Hastings International and Comparative Law Review

Volume 33
Number 2 *Summer 2010*

Article 1

1-1-2010

An Emerging Norma: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors

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An Emerging Norm: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors

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> The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.[1]

I. Introduction

While victims of human rights violations have a well-established right to appropriate reparation, controversy has continued to surround the corresponding duty to provide those reparations.[2] The legal basis for the right to reparations is

* B.A. Yale, J.D. Columbia. Many thanks to Viren Mascarenhas for his helpful comments on an earlier draft of this article, and to the editors of the *Hastings International and Comparative Law Review*.

1. Velásquez Rodriguez, Case1988 Inter-Am. Ct. H.R. (Ser. C) No. 4, ¶ 134 (July 29, 1988).

2. Although the issue of reparations for violations of international humanitarian law is beyond the scope of this article, it is instructive to consider that the following international human rights treaties include the right to reparations: the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2(3)), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14); the Convention on the Rights of the Child (art. 39), the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 13), the African Charter on Human and Peoples' Rights (arts. 7 and 21), and the American Convention on Human Rights (art. 25). Richard Falk, *Reparations, International Law, and Global Justice: A New Frontier, in* THE HANDBOOK OF REPARATIONS 478, 491 (Pablo de Greiff ed. 2008). *See also* The 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 (Mar. 21, 2006) [hereinafter Basic Principles and Guidelines on the Right to a Remedy and Reparation].

articulated in numerous international human rights treaties and has been expanded by regional and international bodies.[3] In addition, the ethical basis for the right to reparations is similarly well-established.[4] In societies transitioning out of periods of political violence and structural injustice, reparations have helped restore the dignity of victims and rebuild civil trust and social solidarity.[5] Yet, despite the clearly defined legal and ethical bases for the right to reparations, disagreement persists on the basic issue of who holds the corresponding duty to provide reparations for victims of gross violations of human rights.

In the instances where States or their agents commit gross human rights violations against those within their territory or jurisdiction, the answer is fairly straightforward: The State itself is responsible for providing reparations.[6] Accordingly, reparations programs have been implemented (to varying degrees) in a series of Latin American States transitioning out of repressive military dictatorships, including Argentina, Chile, Brazil, Guatemala, and El Salvador.[7] In broad strokes, the conflicts in these countries involved the systematic commission of abuses by the armed forces of the State, or by paramilitary forces linked to the State.[8]

As relative peace has settled over Latin America since the end of the Cold War, a different pattern of conflict has become increasingly prevalent, particularly in Africa. Many of these more recent, post-Cold War conflicts have involved the commission of gross human rights violations by private actors, such as rebel factions, in developing States where the government is either

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3. *Id.*

4. Marieke Wierda & Pablo de Greiff, *Int'l Ctr. for Transitional Justice, Reparations and the Int'l Criminal Court: A Prospective Role for the Trust Fund for Victims* 7 (2004), *available at* http://www.ictj.org/static/TJApproaches/Prosecutions/RepICCTrustFund.eng.pdf; Lisa J. Laplante & Kimberly Theidon, *Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru*, 29 HUM. RTS. Q. 228, 231-32 (2007). For a thorough discussion of recognition, civic trust, and social solidarity, *see* Pablo de Greiff, *Justice and Reparations*, *in* THE HANDBOOK OF REPARATIONS, 451 (Pablo de Greiff ed. 2008).

5. *Id.*

6. Basic Principles and Guidelines on the Right to a Remedy and Reparation, G.A. Res. 60/147, ¶ 15, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).

7. Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 HASTINGS INT'L & COMP. L. REV. 157, 170-72, 174-75 (2004).

8. *See* International Center for Transitional Justice, *Where We Work*, *available at* http://www.ictj.org/en/where/region2.html.

unwilling or unable to prevent the commission of violence against civilians. Conflicts of this nature have taken place over the last two decades in a number of African countries, including the Democratic Republic of Congo, northern Uganda, Sierra Leone, Liberia, and Rwanda.[9]

Following the commission of atrocities by rebel factions in States like these, many moral, political, and practical considerations counsel towards the establishment of reparations programs. On a moral level, reparations programs can contribute to national reconciliation through the recognition of victims and the restoration of civic trust and social solidarity.[10] The need for reparations programs is notable in States where the justice system lacks the capacity to handle criminal prosecutions or civil suits for damages. Reparations programs can help to provide victims with a degree of social justice.

In post-conflict States where victims cannot obtain redress directly from their perpetrators for various political reasons, the potential for reconciliation may be endangered when governments fail to step in to provide some form of redress in the place of the perpetrators. Victims who lack reparations may, for example, quickly grow to resent the provision of reintegration packages to ex-combatants.[11]

On a practical level, victims of atrocities committed by rebel groups are typically unable to obtain reparations directly from their perpetrators for a host of reasons. First, many victims simply cannot identify their perpetrators.[12] Second, members of rebel groups are generally not capable of providing their victims with reparations for the harm they have caused. They are often impoverished

9. This characterization applies to Rwanda to the extent that the civilian population, in addition to the military, participated widely in the 1994 Rwandan genocide. *See* International Crisis Group, *Central Africa Project, available at* http://www.crisisgroup.org/home/index.cfm?id=1164&l=1; *see* International Crisis Group, *West Africa Project, available at* http://www.crisisgroup.org/home/index.cfm? id=1170&l=1.

10. Wierda & de Greiff, *supra* note 4, at 461-66.

11. Roht-Arriaza, *supra* note 7, at 179 ("[W]hile reparations for victims languish, resettlement and reintegration of ex-combatants is a priority of those funding and organizing civil reconstruction. There may be good reasons for this, including avoiding new conflicts and trying to tamp down the inevitable growth in criminality, but it also rankles with victims groups who often see their material circumstances deteriorate as the perpetrators improve.").

12. Laplante & Theidon, *supra* note 4, at 243.

themselves and receive some form of reintegration assistance.[13] Moreover, even when warlord rebels do possess large financial resources, those funds may be stowed away in inaccessible, offshore bank accounts.[14] Finally, judicial systems in post-conflict societies often do not have the independence, credibility, or capacity necessary to handle the volume of civil complaints that such massive violations generate.[15]

In addition to these moral, political, and practical considerations, this article argues that an international norm is emerging whereby States, in certain circumstances, have a legal duty to provide reparations for violations by non-State actors. While both conflicting and ambiguous guidance exists on this point, evidence of such a norm has been emerging from the Inter-American Court of Human Rights as well as from several truth and reconciliation commissions.[16] Some international human rights treaties provide support for this norm, although they are, for the most part, somewhat ambiguous on this relatively specific point.[17] In addition, during the drafting of the Basic Principles and Guidelines on the Right to a Remedy and Reparation (Basic Principles), which were adopted by the U.N. General Assembly in 2006, States shied away from this subject, preferring to frame the issue in moral rather than legal terms.[18] The jurisprudence of the Inter-American Court of Human Rights, however, provides key guidance on the obligations of States to ensure respect for human rights. Moreover, the reports of recent truth and reconciliation commissions represent striking evidence of an emerging norm of State responsibility for the provision of reparations for violations by non-State actors.

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13. GULU DISTRICT NGO FORUM & LIU INSTITUTE FOR GLOBAL ISSUES, ROCO WAT ACOLI I: RESTORING RELATIONSHIPS IN ACHOLILAND: TRADITIONAL APPROACHES TO JUSTICE AND REINTEGRATION 65 (2005).

14. For instance, the former rebel leader and President of Liberia, Charles Taylor, has allegedly hidden approximately $375 million in revenues removed from Liberia in New York bank accounts. *See Taylor 'Had Billions' in U.S. Bank*, BBC, May 2, 2008, *available at* http://news.bbc.co.uk/2/hi/africa/7379536.stm.

15. Roht-Arriaza, *supra* note 7, at 165.

16. Velásquez Rodriguez, at ¶ 134; *see generally* THE SIERRA LEONE TRUTH AND RECONCILIATION COMM'N, Witness to Truth, vol. 2 (2004) [hereinafter THE SIERRA LEONE TRC REPORT]; *see generally* PERUVIAN TRUTH & RECONCILATION COMM'N, INFORME FINAL [FINAL REPORT] (2003) [hereinafter PERUVIAN TRC FINAL REPORT].

