessons for Uganda. It is clear that Uganda needs to provide reparations, but the types and amounts must be

87 P Hayner *Unspeakable truths: Transitional justice and the challenge of truth commissions* (2010) 180.

88 JM Gueembe 'Economic reparations for grave human rights violations: The Argentinean experience' in De Greiff (n 40 above).

89 Law 24, 411, Argentina 7 December 1994.

90 Sarkin (n 10 above).

91 MR Rwelamira & G Werle (eds) *Confronting past injustices: Approaches to amnesty, punishment, reparation and restitution in South Africa and Germany* (1996).

92 UN IRIN Humanitarian News and Analysis GHANA 'Reparations for victims of human rights abuses' 17 October 2006 <http://www.irinnews.org/report/61353/ghana-reparations-for-victims-of-human-rights-abuses> (accessed 30 September 2014).

93 Reliefweb Sierra Leone 'Victims receive compensation' 26 June 2012 <http://reliefweb.int/report/sierra-leone/sierra-leone-victims-receive-compensation> (accessed 30 September 2014).

appropriate to the Ugandan context. However, Uganda's lack of resources must not be used as a reason to delay or not implement a reparations process, as can be seen in other African countries where relatively small amounts have at times been paid.

6.3.3 Material and symbolic reparations

While material and symbolic reparations are often seen to be opposite ends of the spectrum with states providing one or the other, it is useful for a comprehensive programme to contain aspects of both. While Uganda may be tempted to provide symbolic reparations as the main vehicle for reparations, material reparations also ought to be provided.

Victims and their families in Uganda should be eligible to receive material compensation for the suffering they have had to endure. Compensation needs to be 'adequate', in other words it should be proportional to the gravity or seriousness of the human rights violation and the suffering that the victims and their families had to endure. The determination of proportionality to the gravity of the violation is, however, extremely complex, taking into account the nature and extent of atrocities committed. For instance, what proportional material compensation should be awarded to children whose parents were killed during the conflict, child soldiers, victims of mutilations, individuals who were sexually abused using objects, and victims of multiple atrocities? Will the determination of such compensation factor in issues of intent, the remorse of the perpetrator, or other issues? It may be more realistic to emphasise that reparations may not necessarily be proportionate to the violations, but they should contribute towards healing and restoration.

Nonetheless, monetary or pecuniary compensation should be provided for any damage that resulted from a violation. The standard for material reparations must ensure that the result is to transmit dignity and inclusion. Measures must be enough to put one in a socio-economic situation which is similar to one's neighbours. It must be specific for victims and not just for everyone.

In Uganda, material support should include, under individual reparations programmes, the setting of a minimum threshold of compensation for victims. A system should be built which addresses more specific situations for people who have medical needs and whose children cannot go to school, have physical deformities, and rehabilitation and psycho-social support.⁹⁴ Livestock wealth must, therefore, be taken into account in addition to cash distribution. A committee could be set up at the local level. One person could handle medical treatment, another person the follow-up and settlement, and another psycho-social support.

94 E de Temmerman *Aboke girls: Children abducted in Northern Uganda* (1995).

Symbolic reparations are measures designed to assist communities as a whole to deal with the process of remembering and commemorating the past.⁹⁵ It is about establishing things such as national holidays in memory of events and victims, and sending personal letters from the state to as many of the victims as a means of symbolic reflecting on the problems of the past. There can also be the renaming of schools, buildings, streets and airports after events or victims. Memorials, such as monuments and plaques, should be erected. Certain prisons and military bases closely associated with the conflict should also be either renamed or closed. It is also about the issuing of death certificates, expunging criminal records, and expediting outstanding legal matters. In various countries, for example, a number of towns, schools, streets and universities bear the names of political figures that were tortured or killed. Monuments bearing the names of those killed could serve to draw a nation together.⁹⁶ Symbolic reparations can include a letter of apology signed by the highest authority in government, supporting families to give proper burials and renaming streets and public spaces in a public and transparent process. Other measures can include erecting museums and other places of memory,⁹⁷ and establishing national days commemorating various events. A truth commission can also assist.⁹⁸ Public gestures, such as by the President and other state officials endorsing the programme, will make it more legitimate and acceptable. Offering an apology is a vital starting point in achieving long-lasting reconciliation.⁹⁹ The apology must entail some expression of sorrow and regret. Dialogue is an important part of this process and, while it does not have to focus solely on the concept of guilt, it does have to include some recognition of past injurious behaviour, acceptance of responsibility and a commitment to the pursuit of justice and truth. To be effective, an apology must be more than a mere political act – it has to be believed to be genuine and sincere. An apology can be given in a public ceremony or by some official declaration. Thus, in Chile, when President Aylwin accepted his country's TRC report, he not only 'offered a formal apology on behalf of the government for the acts of its agents and begged for forgiveness from families of victims', but he also promised 'reparations and special benefits for them'.¹⁰⁰

