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Fighting Impunity
in Peacebuilding Contexts
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The Right to Reparations in Situations of Poverty

I visited East Timor for the first time early in 2000. Dili was a ghost town: no electricity, no running water, a burnt-down market place where the only food being sold was slaughtered farm animals and very old coffee beans. The few people who had not fled Dili were huddled under blue tents.

I was there as a Philippine defense ministry official tasked with assessing whether we should accept leadership of a UN peacekeeping force after the Australian-led interim force left. Recommending that we should take over was the easy part. The hard part was exemplified by a conversation I had outside Dili's Catholic church with three teenage boys who said they were happy. "Why?" I asked. "Because we lived," they said.

The boys told me that they were cousins whose families had fled to the mountains when the post-referendum violence was happening and that they had just returned. Many of their siblings and cousins never made it back. Some of their family members had died earlier, during the occupation. "Died of what?" I asked. I had thought the answer would be that they were killed by Indonesian forces, massacred by the militias, tortured to death or simply forcibly disappeared. But one of the boys said, "No, they died of hunger."

Timor-Leste's truth commission, CAVR, released its final report in 2005. Unlike many truth commissions before or even after it, CAVR uncovered a broader range of human rights violations by looking at violations of economic and social rights. CAVR found 102,800 conflict-related deaths during the 25 years of Indonesian occupation. Of these, 18,600 Timorese were killed or disappeared due to direct armed violence; 84,200—the overwhelming majority of casualties—died of hunger and illness.

CAVR implemented an interim reparations program that distributed approximately \$200 each to around 700 victims. The money came from the World Bank and was meant to start a local government empowerment fund. Recognizing both the difficulty of demanding reparations from its neighbor and former occupier and the emptiness of Timor-Leste's coffers, CAVR only recommended reparations for the most vulnerable victims and communities.

Four years later, Timor-Leste still has no comprehensive reparations program covering a broader set of victims. This is partly because government officials say they cannot find the resources to establish even the modest program CAVR envisioned. It is also because the government and donors have devoted more attention to the demands of different armed groups—such as veterans

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The Right to Reparations in Situations of Poverty

About the Author

Ruben Carranza, a Philippine national, is the Acting Director of the Reparations Unit at ICTJ, where he works on reparations programs and how they link with human rights litigation. Prior to joining ICTJ, he was a Commissioner in the Philippine commission that recovered \$680 million in ill-gotten Marcos assets. He was involved in Alien Tort Claims Act (ATCA) litigation in the United States against the Marcoses. He was a member of the United Nations Ad Hoc Committee that drafted the 2003 UN Convention Against Corruption. As a former Philippine Assistant Secretary of Defense, he worked on the early deployment of Filipino peacekeepers in East Timor, negotiated with counterparts in the ASEAN as well as with China, Japan, Korea and the US on a wide range of security and humanitarian issues and provided guidance on international humanitarian law issues for military operations affecting Muslim communities in the southern Philippines. He obtained his BA and LLB degrees from the University of the Philippines and an LLM from New York University (NYU) in 2005 as a Global Public Service Law Program scholar.

of the resistance movement and the so-called “petitioners” demobilized from the army—as well as to those displaced internally from recent violence caused by economic grievances unresolved by national independence. Thus, no one knows who the “most vulnerable” victims are. No outreach, identification, or victim registration processes have been carried out. The situation in Timor-Leste represents the three sets of questions we might consider when addressing the relationship between reparations and poverty.

1. Is the existing paradigm of reparations responsive to the predicament of poor victims in post-conflict, developing countries?
2. How can these countries provide reparations for poor victims of massive human rights violations while addressing the problem of widespread poverty itself?
3. What should the international and donor community do or *not* do to make reparations not only available for victims but meaningful for developing countries that are seeking both transitional justice and development?

The Existing Paradigm of Reparative Justice

Reparations, as a component of the transitional justice process, are meant to serve two goals. The first is to recognize the loss and pain suffered by victims and, in doing so, help them become rights-holders entitled to redress. The second goal is more problematic in situations of massive poverty: to provide actual benefits to victims, whether in symbolic or material forms, or ideally a combination of both. The political will, technical capacity, and financial resources needed to design, implement and sustain reparations programs are invariably absent in post-conflict developing countries.

*The Basic Principles and Guidelines on the Right to a Remedy and Reparation*¹ adopted by the UN General Assembly in 2005 explicitly recognizes reparations as a right. The Guidelines, while not prescriptive, identify five forms of reparations. These are restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The first three are directly reparative measures; the last two are usually accomplished through criminal justice and institutional reforms that can have reparative effects. The iconic reparations programs carried out in post-authoritarian Chile, Argentina, and Brazil, as well as programs implemented after World War II by Germany, by the United States (with respect to detained Japanese Americans), and more controversially, offered by Japan (for victims of female sexual slavery) consisted of compensation and varying measures of restitution and rehabilitation. These countries could afford the cost of reparations. They all had the administrative and technical capacity to implement and maintain the different programs offered to victims.