17. *See supra note 2* and accompanying text.

18. *See* discussion *infra* Part III.

The truth and reconciliation commissions of both Peru and Sierra Leone recommended that their respective governments provide reparations for the violations of non-State actors, and both States have adopted these recommendations.[19] Liberia's Truth and Reconciliation Commission very recently made similar recommendations, and a future Ugandan commission may do the same.[20] Although the implementation of the reparations programs designed by truth and reconciliation commissions is problematic, these commissions play a noteworthy role in facilitating the development of international human rights law with respect to reparations.[21]

Part I of this article discusses the provisions on remedies contained in several international human rights treaties, including the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR). Part II explores the Basic Principles, while Part III addresses the *Velásquez Rodriguez* case of the Inter-American Court of Human Rights. Part IV discusses the truth and reconciliation commissions of Peru, Sierra Leone, and Liberia, and potentially, of Uganda. Finally, Part V touches upon the International Criminal Court's creation of a Victims Trust Fund for the provision of reparations.

A. International Human Rights Treaties

International human rights treaties do not provide a clear answer to the question of whether States are obligated to provide reparations for the wrongs of non-State actors. The term "reparations" includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[22] A range of international human rights instruments obligates States to provide individuals with remedies and/or redress when their human rights

19. PERUVIAN TRUTH & RECONCILATION COMM'N, Programa de Reparaciones [Reparations Program], 143 (2003), *available at* http://www.cverdad.org.pe/ifinal/pdf/TOMO%20IX/2.2.%20PIR.pdf [hereinafter PERUVIAN TRC REPARATIONS PROGRAM]; THE SIERRA LEONE TRC REPORT vol. 2, ch. 1, at ¶ 21 (2004).

20. THE TRUTH AND RECONCILIATION COMM'N OF LIBERIA, Consolidated Final Report vol. 2, at 276 *available at* https://www.trcofliberia.org/reports/final (2009) [hereinafter THE LIBERIAN TRC FINAL REPORT].

21. Indeed, political problems surrounding the implementation of reparations programs are not discussed in this article and would be the subject of a separate article altogether.

22. *See* Basic Principles and Guidelines on the Right to a Remedy and Reparation, at 19-23.

have been violated, though the scope of these obligations can be unclear. These instruments include article 8 of the Universal Declaration of Human Rights, article 2(3) of the International Covenant on Civil and Political Rights, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and article 39 of the Convention on the Rights of the Child.[23] Regional human rights treaties also impose such obligations, including articles 7 and 21 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, and article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[24]

Not all of these instruments, however, contain provisions on redress that would apply to the circumstances in which non-State actors typically commit violations. Although the CAT contains strong provisions regarding redress, it does not apply to torture committed by non-State actors.[25] The CAT defines torture as severe pain or suffering inflicted "by or at the instigation of or with the consent or acquiescence of *a public official or other person acting in an official capacity.*"[26] Consequently, the CAT does not apply to situations in which non-State actors have committed acts of torture without any involvement of the State. In addition, the African Charter on Human and Peoples' Rights is inapplicable for our purposes because of the weakness of its provisions on redress, which concern only the right of victims to have their cause heard, as

23. Falk, *supra* note 2, at 491.

24. *Id.*

25. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Feb. 4, 1985, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85, *entered into force* June 26, 1987 [hereinafter Convention Against Torture] (stating in Article 14 that States are to ensure that victims of torture obtain and have "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."); *see also* Prosecutor v. Brdjanin, Case No. IT-99-36, Judgment, ¶ 488-489 (Sept. 1, 2004) (finding that "Even though the [Convention Against Torture] envisages that torture be committed 'with the consent or acquiescence of a public official or other person acting in an official capacity, the jurisprudence of this Tribunal does not require that the perpetrator of the crime of torture be a public official, nor does the torture need to have been committed in the presence of such an official.").

26. Convention Against Torture, *opened for signature* Feb. 4, 1985, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85, *entered into force* June 26, 1987 (emphasis added). On the subject of torture and non-State actors, *see generally* THE REDRESS TRUST, NOT ONLY THE STATE: TORTURE BY NON-STATE ACTORS (2006), *available at* http://www.redress.org/publications/Non%20State%20Actors%209%20June%20Final.pdf.

well as property rights regarding wealth and natural resources.[27]

The following therefore focuses on the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and, by way of contrast, the European Convention on the Compensation of Victims of Violent Crimes. The Convention on the Rights of the Child imposes the most minimal obligation upon States, while the European Convention imposes the strongest and most explicit obligation to compensate victims. The ICCPR's provisions are ambiguous, but have been given greater force by the interpretation provided by the U.N. Human Rights Committee.

1. Convention on the Rights of the Child

The Convention on the Rights of the Child contains a unique provision on reparations that is relevant to a number of recent armed conflicts where the use of child soldiers has been widespread (e.g., the Democratic Republic of Congo, Sierra Leone, Liberia, and northern Uganda).[28] Although the Convention does not specifically refer to reparations or remedies, it does require rehabilitation—a form of reparation that encompasses medical and psychological care as well as legal and social services.[29] Article 39 of the CRC provides that:

> States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, peer-respect and dignity of the child.[30]

The drafting history of the CRC reveals that States weakened the language of this provision because they did not want to be obligated to guarantee the recovery and reintegration of children.[31]

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27. African Charter on Human and Peoples' Rights art. 7 & 21 (1986).

28. Dominic McGoldrick, *The United Nations Convention on the Rights of the Child*, 5 INT'L J. OF LAW AND THE FAMILY 132, 153 (1991) ("This article has no direct counterpart in international human rights treaties ...").

29. *See* Basic Principles and Guidelines on the Right to a Remedy and Reparation, at 21.

30. Convention on the Rights of the Child art. 39, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3.

31. U.N. Econ. & Soc. Council [ECOSOC], Working Group to the Commission on Human Rights, *Report of the Working Group on a Draft Convention on the Rights of*

Article 39 originally required States to take "all appropriate legal, administrative and other measures to ensure" recovery and reintegration.[32] The drafters, however, changed the word "ensure" to "enable," and finally from "enable" to merely "promote."[33] Article 39 thereby contrasts with other articles of the CRC that impose a stronger obligation on States to "respect and ensure" the rights of children.[34] In addition, the general term "all measures" replaced the more specific phrase "legal, administrative and other measures."[35] Finally, at the suggestion of the representative of the United States, the word "appropriate" was inserted in between "all" and "measures" to qualify the otherwise undue obligation that would have been placed on States.[36]

While State parties made many reservations to other articles of the CRC, they did not make reservations to Article 39 because they likely did not view its obligations as strong enough to warrant any reservations.[37] Ultimately, the drafting history clarifies that this Article does not obligate States to directly provide rehabilitation services for children who have been victimized by private actors, such as child-abducting rebel forces. Instead, States must only "promote" rehabilitation to the extent "appropriate," such as by supporting the work of non-governmental entities like the International Committee of the Red Cross and the United Nations Children's Fund.

2. *International Covenant on Civil and Political Rights*

By contrast to the Convention on the Rights of the Child, the ICCPR explicitly obligates States themselves to provide remedies for those whose rights have been violated. First, Article 2(1) of the

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the Child, ¶ 528, U.N. Doc. E/CN.4/1989/48 (Mar. 2, 1989). *See also* Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child* 2, 800-04 (2007); Bo Viktor Nylund, *International Law and the Child Victim of Armed Conflict - Is the 'First Call' for Children?* 6 INT'L J. CHILD RTS. 23, 24-9 (1998).

32. U.N. Econ. & Soc. Council [ECOSOC], Working Group to the Commission on Human Rights, *Report of the Working Group on a Draft Convention on the Rights of the Child*, ¶ 66, U.N. Doc. E/CN.4/1988/28 (Apr. 6, 1988).

33. ECOSOC, *supra* note 31, at ¶¶ 527-28, 531.

34. *See, e.g.*, Convention on the Rights of the Child art. 38, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3.