95 B Hamber & R Wilson *Symbolic closure through memory, reparation and revenge in post-conflict societies* (1999).

96 L Fernandez 'Possibilities and limitations of reparations for the victims of human rights violations in South Africa' in Rwelamira & Werle (n 90 above) 74.

97 B Hamber *et al* 'Utopian dreams or practical possibilities? The challenges of evaluating the impact of memorialisation in societies in transition' (2010) 4 *International Journal of Transitional Justice* 397.

98 Mutua (n 7 above) 401.

99 S Engerman 'Apologies, regrets, and reparations' (2009) 17 *European Review* 593.

100 Quoted in E Knight 'Facing the past: Retrospective justice as a means to promote democracy in Nigeria' (2003) 35 *Connecticut Law Review* 867.

The fact that a state refuses to apologise can have dramatic effects. This can be seen, for example, in the resulting problems that have been caused between various Asian countries because of Japan's minimalist apology concerning the use of comfort women¹⁰¹ from countries they occupied during World War II. Their refusal to grant reparations to these women has exacerbated the ill feeling that exists on the matter.

Thus, there is much that Uganda can do. It should embark on a holistic process that contains many such steps and measures. A presidential apology, for example, would be a dramatic and useful step in the process of healing. Embarking on a range of other acts and procedures would help to deal with the past. Entrenching Uganda's democracy is also important. Doing so would similarly be a type of reparation.

7 Collective programmes

Reparations can be used as a means to tackle a range of broader societal aims, such as reconciliation and reconstruction. This is very relevant in the Ugandan context. Reparation processes can assist in rebuilding civic institutions, and in reforming various structures in the country.¹⁰² Thus, adopting rehabilitation programmes and adopting means to achieve satisfaction can be useful devices to achieve transformation and entrench Uganda's democracy as well as assisting in developing a human rights culture in the country. Such a notion of reparations can usefully address various innate restrictions that come with a process that emerges from the courts or even one that sees a society not only as individuals, but also as a collective, particularly in Uganda where the community is a vital part of the way that the society operates. In this way reparations programmes would be future looking, and would contain wider communal goals, including nation building, reconciliation, reconstruction and a range of other broader objectives. Reparations can therefore in Uganda be conceived of more broadly to provide classes of victims with reparation packages. Such a notion of recompense can deal with some of the limitations of an entirely judicial approach to reparations. However, such an approach has drawbacks. It de-emphasises fact finding, there is a lack of effective punishment for perpetrators, and a reduced opportunity for victims to fully and publicly recount their stories. Impunity is

101 See T Yu 'Comment, recent development: Reparations for former comfort women of World War II' (1995) 36 *Harvard International Law Journal* 528; T Tree 'Comment, international law: A solution or a hindrance towards resolving the Asian comfort women controversy?' (2000) 5 *UCLA Journal of International Law and Foreign Affairs* 461 466-468; and K Park 'Comment, the unspeakable experience of Korean women under Japanese rule' (2000) 21 *Whittier Law Review* 567.

102 See further for Uganda JR Quinn 'Social reconstruction in Uganda: The role of informal mechanisms in transitional justice' (2007) 8 *Human Rights Review* 173.

enhanced when such measures become the major process that is pursued. The challenge is therefore on the government of Uganda to develop mechanisms that will actually help individuals recover from the effects of human rights violations but not undermine other efforts to obtain truth, justice and reconciliation.