The Guidelines are a composite reflection of the historical and ideological paradigms that guided earlier reparations programs. Thus, the Guidelines seem focused on political repression and armed conflict while equating human rights violations with gross violations of civil and political rights. But for many victims in developing countries, the acknowledgment of gross violations of their economic, social, and cultural rights is just as important. Surveys taken among victims in Uganda and Cambodia indicate expectations of measures that will acknowledge and address their poverty. Restitution in the Guidelines means “restoring the victim to the original situation before the gross violations” happened. So, if applied to victims among the indigenous populations in Peru or the *dalits* of Nepal, the idea of *restitutio in integrum* is almost cruel. The existing paradigm evades the predicament of victims whose poverty and marginalization is attributable to conflict or systematic repression, such as apartheid, or who were already poor to begin with.

When the causes and consequences of poverty are not seen as directly relevant to transitional justice, reparations programs—if they are implemented at all—may only lead to frustration and resentment.

Even if symbolic reparations can be designed in ways that acknowledge all victims and not just those who were detained, tortured, killed or sexually violated by contesting armed groups within a State or in a conflict, that may not be enough. As an indigenous Mayan worker of the Guatemalan reparations agency said, “Symbols! That’s all we’ve been to this government, and that’s all we get from them.” In the Kurdish town of Halabja, survivors of Saddam Hussein’s brutal chemical weapons attack damaged a monument built in their honor to protest the lack of water and electricity in their community. When the causes and consequences of poverty are not seen as directly relevant to transitional justice, reparations programs—if they are implemented at all—may only lead to frustration and resentment.

Financing Reparations in Situations of Scarcity

Of the 26 countries in the lowest bracket of the UN Development Programme’s 2008 Human Development Index, six have large victim communities expecting reparations as a result of truth-seeking and criminal justice measures. The truth commissions in Timor-Leste, Sierra Leone, and Liberia recommended the establishment of reparations programs. Uganda, the Central African Republic, and the Democratic Republic of Congo (DRC) have cases at the International Criminal Court (ICC). While the Court’s Trust Fund for Victims may provide reparations to a small number of victims participating in these cases, the larger number of non-participating victims will also expect reparations from their governments.

How then can these developing countries provide reparations for victims who are poor while addressing the problem of widespread poverty itself?

Sometimes, the answers lie in the same truth commission reports that recommended reparations. South Africa’s Truth and Reconciliation Commission (TRC) recommended the collection of one-time ‘wealth taxes’ on affluent South Africans and corporations that did business under apartheid.² The Sierra Leone TRC called for a War Victims Fund³ consisting of mining revenues, debt relief, a peace tax, and the assets of convicted perpetrators. In Timor-Leste, CAVR proposed that a trust fund for reparations be jointly funded by the Timorese and Indonesian governments and from contributions by governments “who provided military assistance ... to the Indonesian Government during the occupation.”⁴ None of these proposals have been pursued.

The problem then isn’t a lack of ideas; to some, the problem is a lack of political will compounded by misplaced priorities. South Africa acquired submarines for its navy while refusing to implement the TRC’s reparations scheme. The governments in Sierra Leone and Nepal recently announced their intentions to acquire expensive military equipment even while financing for reparations in both countries remains uncertain.

Even in countries like Morocco and Peru, where reparations programs are relatively on track, there is still debate over how to balance reparations with the government’s obligation to encourage development. One approach has been the concept of collective or community reparations. Morocco has chosen to prioritize the provision of economic opportunities and social services in regions that were deliberately neglected in the past under authoritarian rule because the people in those areas opposed the ruling regime. In Peru, collective reparations that include social services and funding for community projects are targeting provinces that, according to the truth commission, disproportionately bore the brunt of violations during the conflict with Sendero Luminoso.

Collective reparations programs certainly cannot take the place of development activities intended for all citizens; but in developing countries that do not have enough to finance both

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obligations, poor citizens may find it meaningful that their most basic needs can be met without having to disregard the experiences of those who suffered more because of human rights violations. In Peru, a conditional cash transfer program called Juntos relied partly on the truth commission's mapping of the regions most affected by human rights violations. The cash payments made to families on the condition that they would send their children to school were seen by some victims in the region as acknowledgment of the harm they suffered from political violence.

Two other kinds of experiences are worth mentioning. First, assets recovered from corrupt ex-dictators and high-level perpetrators have been applied to reparations in Peru and in the Philippines. A special law in Peru allocated assets confiscated from former president Alberto Fujimori to finance some reparations measures. A pending law in the Philippines would apply part of the assets recovered from the Marcos family for compensation payments.

Second, post-transition developing countries should maximize the political capital that their transitional justice initiatives generate by proposing debt-for-reparations schemes. Since the World Bank and International Monetary Fund recognize Ghana as a Heavily-Indebted Poor Country (HIPC), it used its HIPC status to divert some of its foreign debt repayments to a compensation program for victims.