35. ECOSOC, *supra* note 32, at ¶ 67

36. *Id.*

37. Nylund, *supra* note 31, at 27.

ICCPR requires States to undertake both "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind ...."[38] State Parties thereby have both an obligation to "respect" the rights recognized by the ICCPR, as well as a positive obligation to "ensure" those rights.[39] With regard to this positive obligation, Article 2(3) of the ICCPR requires a State Party to provide a remedy when it fails to ensure the recognition of the rights protected by the ICCPR, such as the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and the right to liberty and security of person.[40]

Thus, under the ICCPR, a State's breach of its positive duty to "ensure" gives rise to an obligation to provide a remedy. States must specifically undertake:

> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.[41]

The first subparagraph of this article suggests a requirement that State Parties provide an effective remedy to individuals whose Covenant rights have been violated.[42] Effective remedies may take the form of disciplinary, administrative or criminal proceedings against a perpetrator.[43] In addition, cessation of an ongoing

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38. Int'l Covenant on Civil and Political Rights art. 2(1), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

39. U.N. Human Rights Comm., *General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter General Comment No. 31].

40. ICCPR art. 7 & 9, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

41. ICCPR art. 2(3), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

42. General Comment No. 31, at ¶ 16.

43. Johann Bair, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND ITS (FIRST) OPTIONAL PROTOCOL: A SHORT COMMENTARY BASED ON VIEWS,

violation may be an essential element of an effective remedy.[44]

According to the ICCPR's Human Rights Committee, a State's positive duty to "ensure" requires it to protect individuals not only against violations committed by its agents, but also against "acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities."[45] States must therefore address certain activities of private persons or entities so as to ensure, for example, that they do not inflict torture on others within their power.[46] In certain circumstances, a State's failure to ensure Covenant rights may give rise to a violation of those rights by the State, such as when the State permits or fails to "exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."[47]

The point of ambiguity in Article 2(3) is the meaning of "ensure" and whether it requires a State to guarantee access to a remedy or to guarantee the provision of the reparation itself. The Human Rights Committee ("Committee") has equated the obligation to "ensure an effective remedy" with the obligation to provide the reparation itself, in certain circumstances. According to the Committee, Article 2(3) requires that:

> ... States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged.[48]

Reparation may take a range of forms, including "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."[49]

By interpreting the duty to ensure an effective remedy as giving

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GENERAL COMMENTS AND CONCLUDING OBSERVATIONS BY THE HUMAN RIGHTS COMMITTEE 7 (2005).

44. General Comment No. 31, at ¶ 15.

45. *Id.* at ¶ 8.

46. *Id.*

47. *Id.*

48. *Id.* at ¶ 16.

49. *Id.*

rise to the duty to provide the reparation itself, the Committee expanded the scope of Article 2(3) to encompass the scenario at issue in this article—the provision of reparations by States for the violations of non-State actors. This interpretation is notable given that Article 2(3) already provides a certain level of detail on what the duty to ensure an effective remedy entails (namely, a determination by competent judicial, administrative or legislative authorities, and the enforcement of such remedies). The interpretation offered by the Committee implies that, regardless of the identity of the perpetrator, States may, in certain circumstances, be held responsible for providing reparations when the State has failed in its duty to ensure the recognition of those rights. In circumstances where the perpetrator is a non-State actor, the Committee's interpretation essentially obligates States to act as a guarantor by ensuring the provision of reparations when the perpetrator is indigent or cannot be identified.

3. *European Convention on the Compensation of Victims of Violent Crimes*

Article 2(3) of the ICCPR contrasts notably with the provisions of the 1983 European Convention on the Compensation of Victims of Violent Crimes (European Convention). The Council of Europe adopted the European Convention because of the need for compensation schemes for victims of intentional crimes of violence, in particular, when the offender has not been identified or is without resources.[50] The European Convention provides that when compensation is "not fully available from other sources" (such as the perpetrator), the State shall "contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence," as well as the dependents of persons who have died as a result of such crimes.[51] In these circumstances, States must award compensation "even if the offender cannot be prosecuted or punished."[52] The General Assembly's 1985 Declaration of Basic Principles of Justice

50. European Convention on the Compensation of Victims of Violent Crimes, *open for signature* Nov. 24, 1983, Europ. T.S. 116 ("Considering that it is necessary to introduce or develop schemes for the compensation of these victims by the State in whose territory such crimes were committed, in particular when the offender has not been identified or is without resources ...").

51. *Id.* at art. 2(1).

52. *Id.* at art. 2(2).

for Victims of Crime and Abuse of Power (1985 G.A. Declaration) also contains very similar language. It provides that States should compensate victims "when compensation is not fully available from the offender or other sources."[53]

When juxtaposed with the ambiguity of ICCPR Article 2(3), the provisions of the 1983 European Convention are striking in terms of the strength and clarity of the obligation they impose on States to provide reparations for the violations of non-State actors. The contrast between the provisions in the ICCPR and the provisions in both the 1983 European Convention and the 1985 G.A. Declaration may indicate that international law has progressed on this point since the ICCPR was drafted in the 1960s. It should be noted, however, that the 1983 European Convention reflects the views of only one region of the world, and the 1985 G.A. Declaration is not binding on States. Nonetheless, the European Convention and the 1985 G.A. Declaration show that, in certain circumstances, States have bound themselves to provide remedies for the violations of non-State actors.

As will be discussed below, the 1985 G.A. Declaration contributed to the development of another soft law instrument that ultimately narrows the obligations of States to provide reparations: The 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.[54]

B. The Basic Principles and Guidelines on the Right to a Remedy and Reparation

The Basic Principles, adopted by the U.N. General Assembly in 2005, depart from the stance espoused by States in the 1985 G.A. Declaration mentioned above. The Basic Principles were developed by Theo van Boven and Cherif Bassiouni, the Special Rapporteurs who were respectively appointed by the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities.[55] The drafting process began in 1989 and culminated in the General

53. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34 (Nov. 29, 1985).

54. Marten Zwanenburg, *The Van Boven/Bassiouni Principles: An Appraisal*, 24 NETH. Q. HUM. RTS. 641, 643 (2006).

55. *Id.* at 641-42.

Assembly's adoption of the Basic Principles in 2006.[56] During this long drafting process, much debate surrounded the issue of "whose violations are subject to reparations"—violations by the State and its agents, or violations by non-State actors such as unchecked rebel factions?[57] The debate focused, in part, on whether States should have to provide reparations even when official involvement cannot be proven or takes the form of an omission rather than an act.[58]

The Basic Principles only make a hortatory statement about the provision of reparations by States for the violations of non-State actors:

> States *should endeavour* to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.[59]

This passage contrasts with the Basic Principles' determination that States must provide reparations for harm suffered at the hands of State actors:

> ... a State *shall* provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.[60]

The Basic Principles made a point of introducing no new legal obligations by using the terms "shall" and "should" to differentiate, respectively, between "cases where a binding international norm is currently in effect," and cases where "an international norm is less mandatory."[61] In this context, the term "less mandatory" appears to signal an emerging norm.[62]

After the adoption of the Basic Principles, Bassiouni commented that "a State's duty to provide reparations for violations

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56. *Id.* at 642-45.

57. Roht-Arriaza, *supra* note 7, at 163.

58. *Id.*

59. Basic Principles and Guidelines on the Right to a Remedy and Reparation, at art. 16 (emphasis added).

60. *Id.* at art. 15 (emphasis added).

61. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Hum. Rights, *Civil and Political Rights: The right to a remedy and reparation for victims of violations of international human rights and humanitarian law*, ¶ 8, U.N. Doc. E/CN.4/2003/63 (Dec. 27, 2002) [hereinafter ECOSOC Comm'n on Hum. Rights].

