

Reparations, Responsibility

 Victimhood in Transitional Societies

FROM TRUTH TO REPAIR:

Implementing Truth Commissions' Recommendations On Reparations

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1. Introduction*

Truth commissions have been adopted in more than fifty countries since they were first used in the 1970s and 1980s by Uganda, Bolivia and Argentina.¹ Truth commissions have been a key mechanism to investigate and document past violations as well as to offer recommendations for a better future to assist in transitioning societies away from the recurrence of atrocities.² Since the 1990s there has been an increasing emphasis on the need for multifaceted, comprehensive transitional justice measures to effectively deal with impunity and the consequences of mass violence.³ It is no longer considered effective to only conduct truth commissions and not consider how they are connected to other transitional justice mechanisms. Instead there is increasing discussion of a comprehensive package of measures that complement each other. Each of the areas of transitional justice – truth, justice, reparations, amnesties, guarantees of non-recurrence and to a certain extent demobilisation, disarmament and reintegration (DDR) – have their own particular focus, benefits and limitations. Although such measures can be complementary, there can also be overlap and tension between them, such as when trying to carry out prosecutions while at the same time seeking to secure truth, which requires careful crafting of social, political, economic and legal factors to avoid derailing the transition itself. A related emergent theme in transitional justice scholarship concerns the sequencing of transitional justice institutions, with the suggestion that there may be optimal combinations and optimal timings to commingle transitional justice institutions and mechanisms.⁴

This report concentrates on truth commissions and reparations; it will mainly address the connection between these two measures.⁵ Truth commissions and reparations, to a certain extent, have a mutual relationship through which they can complement and reinforce one another's goals in acknowledging the atrocities of the past, building social inclusion and trying to vindicate victims' suffering.⁶ The first part of this report outlines the relationship between these two mechanisms, drawing upon different examples of how recommendations for reparations are constructed by truth commissions and their justification. The second part of this report discusses the role of victims in truth commissions. The third part analyses the implementation of reparation recommendations, finding that in most cases states fail to follow through, or only

* This report is based on a chapter written by L. Moffett on 'In the Aftermath of Truth: Implementing Truth Commissions' Recommendations on Reparations - Following Through for Victims', in J. Sarkin (ed.), *The Global Impact and Legacy of Truth Commissions*, Intersentia (2019), 143-168. It draws from research collected from the UK Arts and Humanities Research Council funded project 'Reparations, Responsibility and Victimhood in Transitional Societies' (AH/P006965/1), <https://reparations.qub.ac.uk/>

- 1 P. HAYNER, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Routledge (2011).
- 2 R. Teitel, 'Transitional Justice Genealogy' (2003) 16(1) *Harvard Human Rights Journal* 69.
- 3 D. Orentlicher, Independent study on best practices, including recommendations, to assist states in strengthening their domestic capacity to combat all aspects of impunity, E/CN.4/2004/88 (27 February 2004), para. 10.
- 4 G. Dancy And E. Wiebelhaus-Brahm, "Timing, Sequencing, and Transitional Justice Impact: A Qualitative Comparative Analysis of Latin America" (2015) 16(4) *Human Rights Review* 321-342
- 5 That said, there is emerging practice of reparations being connected to trials for international crimes, as well as with amnesties (such as with the Kenyan TJRC Act, Article 41), but this latter connection is often associated with impunity and reparations being perceived as 'blood money'; see C. Moon, "'Who'll Pay Reparations on My Soul?'" *Compensation, Social Control and Social Suffering* (2012) 21(2) *Social & Legal Studies* 187.
- 6 Orentlicher, note 3, para.59.

do so where they are forced by civil society through legal and political pressure. The fourth part of this chapter briefly discusses transitional societies where reparations are made without a truth commission and their impact on the transition, before reaching a conclusion and detailing some recommendations. It is more likely than not that truth commissions can facilitate, but not guarantee, the implementation of reparations or directly implement reparations. That said, transitional societies are complex and fragile, and cannot be easily socially engineered; the past is often still contested and fought through political and legal forums. Truth commissions can at least assuage these contests by shaking society awake to the atrocities of the past and morally motivating them to alleviate the consequences of those victims left to bear the burden of the past.

2. The Connection between Reparations and Truth Commissions

Reparations are intended to acknowledge, remedy and alleviate the suffering of victims. Truth commissions are established to recognise 'victims as rights holders, foster ... civic trust, and contribute ... to strengthening the rule of law.'⁷ Truth recovery is considered an important part of the measures of satisfaction in publicising victims' experience, vindicating the wrongfulness of their suffering and identifying the institutions and actors responsible.⁸ There may be challenges in the implementation of reparations where truth commissions are broadly construed to include a range of historic victims. Truth commissions can catalyse societies' attention to victims' suffering and ongoing destitution, which in turn builds 'political and public support for the government to respond positively.'⁹ At the other end of the spectrum, reparations cannot deliver the wider social and public conversation and confrontation with the past that a truth commission can catalyse. As such, reparations 'can only assist, not generate or sustain, a critical reappraisal of the past.'¹⁰ Accordingly, reparations and truth commissions can complement each other. A truth commission can be crucial for, 'even if implicitly, acknowledging some form of collective responsibility towards the victims.'¹¹ Furthermore, reparations can be a substantive way to cement the work of a commission in alleviating the consequences of suffering for those most directly affected: the victims. Finally, both truth commissions and reparations can be conceived (in both constructive and critical understandings) to contribute to the (re)constitution of

7 P. De Greiff, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/HRC/24/42 (28 August 2013), para. 24.

8 M. Lawry-White, 'The Reparative Effect of Truth Seeking in Transitional Justice' (2015) 64(1) International and Comparative Law Quarterly 141, p145.

9 Hayner note 1, p163.

10 E. Verdeja, 'A Normative Theory of Reparations in Transitional Democracies' (2006) 37(3-4) Metaphilosophy 449, p460.

11 R. Dudai, "'Rescues for Humanity': Rescuers, Mass Atrocities, and Transitional Justice' (2012) 34(1) Human Rights Quarterly 1, p27.

a political community or State.¹² Where truth commissions and reparations are ambitious in scope, addressing questions of historical or structural injustice, as causes of conflict or gross violations of human rights, they may contribute to broader structural change of transitional societies. This ambition has proved rare.

Truth commissions often make recommendations for reparations, which have now become a 'staple' of such commissions.¹³ Indeed there have been a number of recent truth commissions have explicitly included reparations in their title, such as in Gambia and the Central African Republic, rather than under the heading of reconciliation. Scholars have defined truth commissions in part by their ability to make recommendations on redress for victims.¹⁴ Some peace agreements and legislation establishing truth commissions can specifically provide for reparations to be part of the commission's mandate. Others can be more ambiguous, such as the Sierra Leone Truth and Reconciliation Commission Act, which provides that its object is 'to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.'¹⁵ In Nepal the Truth and Reconciliation Commission is stipulated to create an environment of peace and reconciliation, end the state of impunity for perpetrators, and 'recommend reparation for the persons victimized by the incidents.'¹⁶

Reparations can also be justified to promote reconciliation, reflecting a dual political and transactional role - to recognise victims' suffering, to affirm their rights as citizens through social inclusion and to rebuild trust in state institutions, while at the same time aiming to minimise perceptions that combatants or perpetrators are benefiting from the peace more than victims.¹⁷ The Peruvian Truth and Reconciliation Commission (CVR) justified reparation as 'a gesture and an action that recognizes and reaffirms the dignity and status of people. Reparations coming from the State is an expression of due respect to their status as citizens.'¹⁸ Timor-Leste prioritised the issue of reparations for victims from the wider impact on Timorese societies as '[a]ll East Timorese people have been touched and victimised by the conflict in one way or another. ... We are all victims but not all victims are equal. We must acknowledge this reality and lend a hand to those who are most vulnerable.'¹⁹ It went on to distinguish reparations as:

12 P. De Greiff, "Justice and Reparations" in P. De Greiff (ed), *The Handbook of Reparations*, Oxford University Press, Oxford and New York, at 454; contrast with S. Robins, "Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations" (2017) 11(1) *Human Rights and International Legal Discourse* 41-58

13 De Greiff, note 7, at para.43.

14 M. Freeman, *Truth Commissions and Procedural Fairness*, Cambridge University Press, Cambridge, 2006, at 18; and E. Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*, Routledge, London and New York, 2010, p4. In contrast Hayner does not include recommendations for reparations as part of their definition: Hayner, note 1, p12.

15 Article 6(1), Truth and Reconciliation Commission Act 2000.

16 Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission 2069 (2012), Preamble.

17 Sierra Leone TRC Report, Chapter 7, at paras. 10-11; Chega! Timor Leste Commission for Reception, Truth and Reconciliation (CAVR), 2005, Part 11, p36. See P. Hazan, 'Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice' (2006) 88(861) *International Review of the Red Cross* 19, at 44.

