

## Reparations for Northern Uganda

### *Addressing the Needs of Victims and Affected Communities*

ICTJ Uganda

September 2012

#### Introduction

Since independence Ugandans have endured episodes of violence and human rights abuses across successive political regimes and transitions with devastating consequences. During two decades of conflict in the northern Uganda involving the Lord's Resistance Army (LRA) and the government forces, human rights abuses were perpetrated against individuals, families, and communities. With the return to peace, the government, victims' groups, and civil society are now considering how to move forward with a national policy on transitional justice that includes reparations for victims in the north given the magnitude of serious violations that were committed.

Although the immense scope of the harms inflicted and tragic ramifications have been reported and studied locally and internationally, there is very limited coordinated response that directly addresses victims' reparative needs to date. In 2007 the Ugandan government pledged to promote redress in the Agreement on Accountability and Reconciliation signed in Juba, affirming that it "is essential to acknowledge and address the suffering of victims, paying attention to the most vulnerable groups, and to promote and facilitate their right to contribute to society."<sup>1</sup>

In June 2012, the International Center for Transitional Justice (ICTJ), with funding from the United Nations Office of the High Commissioner for Human Rights, held two-day training seminars in the districts of Kitgum and Gulu with victims' and civil society groups, members of district peace committees, local government, and religious leaders. This paper recounts what the participants said would be the best ways to address victims' reparative needs now that the policy making process has been initiated in Uganda.

#### Addressing Victims' Reparative Needs

*People . . . are even still dying up to today just because they are still suffering from different forms of deformities, those who still contain foreign bodies like splinters and bullets. They die almost weekly if you get down into the communities.<sup>2</sup>*

The pain of years of conflict and suffering was palpable during the trainings for the Acholi sub region in Gulu and Kitgum, exacerbated by what is seen as the slow pace of national planning for reparations and the absence of the government's recognition of its role and responsibility for the harms that occurred. Two points of strong consensus existed: groups in the north need urgent interim reparations, and comprehensive reparations are needed

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<sup>1</sup> Juba Agreement, paragraph 8.1.

<sup>2</sup> Participant in training in Gulu, June 19, 2012.

long-term to respond to the physical, mental, and economic harms suffered—harms that exacerbate and are exacerbated by the extreme poverty in which most victims live. *Residual issues* refer to the enduring tasks of ongoing legal and moral responsibilities to those directly affected by the tribunals’.

### Right to Reparations

International human rights law recognizes that victims of state violations of human rights have a right to reparations by the state. In respect of abuses by non state actors, a state may be liable if it is established that it failed to take reasonable steps to protect the victims in question. Where the state is not liable in terms of omission, international law currently does not impose an obligation on states to provide reparations to victims of violations committed by non state actors. The Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles) recommended that the idea of reparations be premised on the notion of solidarity in the absence of an internationally recognized legal obligation.<sup>3</sup>

In respect of state obligations, affirming its commitment to reparations in the Juba Agreement, the government of Uganda referred to UN Basic Principles,<sup>4</sup> recognizing five general forms of reparative measures:<sup>5</sup>

- **Restitution:** “restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law.”
- **Compensation:** “should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.”
- **Rehabilitation:** “include medical and psychological care as well as legal and social services.”
- **Satisfaction:** covers truth-seeking processes, public apologies, memorialization, human rights training, and searching for, identifying, and turning over the remains of dead and disappeared.
- **Guarantees of non repetition:** include institutional reforms that bring military and security forces under more effective civilian oversight and control, improve law enforcement, and promote human rights standards.<sup>6</sup>

### Setting Priorities for Reparations

Various steps are required to identify victims of violations and to distinguish among classes of victims in broadly similar situations. Reparations at times have been defined and implemented based on vulnerability of victims, or seriousness of the violations committed. Not all victims of conflict are victims of human rights violations. It is possible for a civilian

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<sup>3</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (March 21, 2006), available at <http://www.unhcr.org/refworld/docid/4721cb942.html>.

<sup>5</sup> Juba Agreement, paragraph 9.1

<sup>6</sup> UN Basic Principles, paragraphs 19 to 23.

to be injured in a legitimate and proportionate aerial attack by armed forces and that injury might not have been caused by criminal conduct or a human rights violation. On the other hand, it may be deemed morally, or even politically, appropriate to allow for collective reparations in such circumstances even when a crime or violation cannot be established. Cognizant of the challenges inherent to reparations policymaking in the aftermath of the massive number of harms and injuries that occurred in Uganda, care is required when characterizing the reason for reparations and in implementing interim measures. However such measures may animate policymaking, while having the potential added benefit of restoring people's trust and confidence in the government. These are preconditions to ongoing reparations policymaking and ultimately to the overarching aim of building a unified society founded on the rule of law and respect for fundamental rights.