62. Zwanenburg, *supra* note 54, at 653.

by non-State actors is best described as an emerging norm," and a "laudable aspiration."[63] During the drafting process, States held varying views on the responsibility of States and non-State actors for violations of human rights law and international humanitarian law. The Guatemalan delegation, for example, considered that "the State is always responsible for violations, even if the actual perpetrator cannot be identified."[64] Similarly, the Cuban representative believed that "violations may be perpetrated by States, their agents, or others with the tolerance or acquiescence of the State," which is responsible even when non-State actors are the "actual perpetrators."[65] By contrast, the representative of the United Kingdom believed that non-State actors could not even violate human rights law (only States can do so), although both States and non-State actors could violate international humanitarian law.[66] In response to these varying view points, Special Rapporteur van Boven noted that because the Basic Principles are not a treaty, they may reflect an evolving concept of State responsibility under human rights law.[67]

Ultimately, while focusing on victims' rights, the Basic Principles avoided the controversial matter of who bears responsibility for providing reparations.[68] The drafters were only able to reach agreement on the notion that "the right to reparation applies both to violations of human rights and violations of

63. M. Cherif Bassiouni, *International Recognition of Victim's Rights*, 6 HUM. RTS. L. REV. 203, 223 (2006).

64. ECOSOC Comm'n on Hum. Rights, *supra* note 61, at ¶ 115.

65. *Id.* at ¶ 119.

66. *Id.* at ¶ 33.

67. *Id.* at ¶ 38.

68. It should be noted, however, that, in accordance with the International Law Commission's Draft Articles on State Responsibility, the Basic Principles do carve out limited spheres in which States may be held liable for the wrongs of non-State actors. Non-State actors that become State actors "are responsible for their policies and practices." When non-State actors transform themselves into the government by assuming power, it would be incongruous to deny their victims the rights and remedies available to other victims. Also, when non-State actors assume effective control over a territory equivalent to the control exercised by States, then "there is no legal reason why such non-State actors would be excluded either from responsibility for their actions or for the consequences of their policies and practice with respect to victims ..." U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Hum. Rights, *The Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, Explanatory Comments, p. 27-28, E/CN.4/2004/57 (Nov. 10, 2003).

humanitarian law, regardless of the status of the perpetrator or of succession of Governments."[69] In seeking "to ensure that victims receive remedy and reparation, regardless of who is the principal violator," the Basic Principles deemphasize the question of whether States or non-State actors are responsible for violations. The Basic Principles instead focus on the "situation of the victim."[70] During the latter stages of the drafting process, Special Rapporteur Bassiouni stressed that the Basic Principles aimed not "to establish principles of State responsibility, but to provide guidance on whether there are obligations to provide reparations as a consequence of violations."[71] Thus, instead of addressing who possesses these obligations, the Basic Principles contain only a "weak exhortation to States, but no obligation" in cases where the responsible party is unable or unwilling to fulfill its obligation to provide reparations.[72]

Furthermore, although the Basic Principles recognize victims' rights, they base them in part on moral obligations – on social principles of "solidarity with victims" as well as on "legal principles of accountability."[73] While the Basic Principles do not address the meaning of the term social solidarity, it has been described, on a most basic level, as "an interest in the interests of others."[74] According to one commentator, "[i]n societies divided and stratified by the differences between the urban and the rural, by ethnic, cultural, class, and gender factors, reparations manifest the interest of the traditionally most advantaged in the interests of the least favored."[75] Ideally, a carefully designed and well-implemented reparations program has the potential to play a modest role in catalyzing social solidarity in transitional societies.[76]

According to the drafting history of the Basic Principles, the concept of social solidarity was meant to extend the protection of victims' rights "beyond cases where the perpetrator could be held

69. ECOSOC Comm'n on Hum. Rights, *supra* note 61, at ¶ 47.

70. *Id.* at ¶ 114.

71. *Id.* at ¶ 116.

72. Roht-Arriaza, *supra* note 7, at 164.

73. Basic Principles and Guidelines on the Right to Remedy and Reparation, preamble.

74. Wierda & de Greiff, *supra* note 4, at 464.

75. *Id.*

76. *Id.* at 465.

accountable by calling on the Government concerned to support victims directly, even if it was not at fault."[77] The Basic Principles' use of the concept of "social solidarity" thereby reflects the fact that the drafters did not intend to make States legally responsible for the policies and practices of non-State actors. Instead, victims of violations by private actors may seek redress only on the basis of social solidarity. The concept of social solidarity thereby brings the issue of responsibility into the realm of politics and policymaking, and highlights the reluctance of States to extend their liability in this manner.

Ultimately, the Basic Principles' focus on social solidarity and the rights of victims undermines the ability of victims to enforce their right to reparations. By merely acknowledging that legal obligations exist, without defining and assigning those obligations, the Basic Principles render the rights of victims somewhat meaningless. The relatively long-term goal of social solidarity is quite distinct from concrete legal principles of accountability – only the latter may form the basis of a legal duty to provide reparations. The weakness of the Basic Principles on the issue of reparations for violations of non-State actors reflects a critical lack of consensus among States on this issue. As the following demonstrates, however, not all States and international institutions have shied away from asserting a strong stance on this subject.

C. *Inter-American Case Law: Velásquez Rodriguez*

Unlike the Basic Principles, the case law of the Inter-American Court of Human Rights (Inter-American Court) has both recognized the rights of victims to reparations and identified corresponding obligations of the State. The Inter-American Convention on Human Rights (Inter-American Convention), like the ICCPR, obligates State Parties "to undertake to respect the rights and freedoms recognized" in the Convention, and "to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination ...."[78] The Inter-American Convention also largely mirrors the provisions of the ICCPR regarding the right to judicial protection, although the Inter-American Convention does not explicitly obligate States to "ensure"

77. ECOSOC Comm'n on Hum. Rights, *supra* note 61, at ¶ 13.

78. American Convention on Human Rights art. 1(1), Nov. 22, 1969, 1144 U.N.T.S. 123.

that victims have an "effective remedy."[79] Instead, the Inter-American Convention focuses on the right of the victim to "effective recourse" to a court or tribunal:

> Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.[80]

Although the Inter-American Convention does not, like the ICCPR, obligate states to ensure or guarantee effective remedies or recourse, the jurisprudence of the Inter-American Court has nevertheless imposed such an obligation. Like the ICCPR's Human Rights Committee, the Inter-American Court has found that certain duties stem from the obligation of States to "ensure" the free and full exercise of the rights recognized under the Inter-American Convention. As will be discussed below, the Court has explicitly linked the State's obligation to ensure human rights with its duty to provide recourse in the event of their violation.

In 1988, in the landmark *Velásquez Rodriguez* case, the Inter-American Court of Human Rights articulated a cogent theory of due diligence owed by States in the context of forced disappearances.[81] The Inter-American Court considered the phenomenon of forced

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79. *Id.* at art. 25(2) (stating that "States Parties undertake: (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; (b) to develop the possibilities of judicial remedy; and (c) to ensure that the competent authorities shall enforce such remedies when granted.").

80. *Id.* at art. 25. In addition, Article 10 provides for a relatively narrow right to compensation: "Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice." As noted by one commentator, this provision "seems to refer exclusively to improper behavior of the state associated with criminal prosecution and punishment within the judicial system." FALK, *supra* note 2, at 484. Article 63(1) of the Convention is also worthy of mention:

> [i]f the [Inter-American] Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

81. Arthur J. Carrillo, *The Relevance of the Inter-American Human Rights Law and Practice to Repairing the Past, in* THE HANDBOOK OF REPARATIONS, 504, 506 (Pablo de Greiff ed., 2008).

disappearances to be a continuous violation of many human rights that States are obligated to respect and guarantee.[82] The Inter-American Court observed that although "disappearances are not new in the history of human rights violations," their systemic and repeated use in Latin America to create a "general state of anguish, insecurity and fear, is a recent phenomenon."[83]

The *Velásquez Rodriguez* case concerned the disappearance of Manfredo Velásquez in Tegucigalpa, Honduras, in 1981.[84] Manfredo Velásquez was a student involved in activities that the Honduran authorities considered "dangerous" to national security.[85] The Court found that several heavily armed men, who were connected with, or under the control of, the Honduran Armed Forces, had carried out Manfredo Velásquez kidnapping. The Court further determined that his captors and the Armed Forces had denied the kidnapping.[86] In addition, the Armed Forces and the Honduran Government had failed to investigate and reveal the whereabouts of Manfredo Velásquez.[87] Three writs of habeas corpus and two criminal complaints had been brought before the courts of Honduras, but all had proven ineffective.[88]

The Inter-American Court held that Manfredo Velásquez had disappeared at the hands of, or with the acquiescence of, Honduran officials.[89] More broadly, the Court also found that the Honduran Government had failed to guarantee the human rights affected by the practice of disappearances.[90] In particular, the disappearance of Manfredo Velásquez violated his right to personal liberty (art. 7), his right to personal integrity (art. 5), and his right to life (art. 4).[91] The

82. Velásquez Rodriguez, at ¶ 134.

83. *Id.* at ¶ 149.