18 Informe Final - Comisión de la Verdad y Reconciliación. (CVR) (2003), Volume 9, p141.

19 Timor-Leste CAVR Report, note 17, p35.

[a] form of justice is delivered which directly benefits the victim and will contribute to healing, national reconciliation and a further reduction in the possibility of violence. The most vulnerable victims of past atrocities will be afforded recognition and the means to enjoy their fundamental rights and fulfil their potential on an equal footing with other citizens of Timor-Leste.²⁰

The Sierra Leone Truth and Reconciliation Commission (TRC) conceptualised reparations as forming part of a 'restorative system of justice' that also includes 'accountability, truth telling, [and] acknowledgement.'²¹ Moreover, the implementation of reparations would be 'vital to the reconciliation process because it has the potential to assist those victims whose lives have been most devastated' and to help 'to facilitate relations between victims and perpetrators.'²² The Kenyan TJRC Act defines reparation as 'means dignifying the victims by measures that will alleviate their suffering, compensate their social, moral and material losses, restitute their rights.'²³ The Argentinean CONADEP framed reparations along the lines of truth that '[t]he first indispensable reparation demanded by society after fundamental institutions had been restored was to ascertain the truth of what had happened, to "face up" to the immediate past and let the country judge.'²⁴ Its recommendations with regard to reparations were quite general, including that:

appropriate laws be passed to provide the children and/or relatives of the disappeared with economic assistance, study grants, social security and employment and, at the same time, to authorize measures considered necessary to alleviate the many and varied family and social problems caused by the disappearances.²⁵

Finally, interim forms of reparation, which need urgent and basic needs of victim-survivors, discussed further below, may be seen by victim-survivors and civil society as necessary pre-conditions for engagement with truth and reconciliation commissions. However, a risk emerges that such interim measures become the only form of reparations ever offered or are offered without clear acknowledgment or recognition of the violations that occurred or victims' status and rights. Such interim measures may occur as part of, or independently form, a truth and reconciliation commission.²⁶ The interactions of truth commissions and reparations are therefore various. Minimalist accounts may suggest truth commissions merely recommend reparations as a form of acknowledgement of the harms documented in their reports. Broader or maximalist accounts of this relationship may enable multiple interactions of truth commissions

20 Ibid. p36.

21 Sierra Leone TRC Report, supra note 20, Volume 3(B), Chapter 7, para.8.

22 Ibid. para.9.

23 Article 2(1), Truth, Justice and Reconciliation Commission Act No. 6 of 2008.

24 Nunca Más (Never Again): A Report by Argentina's National Commission on Disappeared People, Faber & Faber, London, 1986, at Part IV.

25 Ibid. Part VI, Recommendation C; along with guarantees of non-repetition such as human rights training for the military, strengthen investigations of human rights violations and the adherence to such rights.

26 Guidance Note of the Secretary-General: Reparations for Conflict Related Sexual Violence, June 2014, available at <https://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf> (last accessed 16th October 2019), p12-13.

and reparations and reflect a desire to communicate a more fundamental re-imagination of the justice system for victim-survivors, as part of a coherent transitional justice package.

2.1. Forms of Reparations

Truth commissions can design a range of reparations in light of their engagement with victims and civil society. Divergences exist in the scope and complexity of reparations being proposed, from simply suggesting compensation or vague measures of reconciliation,²⁷ to a range of monetary and symbolic measures directed at different types of victims. In Nepal the statute establishing the TRC, reparations are the 'compensation, facility or concession made available to the victims.'²⁸ The Commission can recommend, 'any type of compensation, ... restitution or rehabilitation or any other appropriate arrangement, as per necessity, to the victim through inquiry and investigation carried out in accordance with this ordinance.'²⁹ The measures that can be recommended by the Nepal truth commission include '(a) Free education and health-care facilities; (b) Skill-oriented training; (c) Loan facilities without or with concessional interests; (d) Arrangements of habitation; (e) Employment facilities; (f) Other measures, facilities or concessions as deemed appropriate by the Commission.'³⁰ The truth commission for the Democratic Republic of Congo had the power to arrange settlements for compensation and restitution, or traditional forms of reconciliation between victimised communities and perpetrators, but it was never operationalised.³¹

The Kenyan Truth, Justice and Reconciliation Commission (TJRC) categorised and prioritised victims, so as to concentrate resources on those most vulnerable.³² The Commission organised victims of gross violations of human rights into the following categories: (1) violations of the right to life; (2) violations of the right to personal integrity, including sexual or gender-based violence; (3) forcible transfer of populations; (4) historical and contemporary land injustices; and (5) systematic marginalisation. The TJRC prioritised victims in categories 1 and 2 as those most vulnerable under the heading of Priority A.³³ The victims in this group would be eligible for monetary compensation via a 10-year annual pension, as well as medical and psychological vouchers for rehabilitation. Under the TJRC's reparation recommendations, all victims in the five categories are entitled to collective reparations, with other victims in Priority B only able to claim collective reparations. These collective reparations are to address the 'policies and practices that negatively impacted entire groups of people,'³⁴ and include measures such as apologies,

27 See Argentina – (CONADEP) Nunca Mas: Informe de la Comisión Nacional sobre la Desaparición de Personas, (Buenos Aires: EUDEBA, 1984).

28 Section 2(e), 2069 (2012).

29 Section 24(1), 2069 (2012).

30 Section 24(2), 2069 (2012).

31 Articles 41 and 42, loi n°/04/018 du 30 juillet 2004 portant organisation, attributions et fonctionnement de la Commission Verite et Reconciliation; and Hayner, note 1, p253.

32 The Truth, Justice, and Reconciliation Commission of Kenya, Report, Volume IV, (2013), at 97–122.

33 This included those in category 3 who had died as a result of displacement.

34 Kenyan TRJC Report, supra note 15, Volume IV, p107.

memorials and land restitution.³⁵ The purpose of these collective reparations is to recognise victims' experiences, acknowledge the state's responsibility, restore their dignity and ensure non-recurrence.³⁶ Despite being well thought out and innovative, none of these measures were ever implemented.

The second truth commission established into the dictatorship in East Germany during the Cold War recommended a foundation to help maintain education and understanding of this period, memorials, documentation centres and national holidays. Subsequently the German government established the former detention centre Berlin-Hohenschönhausen as a memorial site and created the Foundation for the Reconciliation of the SED Dictatorship, which help draft subsequent reparation laws.³⁷ A few years after the publication of its final report, the German government passed legislation to expand existing reparation programmes to include those whose health had been impaired or persecuted by the SED dictatorship, along with psychological rehabilitation and legal assistance for victims of political persecution. The beneficiaries of this scheme were those who had been imprisoned for over 180 days and in financial needs, and where able to benefit from a pension of €300 per month.³⁸ Other violations during the SED dictatorship were dealt with under earlier legislation for those who were forcibly expelled from their homes or careers, or persecution that impacted their health, which included remedies of compensation, education and social support.³⁹ In Gambia reparation under the TRRC includes 'compensation, ex-gratia payments, restitution, rehabilitation, satisfaction, recognition or community reparations which is applicable to communities denied public services or deprived of State funding as a result of collective punishment.'⁴⁰ In South African the TRC recommended a range of measures including individual payments, symbolic reparations such as a national day of remembrance, memorials and museums, community rehabilitation programmes. Accordingly reparation measures that are recommended can encompass measures to redress individual and community/collective harm, as well as to provide symbolic measures to 'facilitate the communal process of remembering and commemorating the pain and victories of the past.'⁴¹ In Colombia given that there is a reparations body under the Victims' Unit and a separate body for the recovery of those disappeared, the mandate for reparations for the truth commission (CEV) is limited to its final report contributing to the clarification of the truth as a measure of satisfaction and recommendations on guarantees of non-repetition.⁴²

35 Ibid. p108.

36 Ibid. p114.

37 Stiftung zur Aufarbeitung der SED-Diktatur.

38 Sanya Romeike, *Transitional Justice in Germany after 1945 and after 1990*, Occasional Paper No. 1, International Nuremberg Principles Academy (2016), p56-57.

39 Administrative Rehabilitation Act 1994 and the Occupational Rehabilitation Act 1994. See Romeike *ibid.*, p55-56.

40 Article 2(b), Truth, Reconciliation and Reparations Commission Act 2017.

41 SATRC Vol.5, p175.

42 *Artículo 13(5) y (6), DECRETO 588 DE 2017 por el cual se organiza la Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición.*

2.2 Interim measures

As reparations can be subsequent to the publication of a truth commission's final report, some commissions have the power to provide interim measures for victims who appear before them.⁴³ The Gambian TRRC has started to deliver interim support to victims who appear before it, including 33 individuals who have availed of psychosocial support and 9 victims who are been considered with medical treatment in Turkey through the Turkish embassy, and two educational scholarships for two young victims.⁴⁴ In Tunisia the Truth and Dignity Commission (IVD) had the mandate to develop a comprehensive individual and collective programme for reparations for violations that included acknowledgement, compensation, and interim measures.⁴⁵ The statute also placed an obligation on the state to ensure immediate care and temporary compensation was provided to all victims in need, in particular those elderly, the women, the children, the disabled and individuals with special needs, the sick and vulnerable group, without waiting for the outcome of a reparation decision.⁴⁶ The truth commission in Timor Leste recognised it was 'not enough to tell survivors to wait until the recommendations of the Final Report had been acted on for help to come'⁴⁷ and established a small Urgent Reparations Scheme to assist victims 'who were clearly vulnerable and whose need was severe, immediate and related directly to human rights violations which had occurred between 1974 and 1999'. In total 712 people participated in the Urgent Reparations Scheme, of these 516 were men and 196 women,⁴⁸ many of whom were survivors of torture, rape or family members of those disappeared or killed.

2.3. Drawbacks

Broadly therefore there is significant potential to develop complementary relationships between truth commissions and reparations policies, both as a final set of recommendations and through interim measures. However, there are also drawbacks to closely connecting reparations with truth commissions. There is a danger that a truth commission will close the book on the past through a narrowly constructed mandate (temporal, territorial, violations),⁴⁹ not naming names,⁵⁰ or sealing information for decades.⁵¹ These issues can have a detrimental effect on the scope of

43 SATRC Vol. 5, p175.

44 B. G. JALLOW, *The Gambian TRRC: Objectives, lessons learned and the future of truth commissions*, Paper presented at the 3rd Continental Forum on the State of Transitional Justice in Africa. Addis Ababa, Ethiopia, 24 – 26 September, 2019.