### Victims in Need of Urgent or Special Care and Interim Reparations

Participants at the trainings prioritized categories of victims for reparations based on their special or urgent needs. They singled out some groups repeatedly as being at risk or particularly vulnerable because of physical ailments or because they have lost their source of livelihood or face social stigma and exclusion. Two of those categories are highlighted.

#### Victims with Physical and Mental Disabilities or Deformities

Many civilians in northern Uganda were dismembered, mutilated, castrated, burned, shot, beaten, and/or wounded by shrapnel. Many sustained injuries as a result of landmines and during aerial bombardments by the government forces. Although various victims' and humanitarian groups have provided surgical and rehabilitative services to some victims, many still need treatment, such as surgery, wound management, or prosthetic devices.

*And we said that we have got individual victims, particularly those with urgent medical needs. If someone is having a bullet stuck in his leg, it would be inappropriate to think of taking him to school before having that removed.*

*The classes of victims . . . should be considered according to their priority needs. . .*

*There are particular groups of victims that will not be willing to wait. Especially under the category of individual victims, there are certain things that are health concerns, others are survival concerns, and others are . . . OK survival, health, and probably sustenance. So we are saying under this we are talking about physical deformation, which requires immediate health attention.*

Although systematic investigation would be required to locate the victims with physical and mental disabilities or deformities who need of treatment, much information is available publicly. Given their close relationships with and proximity to victims and victim communities, civil society, religious and cultural institutions—and victims themselves—might provide information and should be consulted about categories that need immediate support.

### Victims of Sexual and Gender Violence

During the conflict, the LRA abducted thousands of girls and forced them into conscription. They became victims of sexual and other violence and were forced to carry out a range of duties that included domestic labor, combat, and serving as “sex slaves.”<sup>7</sup> Many gave birth to children while in the bush.

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<sup>7</sup> These are women and girls who were abducted and forced to serve as wives to the combatants

Young girls, however, are not the only victims of gender violence who require reparations. Men were also abused, a fact that has received some media coverage but little attention at the national policy level. These victims' needs are complex and may go beyond the immediate consequences of the violence, requiring changes in social and legal structures, among other reparative measures.

In Gulu the discussion about the difficulties these victims faced was particularly impassioned, precipitating comments by women who were abducted and had children as a result. As a result of stigma and discrimination they continue to face in communities, these women explained, they and their peers are estranged from their families and communities, are economically disempowered, and are socially alienated.<sup>8</sup>

*When you return from the bush with children and want to get into new relationship, there is the element of stigma. You will get a new husband, produce a child, but there will be people stigmatizing you because of your previous background. So they have a challenge when they return home. Normally the children who were born in captivity are discriminated [against]. Their relatives will say, "We don't want those children here."*

After completing a rehabilitation and reintegration program, many of the girls remain social outcasts.

*The plight of women is quite different from the plight of men . . . You can't compare a returnee who is a girl to a returnee who is a boy . . . It takes quite long for a female returnee to be completely reintegrated into the community. A boy can stay for about two, three years there; he is normal. And a lot of things are forgotten about him. He can marry. But I have seen that for ladies it is really quite complicated. You find each time being talked about, see that she's been raped, that woman can't marry. They stay in isolation for quite long, maybe even move away from their original homes. So I was of the view that anything that regards reparations, especially for women, aspect(s) of dependency should be considered.*

Some of Uganda's laws and customs on land and inheritance are still discriminatory therefore; female victims of violence might be unable to move forward to secure their rights without effective government intervention. Given these realities, interim reparations for these victims could include psychosocial counseling, livelihood support, and legal assistance with land ownership and inheritance problems to help them reintegrate into society.

## Defining and Implementing Comprehensive Reparations

Eventually both intermediate and long-term benefits, rehabilitation, and care will be necessary to satisfy victims' rights to reparations. Victims of human rights abuse often suffer from complex forms of harm that affect all aspects of their lives. Often elusive and evolving, the long-term consequences of violence and trauma—whether physical, psychological, or social—can defy instant classification, thereby disabling victims, families, and communities right to remedy as they struggle to rebuild their shattered lives.

To address these realities and to fulfill international obligations to provide redress, societies in transition from conflict or authoritarian rule have addressed the full complexity of victims' suffering and attendant state responsibility by enacting comprehensive initiatives that provide not merely short-term or targeted relief, but also packages of mutually reinforcing measures, all reparative in nature and are far-reaching in type and scope. These initiatives offer benefits to a wide spectrum of victim needs relieving physical and psychological harm, as well as encouraging communal reconciliation and addressing disruptions in income,

<sup>8</sup> All comments quoted in this section were made during the ICTJ-OHCHR training in Gulu, June 19, 2012.

education, and subsistence that follow in the wake of violence. Tending more fully to the victim, family, and community, comprehensive benefits cover a range of reparations types: material and symbolic; collective and individual; and monetary payments and services.