The lesson here isn't only that debt relief is a source of financing; the greater lesson is that creditor countries and international financial institutions have a decisive role in pursuing reparative justice. They can enable reparations, but they can also frustrate their implementation or diminish their reparative impact. The Marcos dictatorship borrowed \$2 billion from foreign creditors to build a nuclear plant. The Marcoses earned \$18 million in construction bribes while the flawed plant was never used. For 30 years, Filipinos paid \$150,000 a day in interest for that single loan instead of using the money as reparations for more than 10,000 victims of the dictatorship. The World Bank has established a \$50 million Emergency Peace Support Fund for Nepal. Half of it funds payments to families of those killed during the conflict with the Maoists; the other half was given to Maoist combatants confined in their camps. This grant, however, is not founded on a rights-based approach to reparations; victims of torture, disappearances, and sexual violence aren't covered or acknowledged. Rather, the goal is to ensure that combatants do not resort to what World Bank economists call "unlawful rent-seeking" and that victims' families themselves do not end up as combatants.

The Role of the International and Donor Communities

The massive number of victims and the magnitude of their needs combined with competing demands for development means that reparations programs in post-conflict developing countries require the support of the international community. That support has been weak and inconsistent.

The necessity of reparations is often undisputed. Reparations are arguably the most victim-centered of the various approaches to fighting impunity; but in recent years, most of the international resources meant for transitional justice and peacebuilding has gone to operating war crimes tribunals, occasionally to truth commissions, certainly to reintegrating ex-combatants, but seldom, if ever, to directly benefit victims of human rights violations.

There are exceptions that deserve recognition. The European Commission has given some support toward implementing reparations in Morocco and Peru. The UN Peacebuilding Commission has given \$3 million to Sierra Leone so it can implement its reparations program.

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By comparison, the disarmament, demobilization and reintegration (DDR) program in Sierra Leone had a multi-donor fund managed by the World Bank, which gave \$ 36.5 million. In Timor, the Bank financed the Falintil Reinsertion Assistance Program (FRAP) that provided benefits to veterans of the Timorese resistance army. In Liberia, survivors of the infamous Lutheran Church massacre have expressed concern that the lack of international attention to the TRC's recommendations for victims reflects a disinterest in reparations.

It is not just about balancing the rights of victims with those of ex-combatants. In the words of a Sierra Leonean amputee, the “problem is they pay the perpetrators...sending the message that it is better to do harm than good.” We cannot speak of acknowledging victims if we do not see the anomaly in declaring reparations as a right but not giving it material meaning, while giving perpetrators among ex-combatants material benefits which no one will argue they deserve as a matter of right.

There have been proposals to impose a condition that ex-combatants cooperate in transitional justice processes to qualify for DDR benefits. While that would be welcome, it may also be important for donors to require governments to fund reparations programs ahead of, or simultaneously with, ex-combatant reintegration and to then helpfully strengthen this principle by funding reparations programs directly.

*The UN Convention Against Corruption*⁵, which took effect in 2005, requires members to cooperate in the recovery and return of ill-gotten assets. The ICC-TFV and the Khmer Rouge court in Cambodia⁶ also mention perpetrators' assets as sources of reparations. Countries where such ill-gotten assets have been kept can support victims by helping developing countries recover those assets and ensuring that a significant portion goes directly to reparations programs. When I later worked on prosecuting the Marcos family and recovering their assets abroad, the help of the Swiss Ambassador to Manila and of officials in the Swiss Federal Ministry of Justice were instrumental in the return of \$680 million in Marcos assets and in efforts to legislate reparations using part of that money.

ENDNOTES

- 1 UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*: resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, available at: <http://www.unhcr.org/refworld/docid/4721cb942.html> [accessed 18 August 2009]
- 2 See *Truth and Reconciliation Commission, Report of the Truth and Reconciliation Commission of South Africa*, vol. 5, chap. 8 (Cape Town: TRC, 1998).
- 3 See the *Report of the Sierra Leone Truth and Reconciliation Commission*, vol. 2, chap. 4, available at <http://trcsierraleone.org/drwebsite/publish/v2c4.shtml>.
- 4 *Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste*, Executive Summary, Comissao de Acolhimento, Verdade e Reconciliacao de Timor Leste (CAVR)
- 5 Chapter V, Asset Recovery, UN General Assembly, *United Nations Convention Against Corruption*, 31 October 2003, A/58/422, available at: <http://www.unhcr.org/refworld/docid/4374b9524.html> [accessed 18 August 2009]
- 6 Rule 23 paragraph 11, Extraordinary Chambers in the Courts of Cambodia, Internal Rules, 12 June 2007, available at <http://www.eccc.gov.kh/english/cabinet/fileUpload/121/IRv3-EN.pdf> [accessed 18 August 2009]