45 Articles 11 and 39, Organic Law on Establishing and Organizing Transitional Justice (2013).

46 Article 12.

47 CAVR, *Chega!*, Final Report, Part 10, Acolhimento and victim support, pp. 38–9

48 *Ibid.*, p41

49 Such as the focus on civil and political rights, rather than economic, social and cultural rights. See L.J. Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations and the Right to Development' (2007) 10(1) *Yale Human Right and Development Journal* 141; and M. Mamdani, 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)' (2002) 32(3–4) *Diacritics* 33, at 37.

50 Such as the Canadian TRC – see A. Woolford, 'The healing state? Residential schools and reparations in Canada', in J.M. Wemmers, *Reparation for Victims of Crimes against Humanity. The healing role of reparation*, Routledge, London, 2014, p133.

51 On Chile, see Collins, note 60.

truth and acknowledgement, but also the extent of reparations. For instance, in South Africa the TRC recommended reparations only for those victims of the four categories of human rights violation (killing, torture, severe ill-treatment and abduction) and who were found to be victims by the commission.⁵² However, less than 22,000 victims were recognised by the commission as being eligible, despite some South African victims' groups claiming the true number of victims to be over 100,000. As a result, the recommendations and the delayed implementation of a smaller amount of compensation by the South African government left many victims feeling 'betrayed'⁵³ and that the implementation of reparations was 'false reconciliation' or a way to buy their silence.⁵⁴

Truth commissions' recommendations and a state's implementation of them can feel like an orchestrated, top-down way for the state to draw a line under the past and for society to move on, compelling victims to accept whatever little or limited reparations are proposed, rather than receive none at all.⁵⁵ Given the usually short temporal scope of a truth commission, it may just capture a snapshot of victims' current needs and harm, without encompassing something that can evolve over time, as they get older and their health and financial security deteriorates. In addition, it may be the case that a truth commission's independence or effectiveness are compromised, with the result that it inaccurately describes the nature and extent of harms to victims or does so in a way that favours one side to a conflict or minimises the responsibility of one set of actors. In such circumstances, where transitional justice institutions are captured by political elites, there may be little additional value in a separate reparations scheme that would be subject to the same pressures and controls. These limitations can undermine these grander justifications of truth commissions, reparations and the goal of transitional justice of social inclusion, civic trust, dealing with the past to prevent its repetition, and reconciliation. However, on balance, from reviewing a number of truth commissions, reports by UN Special Rapporteurs and qualitative research in a number of contexts, it seems that the benefits of connecting truth commissions to reparations may outweigh the risks. Instead, mindful of these concerns, it is incumbent on the international community, civil society, advocates and activists to contribute to ensuring victims have a key role in such processes remains key to ensuring their success and perceived legitimacy.

52 South African Truth and Reconciliation Commission Final Report, (1998) Volume 5, Chapter 5, p176.

53 T. Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims' (2010) 2(2) *Journal of Human Rights Practice* 208, p215.

54 B. Hamber, 'The Dilemmas of Reparations: In Search of a Process-Driven Approach', in K. De Feyter, S. Parmentier, M. Bossuyt and P. Lemmens (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Antwerp, 2005, p139.

55 *Ibid.* at 140; and Woolford, note 50, p133.

3. The role of victims in truth commissions

Victim participation is a key element in ensuring the effectiveness and appropriateness of any recommendations on reparations from a truth commission. Victims will necessarily be involved in the proceedings of a truth commission, given that they are key witnesses to such violence. Yet they can also play a significant role along with civil society allies in crafting appropriate recommendations for reparations. For instance the role of APRODEH and the ICTJ played an integral part in conveying victims' views in designing appropriate reparation for the Peruvian truth commission.⁵⁶

Participation should include gender inclusion of men, women and non-binary individuals affected by the violence.⁵⁷ In Peru the CVR held gender focused workshops aimed at women or men only.⁵⁸ Forums and offices of a truth commission should be established around the country to minimize the cost and time for rural and poor victims to attend. In Colombia the CEV, while a national body, takes a territorial approach in having working groups and offices in each territory.⁵⁹ In addition consideration throughout should be made for individuals who are very young or old, and disabled to ensure that efforts are made to engage them and hear their views and concerns. This may require efforts to meet them in a suitable location and forum. For victims of sexual and gender based violence, torture, or disappearance they can be subjected to stigma, ongoing threats and isolation. There will need to be a confidential process for them to come forward and participate; this may include one-to-one meetings in a secluded and safe environment, accompaniment by civil society allies or confidentiality measures, such as private hearings or voice and facial distortion. The truth commission should employ staff, as far as possible, who are responsible for engaging with victims to be fluent in local languages and trained and monitored under victim-sensitive protocols. Local offices and forum should have staff who are also trained in psychosocial services to be provide on-hand support to victims, where they are testifying or talking about their harm.

In the 2004 Valech Commission in Chile, Collins points out that where the promise of reparations was unclear, victims came forward to testify anyway. Yet other victims were discouraged from testifying, given the 50-year embargo on accessing the testimony and the fact that the exchange of reparations made some of them feel like they were being 'silenced or bought off'.⁶⁰ In contrast,

56 See International Center For Transitional Justice (ICTJ) and Asociación Pro Derechos Humanos (APRODEH) eds., *Parámetros para el diseño de un programa de reparaciones en el Perú*. Informe conjunto (Lima: ICTJ and APRODEH, 2002); and J. GUILLEROT, *Reparations in Peru: 15 Years Of Delivering Redress*, September 2019, *Reparations, Responsibility and Victimhood in Transitional Societies*.

57 Principle 6, *Impunity Principles*.

58 GUILLEROT note 56, p14.

59 Artículo 7, Decreto 588 de 2017.

60 C. Collins, 'Truth-Justice-Reparations Interaction Effects in Transitional Justice Practice: The Case of the "Valech Commission" in Chile' (2016) 49 *Journal of Latin American Studies* 55, at 71.

in Peru many victims participated in the truth commission in the hope of obtaining reparations,⁶¹ though some also sought truth and justice. There is to some extent an unspoken covenant that victims coming forward to testify to truth commissions will benefit from being first in line for reparations, which creates expectations of some form of substantive redress for their harm through testifying.⁶² The failure to deliver reparations after a truth commission, whether part of its mandate or not, can only cause further distrust within a state and society that allowed individuals to be victimised.

From a victim's perspective, testifying before a truth commission means publicly opening themselves up to a traumatic event(s) of their past. They may do this as a good citizen, or perhaps for other reasons, such as to ensure that such atrocities do not reoccur. Yet there can be a 'cost' for victims in engaging with a truth commission, such as the risk of reopening psychological wounds, or suffering secondary victimisation if they are then attacked and diminished by the state or other actors in the engagement with truth commissions or claims for reparations. As Daly points out, this may have a social cost of 'domestic violence, reduced productivity, increased substance abuse.'⁶³ Moreover, victims' participation in a truth commission can be staged or manipulated for political ends, such as excluding victimised perpetrators, or can legitimise violence by state actors.⁶⁴ Nevertheless, truth commissions are to a certain extent dependent on victims coming forward. Without them, truth commissions are limited to their own investigations, archives and secondary sources. As part of the process, psychological support and counselling is needed to minimise the harm to victims and inform their expectations. Otherwise the processes and the failure to deliver reparations will cause them secondary victimisation. If there is an 'implicit bargain' that victims testify for truth commissions in exchange for more substantive redress through reparations, the failure to implement reparation recommendations in practice may be detrimental in the long run to future truth commissions, as victims appreciate the unlikelihood that such a process will provide them with redress. Depending on their calculation of political will and degree of organisation, victims may leverage the necessity of their testimony for a legitimate commission against demands for reparations. In Ireland, victims initially refused to testify in significant numbers to the Commission to Inquire into Child Abuse until a reparations scheme, the Residential Institutions Redress Board, was established.⁶⁵

Regardless of the configuration of truth commission and reparation scheme, victim participation should be prioritised from the outset of a truth commission. This ideally would be in the consultation and design stage so that issues of types of violations, scope of violence the truth

61 L.J. Laplante, 'From Theory to Practice: Implementing Reparations in Post-Truth Commission Peru', in B.R. Johnston and S. Slyomovics (eds.), *Waging War, Making Peace: Reparations and Human Rights*, Left Coast Press, Walnut Creek CA, 2009, p81.

62 Lawry-White, note 8, p170.

63 E. Daly, 'Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition' (2008) 2(1) *International Journal of Transitional Justice* 23, at 41.

64 C. CORREA, J. GUILLEROT and L. MAGARRELL, 'Reparations and Victim Participation: A Look at the Truth Commission Experience', in C. Ferstman, M. Goetz and A. Stephens (eds.), *Reparations for Victims of Genocide, Crimes Against Humanity and War Crimes: Systems in Place and Systems in the Making*, Martinus Nijhoff, Leiden, 2009, p389.