84. For background information on the case of Velásquez Rodriguez *see* Linda Drucker, *Recent Development: Government Liability for 'Disappearances': A Landmark Ruling by the Inter-American Court of Human Rights*, 25 STAN. J. INT'L L. 289 (1988). For an analysis of the jurisprudence of the Inter-American Court on State responsibility *see* Dinah Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, 13 FORDHAM INT'L L.J. 1 (1989).

85. Velásquez Rodriguez, at ¶ 147(g)(i).

86. *Id.* at ¶ 147 (g)(iii).

87. *Id.*

88. *Id.*

89. *Id.* at ¶ 148.

90. *Id.*

91. *Id.* at ¶ 155-57.

Inter-American Court noted that even if it had not found that agents acting under cover of public authority had carried out the disappearance of Manfredo Velásquez, the Honduran Government still would have failed to ensure his free and full exercise of human rights, according to the duties it assumed under the Inter-American Convention.[92]

On a more theoretical level, the Court further held that States can be found responsible for the infringement of human rights not because of their direct involvement in violations, but because of a lack of due diligence. The Court explained that in certain circumstances a State is obligated to prevent, investigate, and punish human rights violations:

> An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[93]

The Court emphasized that due diligence requires a State to prevent, investigate, and punish human rights violations, as well as ensure adequate compensation. The Court explained that a State party must "take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction to identify those responsible."[94] States therefore have a duty "to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights."[95] In addition, States are required "to impose the appropriate punishment and to ensure the victim adequate compensation."[96]

Significantly, the Court added that States must, "if possible attempt to restore the right and provide compensation as warranted

92. *Id.* at ¶ 182.
93. *Id.* at ¶ 172.
94. *Id.* at ¶ 174.
95. *Id.* at ¶ 166.
96. *Id.* at ¶ 174.

for damages resulting from the violation."[97] This passage represents the first judicial articulation of the State's obligation, in certain circumstances, to provide reparations to the victims of human rights abuses committed by non-State or otherwise unidentifiable actors.[98] Although the Court did not specify when a State would be obligated to provide compensation, this passage could logically be interpreted to mean that a duty attaches when the perpetrators are unknown or unable to provide compensation themselves. Furthermore, the phrase "if possible" could imply that States would not be obligated to act if practical considerations, such as a State's budgetary constraints, precluded such a payment. Such a caveat potentially creates a significant exception to this obligation, as even a political impasse, for instance, could be considered a practical consideration that renders compensation impossible.

Ultimately, the Court in the *Velásquez Rodriguez* case called upon the parties to agree on the amount of compensation or damages, but indicated that it would award an amount if the parties were unable to reach an agreement.[99] As the above passages indicate, even if the disappearance of Manfredo Velásquez had not been directly imputed to Honduras, the State still would have been responsible for ensuring adequate compensation due to its failure to prevent, investigate, and punish. Moreover, if the perpetrators had been unidentifiable or without monetary assets, then this duty to ensure would have required Honduras to provide compensation, "if possible."[100]

Overall, the Court's 1988 judgment in the *Velásquez Rodriguez* case had "an enormous impact on the processes of political transformation ongoing in various Latin American countries" at that time.[101] The reparations programs adopted in both Chile and Argentina in the early 1990s internalized the principle of due diligence articulated in the *Velásquez Rodríguez* case and reflected the legal pressure imposed by the Inter-American human rights system.[102] The influence of this case, however, has extended well beyond Latin America in the 1990s. As will be discussed in the

97. *Id.* at ¶ 166.
98. Carrillo, *supra* note 81, at 511.
99. Velásquez Rodriguez, at ¶ 191.
100. *Id.* at ¶ 166.
101. Carrillo, *supra* note 81, at 506.
102. *Id.*

following sections, the *Velásquez Rodríguez* case formed an important legal basis for the recommendations on reparations made by the truth commissions of Peru and Sierra Leone.

D. Truth and Reconciliation Commissions

Truth and reconciliation commissions in post-conflict States such as Peru and Sierra Leone have adopted the principles articulated in the *Velásquez Rodriguez* case by explicitly obligating States to make reparations for violations of human rights committed by non-State actors. Despite the acceptance by States of this obligation, however, the implementation of recommended reparations programs has not been forthcoming. This trend may point to the weakness or unenforceability of such a norm, or the degree to which it is still emerging. The following sections discuss the reports issued by the commissions in Peru, Sierra Leone, and Liberia, and then examine the possible creation of a commission for northern Uganda.

1. Peru's Truth and Reconciliation Commission

In 2001, Peru's interim government established a Truth and Reconciliation Commission (TRC) to investigate the human rights violations that were committed during the internal armed conflict that occurred in Peru between 1980 and 2000.[103] The conflict between guerilla groups, the *rondas campesinas* (armed peasant patrols), and the Peruvian armed forces began in 1980, when Peru's Communist Party, the Shining Path, began its campaign to overthrow the Peruvian state.[104] After President Alberto Fujimori was forced from office in 2000, interim-President Valentín Paniagua used the past conflict as a political opening to establish the Commission.[105] During its two-year investigation from 2001 to 2003, the Commission determined that approximately 69,280 people had been killed or disappeared during the conflict.[106] The Commission also found that the Shining Path was responsible for 54 percent of the deaths and disappearances reported to the TRC, while the

103. Laplante & Theidon, *supra* note 4, at 232-33.

104. *Id.*

105. *Id.*

106. PERUVIAN TRC FINAL REPORT, vol. 8, at ¶ 2 (2003), *available at* http://www.cverdad.org.pe/ifinal/pdf/TOMO%20IX/2.2.%20PIR.pdf.

armed forces were responsible for 37 percent.[107]

Peru's TRC designed a Program of Integral Reparations (*Programa de Integral Reparaciones*) to help promote peace and foster conditions for reconciliation.[108] The TRC called for a comprehensive reparations program which would include symbolic reparations, health and educational services, the restitution of citizen rights, individual economic reparations, and collective community reparations.[109] The TRC also defined "victims" in a notably comprehensive manner.[110] The Commission defined victims as "all those people or groups of people who ... lived in the country between May 1980 and November 2000, [and who] have suffered acts or omissions that violated norms of international human rights law."[111] This definition conspicuously omits any reference to the status of the perpetrator of the violation. The TRC also explained that the term "victim of violation" refers to victims of a wide range of conduct, including forced disappearance, abduction, extrajudicial killings, murder, forced displacement, arbitrary detention and violations of due process, forced recruitment, torture, and sexual violations.[112] The Commission emphasized that a person's classification as a "victim of a violation" "does not depend on who the author was or on who has been identified as the author of the violations ...."[113]

The Commission based its recommendations for the reparations program on legal as well as moral justifications. Like the Basic Principles, the TRC's Report emphasizes the importance of solidarity with victims of the armed conflict. The Commission found that although the damage caused by the conflict is immeasurable, reparations play a role in acknowledging and reaffirming the dignity and the status of Peruvian citizens.[114] The Commission explained that the State has a moral duty to provide victims and their relatives with tangible signs of support and help, which, along with the application of justice, will foster a better

107. *Id.* at ¶ 5-7.
108. PERUVIAN TRC REPARATIONS PROGRAM, at 139.
109. *Id.* at 159-202.
110. Laplante & Theidon, *supra* note 4, at 234.
111. PERUVIAN TRC REPARATIONS PROGRAM, at 149.
112. *Id.*
113. *Id.* at 149-50.
114. *Id.* at 141.

understanding by Peruvian society of the country's different ethnicities and cultures.[115] For Peruvian victims who view the State as having failed to protect them, reparations also serve an important symbolic role by acknowledging their suffering, and signaling the State's accountability, or assumption of responsibility for the wrongs done to them.[116]