Thus, the question of individual versus collective reparations in Uganda must also be looked at. Again, it is not an 'either or' situation but, to get the best of a reparations programme, it makes sense to have components of both. Collective reparations are designed to assisted groups who have suffered violations. The group to be considered should be the whole country, the various regions and especially the northern region, and communities all over the country. As has been noted:¹⁰³

Collective reparations can also be formulated as a way of simplifying delivery of reparations either in the contexts of practical limitations or of concerns about drawing too stark a line between classes of victims or between victims and non-victim groups ... Collective reparations avoid the potentially disruptive effect individual payments can have on communities.

Thus, collective reparations could be useful as particular areas and particular groups have suffered. Such processes have occurred in a number of countries. These provide lessons for Uganda.

In Peru, the reparations process provided US \$36 000 for each community. This process funded infrastructure projects, providing jobs and expanding education, health and electrification needs. A five-person local committee oversaw projects.

In Aceh, Indonesia, US \$5 000 to US \$14 000 was given per village. A large percentage was spent on seeds and cattle. It also saw payments that included between US \$200 and US \$300 a year to families of those who had died or gone missing. Various services were provided, including housing, health and education.

In Morocco, collective reparations programmes focus on regions particularly affected by political repression. The community reparations programme has a developmental aspect to it to assist the affected areas and is designed to redress the harm suffered in those areas and deal with the needs of the people living in those areas. There is also a symbolic aspect to the collective reparations process, by dealing with issues of memorialisation and other such issues.

Various programmes have occurred in Uganda, but more needs to be done. Already, in 2007, the Ugandan government launched a US \$606 million Peace, Recovery and Development Plan (PRDP) in the northern parts of the country. It aimed at co-ordinating all post-LRA development initiatives. There could be a range of programmes. Some could, for example, assist former child soldiers who had been

103 L Magarrell *Reparative justice series: Reparations in theory and practice* (2007) 6.

involved in violence,¹⁰⁴ including girls.¹⁰⁵ While there have been difficulties finding funding to date in dealing with these issues,¹⁰⁶ the pasts of these child soldiers¹⁰⁷ continue to affect their futures,¹⁰⁸ and assistance is needed to ensure the reintegration of the thousands affected by the violence.¹⁰⁹

8 Conclusion

A reparations process ought to be implemented in Uganda in stages, with interim or emergency relief being given to those who need it in the short term. Longer term and full reparations can then be given at a later stage, possibly after a truth and reconciliation process. This process should make full and comprehensive recommendations on a reparations process and its methodology.

A three-step process is thus recommended for Uganda: (i) urgent or interim reparations in the short term; (ii) a truth-seeking mechanism which, in addition, provides recommendations on reparations in the medium term; and (iii) a full and comprehensive reparations process instituted with a diverse and wide set of parameters in the medium and long term.

Various types of reparations ought to be awarded, including urgent/interim reparations, collective and individual, and symbolic and material types of reparations. Within these types, all kinds of different reparations ought to be given to individuals and communities.

These processes should begin as soon as possible. The many victims in Uganda are entitled to such processes and certainly deserve reparations. Uganda's peaceful future is dependent on such processes being done in a democratic and comprehensive way, learning the lessons from other countries that have embarked on similar journeys. The models of other countries should not be merely cut and pasted, but adopted taking due regard to the particularities of the Ugandan situation. Uganda's resource limitations, and its democratic situation, should not be used as a means to avoid tackling these sensitive and

104 H Haider 'DDR and transitional justice' GSDRC Helpdesk Research Report, 2011, Governance and Social Development Resource Centre, Birmingham, UK.

105 On girl child soldiers in Uganda, see S McKay & D Mazurana *Where are the girls? Girls in fighting forces in Northern Uganda, Sierra Leone and Mozambique: Their lives during and after war* (2004).

106 IRIN News 'Uganda: Lack of funding stalls ex-combatants reintegration' 18 June 2012 <http://www.irinnews.org/report/95672/uganda-lack-of-funding-stalls-ex-combatants-reintegration> (accessed 20 February 2014).

107 P Eichstaedt *First kill your family: Child soldiers of Uganda and the Lord's Resistance Army* (2009).

108 V Achvarina & S Reich 'No place to hide: Refugees, displaced persons and the recruitment of child soldiers' (2006) 31 *International Security* 127.

109 L Hovil & M Chrispus Okello *Only peace can restore the confidence of the displaced* (2006).

politically-powerful issues. Leadership is needed to move these issues forward. All sectors of Ugandan society have key roles to pressurise the state to advance these matters. The international community can and should also play its part.