65 J. GALLEN, "Transitional Justice and Ireland's Legacy of Historical Abuse" (2020) *Eire* forthcoming.

commission is going to examine and time period can be as inclusive as possible. The scope of a truth commission can have later consequences on the eligibility for reparations, where only certain violations are included. For instance in the South African TRC limited eligible victims to those who appeared before it and for the gross violations as 'the killing, abduction, torture or severe ill-treatment of any person.'⁶⁶

The voices of victims and survivors are an important source for evidence-based policy; without them, reparative measures are unlikely to be appropriately attuned to redressing their ongoing harm. As such, there are practical reasons why victims and survivors should be given sufficient space and time to articulate their needs and priorities so as to adequately respond to recommendations for reparations. This may require outreach and sensitisation activities to inform victims what reparations entails, what other countries have done and how to participation in a truth commission. The difficulty with such outreach activities is that victims' expectations may be unduly raised that reparations is forthcoming, the truth commission is responsible for it and can provide all the measures proposed. Thus a clearly articulated and in relevant local languages outreach should be conducted on the possibilities and limitations of reparation recommendations and the responsibility of the state should be carried out. Such activities may outstrip the capacity of the commission to conduct these by itself, and so civil society will play a key role in engaging and supporting victims in such outreach and understanding of a truth commission. However, engagement on truth and reparations should not be limited to those groups which support a truth commission, but involve a wider social and societal engagement. For instance, the Peruvian CVR at the outset included human rights NGOs and victim groups that had been campaigning for truth and justice, but neglected groups associated with the rights of Andean peasants and indigenous peoples.⁶⁷ In contrast, the nature of some victim engagement with the South African TRC was problematic. Legal aid was a problem for victims in the South African Truth and Reconciliation Commission, which noted that a limited budget and tariffs that were lower than normal, discouraged higher skilled lawyers from representing victims.⁶⁸ South African was one of the few truth commissions to enable victim participation in face-to-face meetings with perpetrators under the heading of 'reconciliation'. If such participation is required in order to testify or avail of reparations, it may place too heavy a burden on victims, many of whom may find it too traumatic or self-exclude themselves to avoid such risks.⁶⁹

Where victims are treated well and able to voice their concerns, which are considered and respected by decision makers, they are more likely to be satisfied with the process, even if the outcome is not what they wanted.⁷⁰ Informing victims' expectations of engagement with a truth commission, and what this means for potential reparation, remains critical. Successful truth

66 Section 1, Promotion of National Unity and Reconciliation Act 34 of 1995.

67 GUILLEROT note 56, p13.

68 TRC Final Report, Vol. V, p117.

69 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 28 August 2013, A/HRC/24/42, para.48.

70 J. THIBAUT and L. WALKER, A Theory of Procedure, *California Law Review* 66 (1977) 541- 566; T. R. TYLER, Conditions Leading to Value-Expressive Effects in Judgments of Procedural Justice: A Test of Four Models, *Journal of Personality and Social Psychology*, 52(2) (1987) 333-344, p342; and United Nations, *Handbook on Justice for Victims*, (UNODCCP 1999), pp. 4-9.

commissions have provided a platform for victims to 'voice' their experience and tell their story in a sensitive and listening environment.⁷¹ This in itself can contribute to the acknowledgement of their victim status and measures of satisfaction in vindicating their moral worth. Indeed truth commissions can help to affirm victim status and clarify the fate of those killed or disappeared, which can contribute to acknowledgement of their harm and perhaps lessen their stigma in the community. However, truth commissions have a specific mandate to uncover the truth, recommendations that extend into reparations beyond symbolic acknowledgements need to be carried out by a separate body, given the scale of victimisation, the technical registration and administration of reparations such as compensation, and delivery of a range of measures that often requires inter-institutional and ministry implementation, such as healthcare, educational scholarships or training, constructing memorials and payment of lump-sum monetary awards or pensions.

4. Implementation of Reparation Recommendations

In theory, reparations are designed to cement a truth commission's commitment to redressing and acknowledging the past by focusing on those who have been most affected by the violence. Yet in practice, the data on the implementation of reparation recommendations made by truth commissions is poor. Bakiner found in analysing 15 truth commissions that only two states had implemented reparation recommendations made by a truth commission.⁷² This mirrors wider trends in transitional societies, where only 14 out of 84 have implemented reparations programmes.⁷³ This reflects that when it comes to implementation, it is up to a government's political will, with reparation recommendations being 'merely potentialities' and with implementation and institution reform beyond the powers and capacity of truth commissions.⁷⁴ However, there are a number of recent commissions which have the power to award reparations within their mandate, rather than being implemented afterwards. For instance in the Gambian Truth, Reconciliation and Reparations Commission, victims can apply for reparations directly from the commission rather than having to wait for their recommendations to be implemented.⁷⁵

'Successful' implementation of reparation can be defined as where subsequent bodies are established and deliver monetary and symbolic measures and where that delivery reaches the intended beneficiaries. This does not require a 'mirror image' approach, where recommendations have to be directly implemented word for word, but means that there is a margin of appreciation

71 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 28 August 2013, A/HRC/24/42, para.24.

72 See O. Bakiner, 'Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society' (2014) 8(1) International Journal of Transitional Justice 6, p18.

73 T.D. OLSEN, L.A. PAYNE, and A.G. REITER, Transitional Justice in Balance: Comparing Processes, Weighing Efficacy, USIP (2010), p69.

74 De Greiff, note 7, para.38.

75 Section 20, Truth, Reconciliation and Reparations Commission Act 2017.

in implementing such measures to reflect the fact that the democratic process will modify the legislation of such provisions. What is important for a successful implementation is that it includes the majority of serious violations, munificence in the range of measures and mostly satisfies victims' expectation of remedy of their harm. Ideally this should be done in a timely manner to mitigate any further harm to victims. With this in mind, we can say that often more work is required by the government to work out the complex procedures in designing and implementing reparations from a truth commission's recommendations. Procedures such as drafting legislation, a victim registry and inter-institution cooperation can be planned from an early stage of the truth commission, factoring in their administration and funding, with recommendations and consultations with victims tailoring the appropriate measures and eligible beneficiaries.

The two successful examples identified by Bakiner (Chile and Sri Lanka) were planned as part and parcel of the measures of the transition. For instance, the successful payment of reparations in Chile to those who had been extra-judicially executed was due to reparations and the truth commission being viewed as the two 'main pillars' of the political transition.⁷⁶ Often, seeing reparations delivered comes down to the political will of the government to honour the recommendations of the truth commission. It may be that a truth commission's recommendation of reparations fails to engage with political, social or economic realities; as such, there is an art in making reparation recommendations 'policy friendly'.⁷⁷ In Sri Lanka, reparation recommendations were provided through existing reparation bodies, such as the Rehabilitation of Persons, Properties and Industries Authority (REPIIA).⁷⁸ However, this scheme offered a limited form of reparations and funding, only more recently after pressure from civil society and the international community was an Office for Reparations in 2018 to more comprehensively redress the conflict. Both cases represent how reparation proposals have been developed over time to be more inclusive and comprehensive, due to changing political and social factors.

In South Korea reparations in the draft of the legislation for the commission into the violence in Jeju became a point of contention, as it went to the heart of responsibility of the violence with the Korean government.⁷⁹ Victim groups and activist had to see the language of 'reparations' in the commission's statute removed to get it passed, which instead referred to a financial and medical subsidy.⁸⁰ However the findings of the commission meant that it provided a legal basis for victims to bring subsequent claims against the South Korean government. The difficulty for many victims of gross violations of human rights is providing sufficient evidence to make a claim, the finances to hire a lawyer to pursue it or not knowing whom the perpetrator is. Thus truth commissions by collecting evidence and determining the broad pattern of abuses and responsible actors can reduce the burden on victims. In the case of the Bloody Sunday

76 Anita ferrara, Assessing the Long-Term Impact of Truth Commissions The Chilean Truth and Reconciliation Commission in Historical Perspective, Routledge (2014), p65.

77 De Greiff, note 7, para.72.

78 Rehabilitation of Persons, Properties and Industries Authority, Legislative Act No. 29, 2 June 1987.

79 See Hun Joon Kim, Seeking Truth after 50 Years: The National Committee for Investigation of the Truth about the Jeju 4.3 Events, International Journal of Transitional Justice, 3(3) (2009), 406–423, p420; and Hun Joon Kim, Truth Commissions in South Korea: Lessons Learned, 20 December 2013, Middle East-Asia Project, <https://www.mei.edu/publications/truth-commissions-south-korea-lessons-learned>.

80 Kim, *ibid*.

families in Derry, while the British Army was found responsible for the deaths of 14 civilians and liability accepted, compensation took a further ten years to be resolved. This was due to legal contestation over amount of money for those killed and efforts by the Ministry of Defence to provide lower settlement amounts, reflecting a process that was not sensitive to victims' needs, who felt that their harm and value of their loved one was being denigrated.⁸¹

Some truth commissions can provide detailed recommendations on what reparations should look like, thereby helping to minimise the policy and legislative work required of the government in order to obtain successful implementation. The 2007 Ecuadorian truth commission in its recommendations provided a draft reparations bill, which was later enacted into law.⁸² The intention of the commission was to help ensure that reparations were implemented, after examining other countries where reparation recommendations were often left unfulfilled.⁸³ The legislation itself mirrors the recommendations of the truth commission, such as its purpose and temporal scope. It is of course not an exact implementation; issues such as interpretation in good faith in the victim's benefit do not appear in the law that was passed, and the legislation dilutes certain provisions, such as scholarships, as recommended by the commission, which became training and advice on developing economic inclusion initiatives.⁸⁴ Nonetheless, a provision in the legislation speaks of the importance of truth and reparations being complementary and inseparable to prevent the repetition of such violations.⁸⁵

Some truth commissions' recommendations cannot be implemented because they are too unrealistic or too vague, making it difficult to discern if the commission's requirements have been met. For instance, the South African TRC made over a hundred recommendations, mostly aimed at the government, but also including civil society such as the media, faith communities and businesses, some of which were vague.⁸⁶ The scale of reparations required may take time to implement in practice, and having numerous reparation recommendation may require a staggered approach, prioritising measures aimed at those most vulnerable. In Peru, despite the CVR recommending a range of reparations, collective measures for affected communities only began in 2006 and compensation in 2011; they were rushed through around the time of an election⁸⁷ and the required implementation across different ministries and agencies (education, health, social welfare) in the Peruvian context was 'uneven and slow'.⁸⁸

There is a danger that truth commissions can be too prescriptive in their design of reparations recommendations, such as where they are too specific in terms of the regulations of the

81 Alan Erwin, MoD disputes Bloody Sunday compensation claim and considers appeal, *Belfast Telegraph*, 5 April 2019.

82 Informe de la Comisión de la Verdad Ecuador, 2010, Volume 5: Conclusiones y recomendaciones, at 395–413; Ley Reparación Víctimas Judicialización Violaciones Derechos Humanos, 5 December 2013, Oficio No. SAN-2013-1642

83 Informe de la Comisión de la Verdad Ecuador, supra note 63, Volume 5, at 361.

84 Article 6(5), Ley Reparación Víctimas Judicialización Violaciones Derechos Humanos.

85 Ley Reparación Víctimas Judicialización Violaciones Derechos Humanos, Preamble, para. 5.

86 South African TRC Report, Volume 5, Chapter 8, at 308.

87 C. Correa, Reparations in Peru from Recommendations to Implementation, *International Center for Transitional Justice*, (2013) p15–16.