Unlike the Basic Principles, however, the Commission also considered the State to be legally, as well as ethically, obligated to provide reparations. By framing the provision of reparations as a legal obligation, the Commission strengthened the right of victims to such reparations. The fulfillment of this right would otherwise be left to the discretion of the State as it makes decisions regarding the allocation of funds.[117] Like the Inter-American Court of Human Rights, the Commission explained that a State's primary obligation to respect and ensure respect for human rights gives rise to a "duty to guarantee," meaning an obligation to prevent, investigate, and punish, and a duty to provide reparations to victims.[118] The Commission further noted that these obligations of the State correspond to the rights of people, and groups of people, to obtain reparations, as stipulated in various international legal instruments.[119]

In light of these moral and legal obligations, the Commission found the Peruvian Government responsible for providing reparations for victims of violations by non-State actors. This finding was critical for the efficacy of the reparations program, given that the TRC found that non-State actors (the Shining Path) had committed the majority (54%) of violations during the armed conflict.[120] Drawing upon the *Velásquez Rodriguez* case, the Commission emphasized that although violations by non-State actors may not initially be imputable to a State (because, for example, the perpetrator cannot be identified), a State may incur responsibility on account of its lack of due diligence in preventing the violation.[121] The Commission therefore found that a State's duty

115. *Id.* at 141-42.
116. Laplante & Theidon, *supra* note 4, at 245.
117. *Id.* at 246.
118. PERUVIAN TRC REPARATIONS PROGRAM, at 142.
119. *Id.*
120. *Id.* at 109.
121. *Id.* at 143.

to provide reparations extends to violations of human rights committed by private actors, including subversive groups and terrorists.[122] Consequently, the Commission recommended equal treatment for all victims—both for those whose rights have been violated by State agents, as well as for those victimized by subversive groups and terrorists.[123]

However, the Peruvian government's slow and inadequate implementation of the TRC's recommendations on reparations has generated a high level of disappointment in Peru among victims and survivors.[124] Although the Commission issued its report in August 2003, implementation of its recommendations did not begin until nearly two years later. In April 2005, a special government-appointed commission produced a Plan of Reparations, based on the Commission's recommendations, and in July 2005, the Peruvian Congress approved a Law of Reparations.[125] The National Council for Reparation, a government task force that was created in 2006, then registered for reparations 9,900 people in 3,565 communities.[126] In 2007, the Government finally paid approximately $2 million to only 65 communities, and a similarly inadequate amount of money was budgeted for 2008.[127] Greater progress has been thwarted by the limited budget of the task force, the lack of coordination between government agencies, and a lack of technical assistance to the communities in receipt of reparations.[128]

2. *Sierra Leone's Truth and Reconciliation Commission*

The conclusions reached by the Peruvian TRC in 2003 formed an important basis for the recommendations made the following year by the Sierra Leonean Commission. During the decade-long armed conflict in Sierra Leone, multiple armed factions vied for control of the country and engaged in brutal and widespread violence against the civilian population.[129] The armed conflict,

122. *Id.*

123. *Id.*

124. Laplante & Theidon, *supra* note 4, at 241.

125. *Id.* at 241, 246-47.

126. Barbara J. Fraser, *Work Remains in Struggle to Repair Human Rights Violations in Peru*, CATHOLIC NEWS SERV., Aug. 22, 2008, *available at* http://ictj.org/en/news/coverage/article/1938.html.

127. *Id.*

128. *Id.*

129. *See* Priscilla Hayner, *The Sierra Leone Truth and Reconciliation Commission:*

which began in 1991 and persisted until early 2002, was characterized in particular by amputations, the use of child soldiers, and sexual violence against women.[130] The Lomé Agreement of 1999 called for the establishment of a truth and reconciliation commission and provided a blanket amnesty for the acts of all combatants and collaborators up until the signing of the agreement.[131] In February 2000, the Sierra Leonean Parliament passed the Truth and Reconciliation Act (Sierra Leonean TRC Act), but after the fighting renewed in May 2000, the creation of the Truth and Reconciliation Commission was delayed until later that year.[132]

The Lomé Agreement and the Sierra Leonean TRC Act obligated the government of Sierra Leone to design and implement a Special Fund for War Victims.[133] The Sierra Leonean TRC Act also authorized the Commission to provide information and recommendations to this Fund, although it did not permit the Commission to exercise control over the Fund's operations or disbursement.[134] The Commission's report, issued in November 2004, accordingly provided detailed recommendations concerning eligible beneficiaries, the provision of benefits (e.g., health care, pensions, education, skills-training and micro-credit/projects, and community and symbolic reparations), sources of funding, and the implementation of policy.[135]

The Commission also addressed the international legal basis for the Sierra Leonean Government's provision of reparations. In doing so, the Commission followed in the footsteps of the Peruvian TRC by declaring that the government of Sierra Leone was obligated to provide reparations for the violations committed not only by the Sierra Leonean Government, but also by non-State actors during the armed conflict. The Commission took the view that:

Reviewing the First Year, INT'L CTR. FOR TRANSITIONAL JUST. Jan. 1, 2004, *available at* http://www.ictj.org/images/content/1/0/100.pdf.

130. *Id.*

131. Peace Agreement, July 7, 1999, Sierra Leone-Revolutionary United Front of Sierra Leone (RUF/SL) art. 26, ¶ 1 & art. 9, ¶ 2, *available at* http://www.sierra-leone.org/lomeaccord.html [hereinafter Lomé Agreement].

132. THE SIERRA LEONE TRC REPORT vol. 1, ch. 2, at ¶ 7.

133. Lomé Agreement, at art. 29.

134. Truth and Reconciliation Commission Act art. 7(6) (2000) (Sierra Leone), *available at* http://www.b92.net/trr/eng/doc/sierraleone-mandate.doc [hereinafter Sierra Leone TRC Act].

135. THE SIERRA LEONE TRC REPORT vol. 2, ch. 4, at ¶ 100.

> ...the State has a legal obligation to provide reparations for violations committed by both state actors and private actors. The Commission is of the opinion that all victims should be treated equally, fairly, and justly. Given the nature of the conflict in Sierra Leone, it was not always possible to identify the perpetrators or the group they belonged to. States have the obligation to guarantee the enjoyment of human rights and to ensure that human rights violators are brought to justice and that reparations are made to victims. States do not only have an obligation to respect human rights themselves; they are also obliged to ensure compliance with international obligations by private persons and an obligation to prevent violations. If governments fail to apply due diligence in responding adequately to, or in structurally preventing human rights violations, they are legally and morally responsible.[136]

In support of this pronouncement, the Report referenced the *Velásquez Rodriguez* case as well as the Report of the Peruvian TRC.[137] The Report also noted that several international human rights instruments impose on States the duty to provide individuals with "an effective remedy," "effective protection and remedies," or "redress and an enforceable right to fair and adequate compensation."[138] In addition, the Report generally referenced the Basic Principles and Guidelines on the Right to Remedy and Reparations.[139] One of the Commissioners of the TRC, William Schabas, separately opined that the Commission's views on the State's duty to provide reparations were in keeping with the progressive vision of the Basic Principles.[140]

Like the sources it references, the Commission explicitly found that in certain circumstances, the State has a legal obligation to provide reparations for violations by private non-State actors, as well as by the State. The Commission seems to have implicitly

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136. *Id.* at ¶ 21.

137. *Id.*

138. THE SIERRA LEONE TRC REPORT vol. 2, ch. 4, at ¶ 17. Examples include the Universal Declaration of Human Rights (art. 8), International Covenant on Civil and Political Rights (art. 2.3), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14), and the African Charter on Human and Peoples' Rights (arts. 7, 21).