Although no one type of reparations was overwhelmingly favored above others at the trainings, several were emphasized, showing the scope and diversity of victim needs and the potential importance of a coordinated national approach, encompassing both material and symbolic reparation measures. These are outlined below.

- Educational initiatives, spanning levels (from primary through university) with special provisions made for those who may need to pursue an alternative education track, perhaps in a specialized technical or vocational program.
- Access to professional medical care, and programs that raise awareness of the aftereffects of violence.
- Psychological or trauma counseling
- Symbolic measures, such as a national day of commemoration, public gestures, and letters of apology, public ceremonies, and other acts of acknowledgment.
- Truth-seeking to resolve questions about the status of the disappeared and missing.
- Economic empowerment programs, e.g. assisting with income-generation projects.

Although the above represents only a selection of the views expressed, the diversity of needs is apparent and the appropriateness of a comprehensive approach discernible.

### **Ensuring Meaningful Acknowledgment and Redress**

To be truly reparative, reparations must acknowledge wrongdoing and recognize harm. Participants at the training emphasized that in the past the line between development initiatives and reparations has sometimes been blurred, sowing confusion among victims and communities. Participants stressed the importance of the government's formal and unambiguous acknowledgment of the harms that occurred.

### **Differentiating Reparations and Development Assistance**

*A police station! Is that reparations??*

As peace returned to the region, the government has undertaken some initiatives in the north: e.g. the Peace, Recovery and Development Plan for Northern Uganda (PRDP I and II), and the Northern Uganda Social Action Fund (NUSAF). As national policies, albeit with some regional targeting, these programs—motivated chiefly by development and poverty reduction objectives—improved the welfare of many citizens, complementing and at times overlapping with the aims of reparations by providing some measure of relief to victims.

However, reparations are distinct from victim assistance, reconstruction, and development programs, “first by their roots as a legal entitlement based on an obligation to repair harm, and second by an element of recognition of wrongdoing as well as harm, atonement or

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<sup>9</sup> Participant, training in Kitgum, June 22, 2012.

making good.”<sup>10</sup> Whereas development aid aims to achieve, in the words of the Ugandan government, “Prosperity for all,” reparations serve to redress individual harm and fulfill individual rights with a distinct symbolic component, whereby the state recognizes and takes formal responsibility for the harms for which it is liable. Government development programs cannot be considered reparations, although sometimes labeled as such, without the requisite recognition of state responsibility and unambiguous symbolic acknowledgment of victims.

*PRDP is so holistic. But if you look at the components, there is really nothing clearly stating the issue of reparations. So it is very confusing to say reparations are also included in PRDP. So it is not very clear because the government needs to come out and say, “We are doing this because we are repairing.”<sup>11</sup>*

Many victims and victims’ groups expressed a desire for greater clarity between development and reparations, citing occasional instances when officials have claimed that a development initiative is reparations without any basis for doing so and causing confusion as a result.

*They mentioned that it (PRDP) is reparations! But we should now be clear that there are very many ways of doing reparations . . . But where is the will that the government is doing it for your interest? Because the government is only contributing 30 percent of the total PRDP.<sup>12</sup>*

Given these sentiments, it is important that the government demarcate its reparations efforts to ensure that they are seen as truly reparative, acknowledging and recognizing harm. Otherwise, by conflating the two, even inadvertently, the government risks losing the necessary symbolism of reparations, undermining perhaps the very goals it seeks to achieve.

## Conclusion

The consequences suffering in conflict persist for years, disabling victims, families, and communities long after the abuse ceased and sometimes long after society has taken steps to move on. To address such persistent suffering, states need to make a commitment to victims that is sustainable over time and that accounts for the full range and diversity of the harm done. During the trainings, it was widely agreed that both short- and long-term reparations measures are necessary to redress the harms done to victims in the north. By offering interim measures now, the government may begin the process of addressing victims’ needs while building the civic trust and organizational capacity that will be needed as Uganda works to design and implement a comprehensive reparations program that is fair, feasible, and meaningful. In the meantime, it was agreed that channels of communication and participation need to remain open both at the local and national levels and that active and ongoing collaboration (“a need to come together”) needs to occur to ensure a full exchange of ideas and to take advantage of the wealth of information already available about victims, their needs, and their interests.



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ICTJ New York  
5 Hanover Square, Floor 24  
New York, NY USA 10004



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

<sup>10</sup> Pablo de Greiff and Roger Duthie, *Transitional Justice and Development: Making Connections*, (New York: PUBLISHER NAME, 2009), 172.

<sup>11</sup> Participant, training in Kitgum, June 22, 2012.

<sup>12</sup> *Ibid.*