88 Ibid. p21.

operation of a reparations programme, which is best settled by a reparations body itself. Where truth commissions provide for a specific amount of compensation, this might become worthless in the years it takes for the reparations to be implemented. This was the case in Ghana, where its high inflationary economy devalued the specific amounts set out for each type of violation by the National Reconciliation Commission, which trivialised victims' harm and created a hierarchy of victimhood.⁸⁹

Truth commissions' recommendations have to be implemented through democratic processes such as parliaments. During such processes, a truth commission's findings can be dissected in terms of the scope of reparations or eligibility, such as drawing a line between victims and perpetrators or enabling one side to 'blame' the other.⁹⁰ The recommendations of truth commissions are best situated in tracing out the principles and shape of reparations, based on views from victims who have testified before it and other evidence, such as draft legislation and eligible victims; by contrast, a reparations programmes should be based on wider research and victim engagement by itself, guided by expertise on reparations and responding to victims' harm. Yet legislating and implementing such measures through the democratic process, can see such issues being manipulated or stifled, especially where the majority support or colluded in violence in the past continue to dominate the legislature and executive, that may fall short of the truth commissions' recommendations and victims' expectations for redress.

Truth commissions can carefully consider the financial and social implications of reparation recommendations and the challenges of implementation. The Peruvian CVR acknowledged that no matter what it proposed in terms of reparations, it was dependent on political will, resulting in it developing a detailed reparations policy in the hope that it would reflect the complex social and financial implications of its recommendations.⁹¹ In the case of the Sierra Leone TRC, it recommended social services rather than individual compensation, not only because of victims' views expressed to the commission, but also so as to make such measures as 'feasible and practical as possible' given the resources available to the state.⁹² Moreover, due to the widespread poverty caused as a result of the conflict, awarding individual cash payments in Sierra Leone could have potentially '[led] to additional division and strife as opposed to the sense of social solidarity that the reparations programme is meant to foster'.⁹³ Similarly, the Kenyan TJRC provided detailed recommendations for reparations with the intention that they would be 'practical and implementable'.⁹⁴ Hayner notes that truth commissions often aim to be 'realistic and policy-relevant' to ensure that their recommendations have the best chance of being implemented.⁹⁵ Despite this, the Sierra Leone and Kenyan commissions' recommendations have not yet been put into action. In Sierra Leone, interim reparations were made to some victims through funding

89 N. Valji, 'Ghana's National Reconciliation Commission: A Comparative Assessment', ICTJ, New York, 2006, p23.

90 See C. Lawther, *Truth, Denial and Transition: Northern Ireland and the Contested Past*, Routledge, London, 2014.

91 See J. García-Godos, 'Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation' (2008) 2(1) *International Journal of Transitional Justice* 63, p74.

92 *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Report*, Chapter IV, (2004), para.71.

93 Ibid.

94 Kenya Truth, Justice and Reconciliation Commission Report, Volume IV, p98.

95 Hayner, note 1, p163.

from international donors, in contrast to the more substantial financial support given to ex-combatants under demobilisation and reintegration programmes.⁹⁶

Truth commissions' capacity to consider the social and economic impact of reparations policies may be influenced by the extent to which they address violations of socio-economic rights and the underlying grievances and causes that led to widespread or systemic violations of civil and political rights. Both of these elements have been traditionally ignored or minimised in mainstream human rights discourse and latterly in transitional justice practice, but recent scholarship and practice has expanded consideration of these issues and may represent a future expansion of the concept and practice of institutions.⁹⁷ The prevailing socio-economic context and its political reception is likely to significantly influence whether such measures are feasible. In South Africa, the TRC recommended financing reparations with a once-off wealth tax on individuals, a reparations fund to be contributed to by businesses and the restructuring of the apartheid debt. None of these was implemented.⁹⁸ Naomi Klein documents how the international community's "Washington Consensus" created pressures for South Africa to adopt a more neo-liberal economic model that would eschew such re-distributive measures.⁹⁹

Truth commissions have also been conscious that victims' needs change over time, such as recommending pensions for those who are injured.¹⁰⁰ Those victims coming before a commission may emphasise the need for assistance over more substantive long-term reparations, such as access to health care, education and housing.¹⁰¹ Waldorf suggests that victims were unsatisfied with the traditional reparations approach, which would return them to the status quo ante.¹⁰² However, while victims coming before the Sierra Leone TRC did not prioritise compensation, in Ghana, nine out of 10 victims who appeared before the commission (some 2,000) did so to seek compensation.¹⁰³ Victims' interests should not all be reductively merged into what the majority wants or needs. Victims of extra-judicial executions can have differing needs from families of those disappeared, and those who have been seriously injured or tortured have distinct needs and from victims of sexual violence or child soldiers. Reparations are intended to acknowledge and alleviate the suffering of those who suffer the most, with assistance aimed at helping the recovery of the generally affected population. With the passage of time, victims' needs may move

96 E. Conteh and M. Berghs, 'Mi At Don Poil': A Report on Reparations in Sierra Leone for Amputee and War-Wounded People, Amputee and War-Wounded Association, Sierra Leone, Freetown, 2014, p6.

97 E. Schmid and A. Nolan, "Do No Harm? Exploring the Scope of Economic and Social Rights in Transitional Justice" (2014) 8(3) *International Journal of Transitional Justice* 362-382; M. Evans, "Structural Violence, Socioeconomic Rights, and Transformative Justice" (2016) 15(1) *Journal of Human Rights* 1-20

98 J. Gallen "Odious Debt and Jus Post Bellum" *The Journal of World Investment and Trade* 4 (2015) 666-694

99 N. Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Toronto: Knopf Canada 2007) p210-211.

100 Sierra Leone TRC Report, paras.71 and 168-171; South African TRC Report, Volume 5, para. 41.

101 Of the 7,707 victims who testified before the Sierra Leone TRC, 49% sought home or shelter, 41% education, 27% health care and 18% cash – reflecting more than one measure by respondents, Chapter IV, para.30, figure 1. See also in Peru, L. Laplante, *Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework*, *International Journal of Transitional Justice*, 2(3), 2008, 331-355, p351-352.

102 L. Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs' (2012) 21(2) *Social & Legal Studies* 171, p178.

103 Valji, note 89, p22.

on from immediate assistance with supporting themselves to more substantive reparations to seek acknowledgement and alleviation of their long-term suffering. Though highly culturally and legally diverse, understanding reparation as an umbrella term which incorporates but may not be limited to compensation may, if accepted among relevant constituencies, offer a conceptual framework to navigate the inevitably inadequate munificence, scope and coherence of reparations recommendations, policies and implementations. If understood and communicated explicitly as part of the State's efforts to (re)constitute political community, both a truth commission set of recommendations and reparations policy can be seen as a necessarily small part of an overall project regarding the re-distribution of power, wealth and recognition, with a focus on empowerment and partnership with victim-survivor constituencies.

There is no road map for transitional justice: the different measures of truth, justice and reparations are lights meant to guide the way forward through a dark past. Many countries have chosen not to establish a truth commission, but instead have created a reparations programme. In addition, having a truth commission and a reparations programme may not satisfy victims' needs for redress, who can continue to pursue through the courts their own vision of remedy. Transitional justice measures are meant to complement each other; one without the other can undermine the dual individual-societal dimensions embedded in each measure in dealing with the past. Reparations without truth-telling can hide away victims' harm from the public eye, with compensation being the manner in which the state tries to 'buy [their] silence or acquiescence'.¹⁰⁴ In cases of disappearances, victims' families may not be satisfied with compensation, but want to know the circumstances around the disappearance and fate of their loved one, in the hope of giving them a proper burial.¹⁰⁵ Systemic data on victim-survivor preferences offers a valuable mechanism to shape highly politicised debates about these relationships. Such data may be gathered by a truth commission as part of its statement taking and research, or independently through public attitudes surveys or through civil society.

In Brazil, social movements in pursuing civil litigation in the absence of a truth commission eventually saw a reparations body established.¹⁰⁶ Brazil had a range of compensation schemes that were made up of a 'series of unrelated laws and decrees', but were not part of a comprehensive reparations programme.¹⁰⁷ The detachment and privatisation of harm caused victims to pressure the government into establishing a truth commission to publicise the harm caused, in particular around torture, but only years after the events. Comparably, the Canadian TRC on the historic abuse of First Nations people in residential schools followed on from a class action settlement, with its recommendations focusing on more symbolic measures and institutional reform to prevent repetition.¹⁰⁸ Together these examples may show that there is a continuum of

104 D. Orentlicher, Report of the independent expert to update the Set of Principles to combat impunity, E/CN.4/2005/102 (18 February 2005), at para.59(d).