139. THE SIERRA LEONE TRC REPORT vol. 2, ch. 4, at ¶ 18-21.

140. William A. Schabas, *Reparation Practices in Sierra Leone and the Truth and Reconciliation Commission, Out of the Ashes*, REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS 289, 298-99 (K. De. Feyter et al. eds., 2005).

recognized that without such an obligation on the State, few victims would qualify for reparations due to the nature of the armed conflict. The Sierra Leonean Armed Forces were ultimately responsible for a relatively small proportion of the violations against civilians. Furthermore, the more culpable armed factions (including the Revolutionary United Front, the Armed Forces Revolutionary Council, and the Civil Defense Forces) were at times difficult to differentiate between one another, while the individual perpetrators were similarly difficult to identify.[141] These extenuating circumstances seem to have necessitated the Commission's examination of the basis on which the State may be obligated to provide reparations for all victims, regardless of the status of the perpetrator.

The significance of the Commission's statement has been diminished by the Sierra Leonean Government's failure to implement the Report's recommendations. The Sierra Leonean TRC Act requires the Government of Sierra Leone to implement the Commission's recommendations in a timely and faithful manner.[142] Yet, as of this writing, few significant steps have been taken towards implementation.[143] In its November 2004 Report, the Commission recommended that Sierra Leone's National Commission for Social Action (NaCSA) handle the implementation of the reparations program, in part because of the organization's prior experience in dealing with the devastation caused by the conflict.[144] Not until June 2005, however, did the Government of Sierra Leone issue a White Paper accepting "in principle" the findings and recommendations of the Commission regarding reparations.[145] In addition, the White Paper quickly qualified this statement by explaining that it would use its "best endeavours to ensure the full and timely implementation" of the reparations programs recommended by the Commission, subject to available resources, including assistance received from the international community.[146]

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141. THE SIERRA LEONE TRC REPORT vol. 2, ch. 4, at ¶ 21.

142. Sierra Leone TRC Act, at art. 17.

143. *See generally* NAT'L COMM'N FOR SOCIAL ACTION (2007), *available at* http://www.nacsasl.org.

144. THE SIERRA LEONE TRC REPORT vol. 2, ch. 4, at ¶ 210-14.

145. WHITE PAPER ON THE TRUTH AND RECONCILIATION REPORT, 16 (June 29, 2005), *available at* http://witness.typepad.com/gillian_in_salone/files/whitepaper2.pdf.

146. *Id.*

In 2007, the Government of Sierra Leone finally designated NaCSA as the implementing body of the reparations program.[147] Thus, five years after the conclusion of Sierra Leone's decade-long armed conflict, the government of Sierra Leone was just beginning to implement a reparations program, which was originally conceived of in the 1999 Lomé Peace Agreement. This prolonged delay highlights the difficulties involved in implementing a reparations program in a post-conflict setting, given problems concerning adequate and sustained funding, as well as sufficient political will. Although the Government's acceptance of the Commission's findings contributes to *opinio juris* on the extent of State responsibility for the provision of reparations, little State practice (in the form of implementation) has followed. The absence of any State practice could suggest that the Government's acceptance of responsibility in the first instance was not entirely in good faith. It could also point to the weakness of this legal norm in light of the fact that transitional governments often have a limited capacity to implement such programs.

3. Subsequent Truth Commissions

Since 2004, no other truth and reconciliation commission has declared in similarly explicit terms that States are responsible for providing reparations for violations committed by non-State actors. The Liberian Truth and Reconciliation Commission has, however, designed a reparations program following a conflict in which rebel groups committed widespread atrocities against the civilian population over the course of Liberia's 15-year civil war. In addition, the Ugandan government has been exploring the possibility of creating a truth commission that would have the capacity to recommend reparations for victims of atrocities committed by the Lord's Resistance Army in the northern regions of Uganda.

a. Liberian Truth and Reconciliation Commission

The Liberian civil war, which took the lives of 200,000 Liberians and displaced one million people, was originally sparked in 1989

147. INT'L CTR. FOR TRANSITIONAL JUST., SIERRA LEONE, BACKGROUND, *available at* http://ictj.org/en/where/region1/141.html (last visited Feb. 15, 2010). The International Center for Transitional Justice has since been involved in training NaCSA officials and other members of civil society.

with the invasion of the armed group, the National Patriotic Front, under the leadership of Charles Taylor, who would later become the president of Liberia.[148] Throughout the course of the civil war, atrocities were committed against civilians by a relatively large and complex array of rebel factions, as well as by the Liberian military (the Armed Forces of Liberia).[149] Liberia's civil war ended with the signing of its Comprehensive Peace Agreement (CPA) on August 18, 2003 in Accra, Ghana.[150] This agreement was, by some accounts, Liberia's fifteenth peace agreement since the country's civil war began in 1989.[151] The negotiations leading up to this agreement took place in Ghana over the course of 76 days, while warring factions continued to shell Monrovia, Liberia's capital.[152] In addition to establishing a truth commission and a two-year transitional government, the CPA called for reform of the judicial and security sectors.[153]

The CPA itself did not call for reparations, although Liberia's Truth and Reconciliation Act of 2005 (Liberian TRC Act) later did.[154] The provision in the CPA that provided for the establishment of a TRC only called upon the Commission to make recommendations regarding rehabilitation rather than reparations, more broadly.[155] Apparently the participants in the peace negotiations never

148. *See generally* Peter Dennis, *A Brief History of Liberia*, INT'L CTR. FOR TRANSITIONAL JUST. (May 2006), *available at* http://www.ictj.org/static/Africa/Liberia/BriefHistory.pdf.

149. *Id.*

150. Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, Aug. 18, 2003 *available at* http://www.iss.co.za/Af/RegOrg/unity_to_union/pdfs/ecowas/liberiapeace.pdf [hereinafter Comprehensive Peace Agreement].

151. Priscilla Hayner, *Negotiating Peace in Liberia: Preserving the Possibility for Justice*, INT'L CTR. FOR TRANSITIONAL JUST., Nov., 2007, *available at* http://www. ictj.org/static/Africa/Liberia/HaynerLiberia1207.eng.pdf.

152. *Id.* at 4, 11-14.

153. Comprehensive Peace Agreement, at art. XIII.

154. Liberia's Truth and Reconciliation Commission Act authorizes the Commission to make recommendations regarding "[r]eparations and rehabilitation of victims and perpetrators in need of specialized psychosocial and other rehabilitative services." THE TRUTH AND RECONCILIATION ACT OF LIBERIA art. 7 § 26(j)(i) (2005) *available at* https://www.trcofliberia.org/reports/final (2009) [hereinafter TRC ACT OF LIBERIA].

155. Comprehensive Peace Agreement, at art. XIII § 3.

seriously discussed the subject of reparations.[156] Some international participants briefly considered the possibility, but decided that it would be too costly; their assumption was that reparations could not realistically be undertaken because everyone in Liberia is a victim of the conflict.[157]

The Liberian TRC Act, however, does provide for reparations, as well as for a trust fund, and official recognition of those who died in the conflict.[158] In its June 2009 Final Report, the Liberian Commission accordingly made a series of recommendations, though they lack a crucial level of detail, especially by comparison to the recommendations of other commissions.[159] For individuals who were incapacitated as a consequence of the civil war, the Commission recommended reparations in the form of psychosocial, physical, and mental health services.[160] In addition, the Commission recommended the provision of cash or material assistance to victims, though the parameters of this recommendation are unclear.[161] The Commission also recommended an adequately resourced trust fund, the establishment of memorials in recognition of the dead and the survivors of the conflict, and the provision of reparations for particular groups (such as education for children and special programs for the empowerment of women).[162] Although the Commission does not explicitly discuss which victims will be eligible for reparations, the assumption appears to be that victims of violations committed by both State and non-State actors will be beneficiaries.

Compared to the Peruvian and Sierra Leonean TRCs, Liberia's Commission offers little discussion of the moral or legal support for its recommendations. The Liberian TRC simply recommended "that the Government of Liberia assume its full responsibility under international law principles and regimes and pursuant to its moral, legal, social, political, cultural, economic, and security obligations to its citizens to provide reparations for all those individuals and

156. Hayner, *supra* note 151, at 20.

157. *Id.*

158. TRC ACT OF LIBERIA, at art. 4, 7 § 26(j)(i), art. 8 § 29, art. 9 § 38.

159. *See generally* THE LIBERIAN TRC FINAL REPORT, at vol. 2.

160. *Id.* at 378.