105 Ibid. para. 63.

106 See C. Macdowell Santos, 'Transitional Justice from the Margins: Legal Mobilization and memory Politics in Brazil', in N. Schneider and M. Esparza (eds.), *Legacies of State Violence and Transitional Justice in Latin America: A Janus-Faced Paradigm?*, Lexington Books, Lanham MD, 2015.

107 I. CANO and P. GALVÃO FERREIRA, *The reparations program in Brazil*, in de Greiff (2006), 102-153, p102.

108 *Canada's Residential Schools: Reconciliation. Final Report of the Truth and Reconciliation Commission of Canada*, Volume 6, (2015), at 223-241.

transitional justice measures. Perhaps for each context it is not formulaic as simply finding the truth first, and then implementing reparations in consequence to the findings, but instead being comprehensive and finding the best temporal fit to advance an issue.¹⁰⁹

In a way, victims' use of civil litigation to claim compensation has been secondary to their goal of seeking accountability and acknowledgement. To give two examples, in Brazil, victims of torture have made claims against the head of the Centre for Operations for Internal Defence, while in Northern Ireland victims of the Omagh bombing have sued leaders in the Real IRA who were never prosecuted.¹¹⁰ The absence of a truth commission leaves the burden of uncovering the truth about the past on the shoulders of victims, who can try to pursue truth and reparations through civil litigation in courts or mobilise on the streets. Not all victims want reparations and truth. In Northern Ireland, injured victims have been advocating for a pension as a form of reparations, rather than truth. As one victim case worker noted, those injured were more concerned with 'improving their quality of life' than truth or justice.¹¹¹ However, for some victims, acknowledgement and truth are more important, in that reparations are seen an insult to the memory of their loved one. As such, victims do not speak with one voice and their needs and interests change over time, transitional justice mechanisms have to be flexible as far as possible to provide a certain level of choice for victims in whether or not they want to engage in them.

Reparations alongside or after a truth commission can promote better transparency and inclusion than awards made before one. After the peace agreement in the Solomon Islands, compensation was distributed to those who lost economic opportunities and property, but lacked guidelines and transparency, resulting in corruption, and failed to highlight the truth about the wider pattern of violations. The subsequent TRC recommended comprehensive reparations for a broader range of more serious violations, but has so far not received funding.¹¹² Similarly, the Moroccan Arbitration Panel, while offering compensation to thousands of victims, was considered to have failed to uncover the truth and provide reparations to all victims who had suffered under the regime.¹¹³ As a result, the Equality and Reconciliation Commission (IER) was established to provide more comprehensive reparations and truth. Even with such measures, corruption can still be a substantial issue for any reparations programme, with or without a truth commission. The benefit of a truth commission beforehand is that it can awaken society to the importance of delivering reparations to victims, and show that the truth is not just empty words, but instead has real consequences for victims.¹¹⁴

109 Daly, note 63, p39–40.

110 Maccowell Santos, note 106, p61; and L. Moffett, 'Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda', in N. Gal-Or, C. Ryngaert and M. Noortmann (eds.), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings*, Brill, Leiden, 2015.

111 Interview with victim group coordinator, IR06, Belfast Northern Ireland, March 2017.

112 See N. Dicker, 'Development Aid for Reparations in the Solomon Islands', in R. Jeffery (ed.), *Transitional Justice in Practice: Conflict, Justice, and Reconciliation in the Solomon Islands*, Palgrave Macmillan, New York, 2017.

113 Hayner, note 1, p172.

114 Laplante and Theidon, note 126.

4.1. Sequencing and Timing

Timing can play an important part in the implementation or sequencing of transitional justice mechanisms, such as truth commission and reparations. Collins suggests a 'phased' approach to transitional justice. Instead of trying to do all transitional justice measures at once, she suggests that a more 'progressive realisation' can enable states to build momentum for transitional justice with measures that 'generate[] least internal resistance'.¹¹⁵ Hayner suggests that in some countries, reparations have come in waves on the back of truth commissions or litigation at regional courts, such as in Chile and Argentina.¹¹⁶ Firchow calls for greater research into the sequencing between reparations and reconciliation that can facilitate the community acceptance of the payment of reparations to victims and repair the social fabric of communities.¹¹⁷

More broadly, timing is a key issue in transitional justice and its wider engagement with rule of law initiatives, development, democratisation¹¹⁸ and reconciliation. However, when all the energy is initially placed on establishing a truth commission and leaving the issue of reparations for a later time, may mean that the momentum for their delivery has dissipated. Hamber notes that the South African government failed to deliver symbolic reparations early on in the transition at a time when it would have been more receptive to their implementation.¹¹⁹ The difficulty with reparations is that it requires a mapping out of the universe of victims and creating at least a registry of those who have suffered and would be eligible, through legal and evidential requirements. Such programmes require time and resources to set up so that they deliver measures that are not merely symbolic, but are fair and efficient. Nevertheless, the sooner evidence and documentation of violations can be collected, the more quickly the victims' harm can be alleviated, as well as ensuring that their harm does not develop into long-term vulnerability and marginalisation.

The sequencing of transitional justice and delivery of recommendations regard reparations and independent reparations programmes can also be affected by the sequence of practices outside of the traditional purview of transitional justice. Consideration of issues of land reform and land restitution, after conflict or the internal displacement of persons and external migration of refugees, can complicate both the economic conditions in which reparations packages are received and the effectiveness of those packages as forms of acknowledgment or compensation.¹²⁰

115 Collins, note 60, p79.

116 Hayner, note 1, p170–171.

117 P. Firchow, 'Do Reparations Repair Relationships? Setting the Stage for Reconciliation in Colombia' (2017) 11(2) *International Journal of Transitional Justice* 315, p331.

118 See L.E. Fletcher, H.M. Weinstein and J. Rowen, Context, 'Timing and the Dynamics of Transitional Justice: A Historical Perspective' (2009) 31 *Human Rights Quarterly* 163, p218–219.

119 Hamber, note 54, p147.

120 A. Dusek, 'Ill Fares the Land: Reparations for Housing, Land, and Property Rights Violations in Myanmar' (2017) 30 *Harvard Human Rights Journal* 129-164.

5. Challenges

Truth commissions can face a range of challenges in seeing their recommendations implemented, particularly around reparations which can be both politically contested and can involve substantive investment in services and resource allocation. Reparations carry baggage meaning that even the most carefully crafted recommendation from a truth commission can easily falter in the face of political contention or intransigence over such issues as who is seen as a deserving victim worth of redress. In Peru, despite the CVR recommendation of an inclusive approach to reparations that encompassed victimised non-state actors, the issue became polemic as the government initially dragged its feet on implementation, prioritising redress for wounded government soldiers and screening measures aiming to exclude members of the Shining Path that increased the evidential burden of victims in claiming reparations.¹²¹ Similarly, in South Africa, victims were tarred by the government as being economic opportunists in their claims for the TRC's reparation recommendations to be implemented.¹²²

5.1. Funding

In practical terms, reparations programmes require substantial resources and administration to deliver successfully. This can mean that progressive recommendations by a truth commission on reparations may only be partially met by the government in the short and medium term after mass violence, due to other reconstruction needs. Truth commissions can struggle to find the funding to complete their own work, especially where it lasts for a number of years.¹²³ There is a role for international community and international or regional actors to help build capacity and assist in the delivery of reparations, such as the International Organization for Migration's support of the Sierra Leone reparations programme or the work of the International Committee of the Red Cross (ICRC) in recovery of the disappeared alongside national NGOs in Guatemala.

There have been some innovation in finding funding for reparations, such as a wealth tax,¹²⁴ natural resources or reparation/peace tax,¹²⁵ debt buyouts,¹²⁶ legal and illegal assets of members of non-state armed groups,¹²⁷ tax on banks who profited from violations,¹²⁸ and donor

121 Laplante, supra note 46, at 87.

122 O. Makhalemele, 'Still not Talking: The South African Government's Exclusive Reparations Policy and the Impact of the R30,000 Financial Reparations on Survivors', in Ferstman, Goetz and Stephens, note 64, p547.

123 See Hayner note 1, p216-218.

124 South African TRC, Vol. V, Chapter 8, p319.

125 Such as on gold and diamonds in Sierra Leone, Lomé Agreement, Article VII (6) and (14). Sierra Leone TRC Report, Volume Two, Chapter Four, para.227.

126 Such as in Peru. See Lisa J. Laplante and Kimberly Theidon, Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru, *Human Rights Quarterly* 29(1) (2007), 228-250, p247.

127 Sierra Leone TRC Report, Volume Two, Chapter Four, para.227(d). Chad Commission of Inquiry report (1992), p93. See Christine Evans, *The Right to Reparations in International Law for Victims of Armed Conflict*, (Cambridge University Press 2012), p214-215.

128 Mauritius Truth and Justice Commission Final Report, 2011, p380.

contributed trust funds.¹²⁹ That said, the most sustainable funding process for compensation is through a dedicated budget line by the state.¹³⁰

Within a particular country, public, political and media attention to victims can fade, reducing the impetus to deliver reparations to them. For instance in Ghana, with the initial delay by the government in implementing reparations, where a budget was not established for reparations before the National Reconciliation Commission (NRC) report came out in 2005, despite being deferred from being published in 2004.¹³¹ The Ghanaian NRC had recommended a comprehensive reparations programme that included apologies, a memorial, a monument, a national day of remembrance, restitution of property and compensation, as well as scholarships and health benefits for survivors and next of kin. Only in 2007 did the Ghanaian government pay out US\$1.5 million in compensation to some 2,000 victims, ranging from \$217 to \$3,300 depending on their harm suffered, but it did not implement the more symbolic collective measures of an apology or monuments.¹³² Victims were dissatisfied with the amount of compensation provided, but by that stage public attention in dealing with the past had waned.¹³³ This reflects the challenges of trying to consult and engage victims in the design of reparation recommendations by a truth commission, particularly where there are multiple types of violations, different actors involved and a large geographical area. In such circumstances, conducting outreach and providing sufficient time to engage and build the capacity of victims' groups can be challenging.¹³⁴ This does not mean it should not be done, but that it needs to be considered in the design and delivery of reparation recommendations and implementation.

In the case of South Africa, the lack of financial backing for community measures meant that reparations were only partial. Although the TRC recommended more substantive individual compensation than the government provided, it also viewed apartheid as a crime against humanity and considered that it 'constructed' the system and 'destroyed' communities.¹³⁵ As such, there should also be a collective and community dimension to reparations. Community-focused rehabilitation sought to ensure reconciliation and transform the way in which services are provided to all South Africans, rather than being discriminatory, depending on the recipient's race.¹³⁶ Yet the South African President's Fund responsible for financing these community measures has not yet disbursed these funds.¹³⁷ In the face of the South African government's slow and ineffectual action, victims' groups, such as the Khulumani Support Group, have initiated

129 Such as trust fund recommended by the El Salvador truth commission to be funded by the state and international community to make compensation payments to victims. See *From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador*, (1993).

130 Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014, para.56.

131 Valji, supra note 70, p25-27.

132 A. Ampofoa Asare, 'The Ghanaian National Reconciliation Commission: Reparation in a Global Age' (2008) 2(2) *The Global South* 31, p35 and 49.

133 Ibid. at 49.

134 Correa, Guillerot and Magarrell, note 64, p393.

135 Mamdani, supra note 50, at 44.

136 South African TRC Report, supra note 53, Volume 5, Chapter 5, at para. 95.

137 F. Collins, 'R1.5-billion for apartheid victims but thousands still waiting for money', *The Times*, 28 August 2017.

litigation and political protests to demand reparations. In such cases where the state has not implemented such measures or done so only partially, civil society, in particular victims' groups, may try to force implementation through social and political mobilisation or strategic litigation before domestic or international courts.

5.2. Lack of political will

The failure to implement the recommendations of a truth commission is often due to a lack of political will on the part of the government, which after an authoritarian regime or post-conflict may still be struggling with the political, social and economic costs of the past. In some cases, the publication of the final reports of a truth commission are delayed (e.g. the 1986 Ugandan truth commission report was only released in 1994) or sealed (e.g. the 1974 Uganda Commission of Inquiry into Disappearances).¹³⁸ In Peru, while reparations were eventually given, the years of delays around individual awards (over eight years) left victim feeling 'disillusioned and cynical' about the truth commission, 'nullifying [its] positive results', and about the government's commitment to redressing their suffering.¹³⁹ Political will can only take an implementation process so far. As acknowledged by the OHCHR, implementation is a major challenge, which also requires 'sufficient institutional capacity' and funds to undertake these measures.¹⁴⁰ As such, donors and international organisations can play an important role in the delivery of reparations, helping to fill in these gaps in resources, but also in terms of how they prioritise funding and development goals in shaping values in transitional societies. In such cases where the state has limited resources and is dependent on donors in the short term, the government can still play an important role in acknowledging its responsibility for violations and taking ownership over delivering redress to all victims of the violence.

In the face of elections or waning public support or interest in the transition, force majeure or unforeseen crises can deprioritise reparations, such as an economic slump (Argentina and Ghana) or natural disasters (Haiti and Nepal), can diminish the political impetus for seeing recommendations for reparations implemented. However, if there is a will, there is a way, and there are many avenues to fund reparations, whether through 'wealth taxes',¹⁴¹ seizing the assets of perpetrators, donor contributions, issuing government bonds, or levies on natural resources.¹⁴² That said, reparations programmes can often be long-term financial commitments that need to have a dedicated budget line in a government's expenditure to make them meaningful and effective, even if the amounts will taper off in time.¹⁴³

138 This report has still not been officially published, but a leaked version is available online, where the commission recommends reparations including compensation for illegally detained prisoners, restitution of property of disappeared soldiers, and social services to widows and children of those disappeared: 1974 Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971, at 789–800, <https://www.usip.org/index.php/publications/1974/06/truth-commission-uganda-74>.

139 Laplante and Theidon, note 126, p231 and 248; and similarly in South Africa – Hamber, note 54, p144.

140 OHCHR, Rule of Law Tools for Post-Conflict States: Truth Commissions, HR/PUB/06/1 (2006), p31.

141 South African TRC Report, supra note 53, Volume 5, Chapter 8, p319.

142 1999 Peace Agreement between the Government of Sierra Leone and the RUF (Lomé Peace Agreement).

143 See P. De Greiff, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/69/518 (8 October 2014), para.56.

Implementation can be delayed or derailed by the politics of reparations. Opposition parties or members of the former regime can use the political nature of reparations and any controversy associated with them, such as economic cost, corruption or benefiting victim-perpetrators, to weaken the political power of the government and its vision of transition. Successive governments or legislative bodies may try to 'ignore, evade and delay' if it does suit their political ambitions or benefit their constituents.¹⁴⁴ For truth commissions that take years, it can mean that recommendations get caught in election cycles with victims and reparations used as 'political footballs'.¹⁴⁵ This can leave societies with 'partial implementation', in that some recommendations are delivered by the government, but not to the scale, intent or design of the truth commission, such as in South Africa where a fraction of the recommended amount of reparations was distributed to victims.¹⁴⁶

In some cases, there can be decades between a truth commission's findings and victims receiving redress. Where reparations are delivered over such long periods, it is often only due to litigation or political mobilisation of victims, and in some cases political opportunism, as the state is approaching elections.¹⁴⁷ Forced implementation here thus refers to a lack of political will on the part of the state to implement a truth commission's recommendations, but it being compelled to do so because of domestic and/or international pressure.¹⁴⁸

Implementation of reparations may also be limited by a lack of engagement or political will shown by key non-state actors, such as ex-combatants, in facilitating such measures. In the case of the Chile, reparations based on the commission's recommendations delivered monthly pensions to some 5,794 victims,¹⁴⁹ but failed to discover the whereabouts of many of those disappeared, as a result of the lack of cooperation from military personnel on the location of the victims' remains.¹⁵⁰ Other actors may also shape the transition, such as economic forces or donors, who may be more concerned with market stabilisation and economic development than spending already limited public finances on uncovering past crimes. Yet this is short-sighted, given that the failure to address past atrocities and causes of violence risks future conflict and marginalisation that will undermine any future development.

There are a number of examples of reparations being delivered years after a truth commission recommends them. In the case of Chad, a truth commission was established in 1995 after Hissene Habré was deposed. It recommended reparations, but victims sought justice against

144 Waldorf, note 102, p177.

145 P. Gallagher, 'A deflated political football: external perceptions of the campaign for a pension for those severely physically injured during the conflict in Northern Ireland', Master's thesis, 2017 – on file with the authors.

146 The South African TRC recommended \$2,700 for six years to 21,676 victims (\$16,200 total), but instead the government provided a single payment of \$4,900 to 17,408 victims

147 Such as reparations made in 2010 by the Ugandan government before the presidential election to the victims of the Mukura massacre in northern Uganda – 'Mukura Massacre of 1989: Justice and Reconciliation Project', Field Note XII, March 2011, p17.

148 See MOFFETT chapter note *.

149 The Commission had originally identified 2,298 victims. E. Lira, 'Policy for human rights violations in Chile', in P. De Greiff, *The Handbook of Reparations*, Oxford University Press, (2006), p57–59.

150 Ferrara, supra note 60, at 62.

Habré for nearly 30 years through the International Court of Justice and then the Extraordinary African Chambers. Only in 2017 were reparations ordered, similar to the truth commission's original recommendations against Mr Habré and the Chadian government, but there have still been delays in setting up the delivery of these reparations.¹⁵¹ As the Habré case shows, it is also important to acknowledge the international dimensions of victims pursuing redress abroad where their government is unwilling or unable to provide it.¹⁵² This is a long and arduous process that places a heavy burden on victims. There has been similar experiences in Chile, with the arrest of former president Augusto Pinochet in London reviving the issue of dealing with the past more comprehensively. This included revisiting the scope of victims and reparations: where the Rettig Commission had only examined those killed or disappeared, the Valech Commission in 2004 and 2010 covered those who had been imprisoned on political grounds and tortured by the regime.¹⁵³

In Guatemala, despite reparations being outlined in the 1996 peace agreement and in the official and unofficial truth commissions, it was only because of continuing judgement of mass violations of human rights and awards of reparations to dozens and even hundreds of victims in cases before the Inter-American Court of Human Rights that a domestic reparations programme was established to reduce the cost of paying reparations to all affected victims.¹⁵⁴ Yet notwithstanding creating a national reparations programme, the Guatemalan government has not yet implemented (at the time of writing) many of the collective and economic reparations to victims, such as the massacre cases of Plan de Sanchez and Rio Negro cases, which represented only a handful of the hundreds of sites where the genocide was committed.

Such a relationship between the national and international mechanisms on reparations has not always been top-down, but can be integrative. Generally, the Inter-American Court of Human Rights has tried to include victims that come before it within national reparations programmes, even where they have been excluded, such as Afro-Colombians in Colombia,¹⁵⁵ or has tried to increase the amount of compensation they would get in comparison to the national reparations programme.¹⁵⁶ There has been a symbiotic relationship in Latin America between national

151 US\$148 million or 82,290,000,000 CFA Francs: Appeals Chamber of the Extraordinary African Chambers, *The Prosecutor v. Hisssein Habré*, dispositif, 27 April 2017, at 225–227. A similar ruling was made in the Chadian courts for joint liability of Mr Habré and the Chadian state – see N. I. Diab, 'Challenges in the Implementation of the Reparation Award against Hisssein Habré: Can the Spell of Unenforceable Awards across the Globe be Broken?' (2018) 16(1) *Journal of International Criminal Justice* 141.

152 See also the South African example and the ACTA claims against corporations; see J. Sarkin, 'Pursuing Private Actors for Reparations for Human Rights Abuses Committed in Africa in the Courts of the United States of America', in C. Villa-Vicencio and E. Doxtader (eds.), *Reparations in South Africa*, David Philip Publishers, Cape Town, 2004.

153 See Collins, note 60.

154 N. Roht-Arriaza, 'Guatemala: Lessons for transitional justice', in C. Lawther, L. Moffett and D. Jacobs (eds.), *Research Handbook on Transitional Justice*, Edward Elgar, Cheltenham, 2017, p449.

155 *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*, Judgment of 20 November 2013, Series C No. 270, para.470.

156 See *Case of the Río Negro Massacres v Guatemala, Preliminary Objection, Merits, Reparations and Costs*, Judgment of 4 September 2012, Series C No. 250, at paras. 303–309.

reparations programmes and the international Inter-American system, with them influencing each other on the scope of victims and appropriate measures.

It is easy to place blame for the lack of implementation at the door of a truth commission and its construction of recommendations. In Sierra Leone, the government laid the fault for the failure of reconciliation on the TRC for not developing a follow-up strategy, not securing sufficient financial support, and in raising expectations without any long-term planning.¹⁵⁷ However, this is not the mandate of truth commissions; it is the government that is responsible for delivering reparations. Even the legislation that designs the mandate of truth commissions can be vague as to the details of carrying out reparations, causing challenges in implementation. The Kenyan TJRC Act permits victims of gross violations of human rights to apply to the Commission for reparations; however, the Commission had no power to award or implement reparations, only to make recommendations on '(a) the basis and conditions upon which reparation may be granted; (b) the authority responsible for the reparation; and (c) measures that should be taken to grant urgent and interim reparation to victims.'¹⁵⁸ Reparations have not been dispersed to victims of the post-election violence in Kenya, despite the recommendations of the TJRC, government directives and victim litigation.¹⁵⁹

Truth commissions rarely have implementation bodies, with the exception of the Rettig Commission in Chile, but even the delivery of reparations in Chile was through a separate administrative body, the CNRR (*Corporación Nacional de Reparación y Reconciliación*). It can be undesirable for truth commissions to be burdened with the technical and administrative process of identifying and delivering reparations to victims, as it may affect their capacity to uncover truth.¹⁶⁰ The Colombian truth commission (CEV), while it does not have a primary mandate for reparations, it is responsible for recommendations around guarantees of non-repetition and it has a stipulated implementation and monitoring committee to oversee the implementation of its recommendation once its final report is delivered.¹⁶¹ However, it is worth remembering that without an implementation body and dependent on the political generosity of the government, victims often have to force implementation through political pressure or the courts, which even then do not guarantee delivery by themselves. It seems important to synthesise this pattern of national practices and delays regarding reparations, especially those arising from truth commissions. A feasible timeline and articulation of the requirement for consistent legal and political pressure from victim-survivors will help inform expectations about the nature, timing and effectiveness of any reparations that ultimately emerge.

157 R. Friedman, *Competing Memories: Truth and Reconciliation in Sierra Leone and Peru*, Cambridge University Press, Cambridge, 2017, p113.

158 Article 42(3), TJRC Act 2008.

159 'Restorative Justice Fund not created 3 years after directive', *Capital News*, 19 March 2018.

160 Orentlicher, note 3, para. 19(b).

161 Articuló 32, Decreto 588 de 2017.

6. Conclusion

Truth commissions and reparations are often invoked on the basis of healing the wounds of the past and bringing about reconciliation. Informing victim-survivor and society's expectations of these measures and ensuring their delivery is an important, if not vital, part of the transition. The best we can expect between the two is that one opens the door for the other, facilitating society to accept that truth and reparations are necessary to heal the wounds of the past. While this is not to burden reparations with the expectations of reconciliation, it can help to ease the differences amongst victims, who are left to bear the burden of the past, and the rest of society. At most, reparations can possibly address and acknowledge victims' suffering, which in turn can create space for them to engage with reconciliation. The idea of a full compensation of individual harm, in the context of widespread or systemic violations, is likely to remain elusive and should be avoided in arguing for reparations. For victims, reconciliation is an individual's choice, something that has to be voluntary and not the result of external pressure. The design and implementation of reconciliation is something best left to other social, moral, cultural or communal forces to broker, rather than via a legalised top-down process by lawyers and, by extension, reparations. Apologies are an important part of reparations and truth recovery, with responsible actors acknowledging their wrongdoing; however, apologies need to be carefully crafted in consultation with victims, so that it is meaningful to them and not merely a way for those responsible for causing harm to justify their violence.¹⁶²

There remains a strong bond between truth commission and reparations. Truth commissions and reparations are two tools in the transitional justice toolkit, and while they can be complementary, they are designed to serve to some extent discrete functions.¹⁶³ Recommendations for reparations by truth commissions provide a supportive and normalising function, which ultimately recognises the need to move beyond truth to alleviate the ongoing consequences of mass atrocities for victims. It needs to be remembered that although there are ambitious goals for such transitional justice mechanisms, reparations and truth commissions can only make modest contributions to reconciliation, building civic trust and the rule of law.¹⁶⁴ In truth, the strength of truth commissions is their ability to 'narrow the range of permissible lies';¹⁶⁵ of reparations, the provision of measures that can ease victims' suffering so that they may regain some quality of life and dignity.

A number of best practices may offer the means to secure the greatest opportunity for the relationship between truth commissions and reparations to most effectively implement their shared and complementary goals. First, states, donors and civil society should seek to ensure

162 See Queen's University Belfast's Human Rights Centre (HRC) and University of Ulster's Transitional Justice Institute (TJI) Submission on Reparations Issues pursuant to Article 75 of the Statute, 15 May 2015, ICC-01/04-01/07-3551, para.85.

163 Victims still have the right to pursue justice for international crimes and gross violations of human rights, which they may find truth and reparative effects in as well, we are not negating this area, but rather focusing on the connection between truth commissions and reparations.

164 L. Magarrell, 'Reparations for massive or widespread human rights violations: Sorting out claims for reparations and social justice' (2003) 22(1) Windsor Yearbook of Access to Justice 85, at 94.

165 M. Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience*, Owl Books, New York, 1997, p174.

victim-survivor ownership, consultation and engagement at all stages of TJ processes. The goals of the process are not made subservient to the agenda of victims, but 'an awareness of the centrality of victims/survivors and their needs to the whole process drives it'.¹⁶⁶ As a result, consistent consultation with victim-survivors in the design, operation and implementation of transitional justice mechanisms is essential to the legitimacy and effectiveness of the enterprise.¹⁶⁷

Second, a related concern arises for victim-survivor advocates and relevant State actors. Comparative experiences suggest that the relationship between truth commissions and reparations are likely to be slow, complex and highly politically contested. It would be useful for all actors to clearly inform and engage with victim-survivor expectations, communicating at least that: (i) reparations are unlikely to equal full compensation; (ii) reparations arising from a TRC process are likely to take considerable time to be agreed upon; and (iii) are likely to be imperfectly implemented.

Third, comparative experiences discussed throughout this report suggest that the optimal outcome for societies should involve both investigations/truth recovery mechanisms and redress/reparations mechanisms. However, this is capable of being achieved through a variety of leverage (civil litigation, criminal trial, peace agreement) and sequencing (TRC first, then recommending reparations; TRC and reparations in parallel, etc.) Where a truth commission is sequenced prior to any reparations scheme it would be productive for the designing body (government, legislature) to gather victim-survivor perspectives (including those outside its investigative mandate) and to recommend reparations to be explicitly included in truth commission mandates. The existence of interim reparations or humanitarian relief designed to meet the immediate needs of victim-survivors and encourage participation in a TRC should not preclude a future and more comprehensive reparations package or set of recommendations.

Fourth, an assessment of prevailing socio-economic conditions and the socio-economic basis for grievance leading to armed conflict/authoritarian rule/gross violations of human rights, should inform the nature and extent of any TRC recommendations regarding reparations. This may require explicit reference in the TRC mandate and greater economic expertise in TRC staff – but has the potential to lead to a more effective mapping of reparations proposals across economic divisions in society.

Fifth, international funding to governments engaging in transitional justice should extend to include supporting the work of civil society, engagement at the grassroots, and audit and evaluation (including piloting stage) of delivery of reparations through existing or capacity enhanced administrative structures. Relatedly, the international community should continue to support capacity building for transitional justice, particularly in the implementation of reparations policies and with a particular focus on monitoring, implementation and evaluation functions that may mitigate the risks of co-option or corruption attendant to reparations policies.

166 S. ROBINS, "Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal" *International Journal of Transitional Justice* 5 (1) (2011) 75-98.

167 United Nations Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: National Consultations on Transitional Justice*, HR/PUB/09/2.

Conclusion

There remains no “one size fits all” relationship between truth and reconciliation commissions and reparations. However, this report has highlighted the potential risks and opportunities in the various configurations of this relationship that must be addressed in the design, practice and evaluation of both TRCs and reparations schemes.

Reparations, Responsibility

 Victimhood in Transitional Societies

FROM TRUTH TO REPAIR:

Implementing Truth Commissions' Recommendations On Reparations

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