161. *Id.*

162. *Id.* at 378-79.

communities victimized by the years of instability and war."[163] The Liberian TRC's brief treatment of the issue could suggest that the Commission perceived that the legal basis for reparations for violations of non-State actors was already sufficiently well-established, and therefore not worthy of serious attention. On the other hand, the terseness of this passage could suggest that the Commission did not give these issues the type of careful consideration that the Commissions of Peru and Sierra Leone devoted. Given the overall brevity and lack of specificity of the Report's section on reparations, successful and timely implementation of the recommendations may be an unlikely outcome.

b. Uganda's Juba Peace Agreement

Reparations have also been a feature of the Juba peace process that has been aimed at bringing sustainable peace to northern Uganda after 23 years of conflict and internal displacement. Unlike the reparations programs discussed above, however, the agreements stemming from this peace process take into consideration the likelihood that decisions by the Ugandan Government on resource allocation could impact the design of any reparations program.[164] In addition, these agreements also allow for the perpetrators to be held responsible for providing reparations; however this is an unlikely outcome in practice due to the general impoverishment of the Lord Resistance Army's members (LRA).[165]

The Juba peace process, which began in June 2006, has been working toward bringing closure to the conflict in northern Uganda, which involved the commission of atrocities by the LRA, and also, to a lesser extent, by the Ugandan military (the Ugandan People's Defense Force).[166] Over one million internally displaced people have returned to their areas of origin since the cessation of hostilities

163. *Id.* at 378.

164. *See, e.g.*, The Agreement on Accountability and Reconciliation Between the Government of Uganda and the Lord's Resistance Army/Movement, Uganda-Sudan, June 29, 2007, *available at* http://northernuganda.usvpp.gov/uploads/images/u_h8S9SwfKutKGw70eM4vw/agendaitem3296.pdf.

165. *Id.*

166. *See* HUMAN RIGHTS WATCH, BENCHMARKS FOR ASSESSING POSSIBLE NATIONAL ALTERNATIVES TO INTERNATIONAL CRIMINAL COURT CASES AGAINST LRA LEADERS: HUMAN RIGHTS WATCH'S FIRST MEMORANDUM ON JUSTICE ISSUES AND THE JUBA TALKS, 2 (May 2007).

agreement and a permanent ceasefire were signed in February 2008.[167] Although the conflict in northern Uganda has effectively ended, the LRA has moved on to neighboring regions of southern Sudan and the eastern Democratic Republic of Congo (DRC).[168] In addition, the LRA's leader, Joseph Kony, has refused to sign the Final Peace Agreement that would bring the Juba peace process to a successful conclusion.[169] Nevertheless, despite the LRA's resumption of attacks in Sudan and the DRC and the peace talk's apparent failure, the Government of Uganda has already begun to implement parts of the concluded Juba protocols.[170]

The June 2007 Agreement on Accountability and Reconciliation (Agreement), and its February 2008 Annex, obligate the Ugandan Government to establish a body with truth commission-like powers, which would analyze the history of the conflict, inquire into its manifestations, hold hearings, promote truth-telling, preserve memory of the conflict, and gather information on the disappeared.[171] This body would also have the power to "make recommendations for the most appropriate modalities for implementing a regime of reparations, taking into account the principles set out in the principal agreement."[172] The parties agreed that "collective as well as individual reparations should be made to victims through mechanisms to be adopted by the Parties upon further consideration."[173] In keeping with the Basic Principles, the Agreement specifies that such reparations may take the form of rehabilitation, restitution, compensation, guarantees of non-recurrence, and other symbolic measures, including apologies, memorials, and commemorations.[174]

Unlike the other reparations programs discussed above, the

167. INTERNATIONAL CRISIS GROUP, NORTHERN UGANDA: THE ROAD TO PEACE, WITH OR WITHOUT KONY 1, 7 (2008).

168. *Id.* at 1.

169. *Id.*

170. *Id.* at 1, 4.

171. Annexure to the Agreement on Accountability and Reconciliation Between the Government of Uganda and the Lord's Resistance Army/Movement, Feb. 19, 2008, art. 4, *available at* http://www.iccnow.org/documents/Annexure_to_agreement_on_Accountability_signed_today.pdf [hereinafter Annexure to the Agreement on Accountability and Reconciliation].

172. *Id.* at ¶ 4(j).

173. Agreement on Accountability and Reconciliation, at ¶ 9.2.

174. *Id.* at ¶ 9.1.

Agreement on Accountability and Reconciliation allows for the possibility that the rebels themselves could be held responsible for providing reparations to their victims. The Agreement calls for legislation that would establish a regime of "alternative penalties and sanctions" for serious crimes and human rights violations committed by non-State actors during the conflict.[175] This legislation would require perpetrators to provide reparations to victims.[176] The Agreement, however, is not clear on whether perpetrators themselves would be responsible for directly providing reparations. The Agreement states that reparations that are ordered to be paid to a victim as a result of "penalties and sanctions in accountability proceedings, *may* be paid out of resources identified for this purpose."[177] Based on the text of the Agreement, the nature of those resources is unclear.

In addition, the reparations scheme outlined in the February 2008 Annexure to the Agreement on Accountability and Reconciliation (Annex) is unusual because it would not ensure the independence of any reparations program recommended by a truth commission.[178] According to the Annex, prior to establishing a reparations program, the government must "review the financial and institutional requirements for reparations, in order to ensure the adoption of the most effective mechanisms for reparations."[179] This focus on "financial and institutional requirements" suggests that a reparations program would not likely be designed according to victims' needs, but instead according to the Government's decisions on resource allocation.[180] As of this writing, however, given that a truth commission has yet to come into being in northern Uganda, the exact contours of or limitations on any reparations program remains to be seen.

E. International Criminal Court

Although the reparations scheme of the International Criminal

175. *Id.* at ¶ 6.3.

176. *Id.* at ¶ 6.4.

177. *Id.* at ¶. 9.3 (emphasis added).

178. Amnesty International, *Uganda: Agreement and Annex on Accountability and Reconciliation Falls Short of a Comprehensive Plan to end Impunity* , Mar. 1, 2008, AFR 59/001/2008, *available at* http://www.unhcr.org/refworld/docid/4847a4872.html [accessed Feb. 21, 2010].

179. Annexure to the Agreement on Accountability and Reconciliation, ¶ 16-17.

180. Amnesty International, *supra* note 178, at 23.

Court (ICC) does not directly contribute to the development of State responsibility for reparations, the ICC's use of its trust fund may serve as an example of how reparations may be provided by an entity other than the perpetrator. The ICC is the first international court with the power to order reparations directly against individual perpetrators.[181] The reparations scheme embodied in the Rome Statute was part of a more general effort by the drafters to grant victims broad abilities to participate in proceedings before the ICC.[182] The provisions on reparations were also part of an attempt to effectively address the issue of reparations, in light of the fact that the International Criminal Tribunals for the former Yugoslavia and Rwanda were not able to make use of the compensation schemes in their statutes.[183]

Although the Rome Statute does not include any provisions on State responsibility, it does recognize that reparations may be provided by sources other than the perpetrator.[184] The concept of State responsibility for reparations was a contentious issue during the negotiations on reparations at the 1998 Rome Conference for the International Criminal Court.[185] Perhaps the debates on this issue at the Rome Conference foreshadowed its contentiousness a few years later during the latter stages of the drafting of the Basic Principles. A significant number of delegations were not prepared to accept the principle of State responsibility towards victims, and they likely would have opposed the article on reparations in its entirety had it included provisions to this effect.[186] While proponents of State responsibility pointed to support for this principle in the 1983 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, opponents argued that the ICC was designed to deal specifically with issues of individual criminal responsibility.[187]

Thus, the Rome Statute allows only for the provision of

181. Adrian Di Giovanni, *The Prospect of ICC Reparations in the Case Concerning Northern Uganda: On a Collision Course with Incoherence?* 2 J. INT'L L. & INT'L REL. 25, 39 (2006).

182. *Id.* at 40.

183. *Id.*

184. Bassiouni, *supra* note 63, at 225.

185. Christopher Muttukumaru, *Reparation to Victims*, THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE 267-69, (Roy Lee ed.,1999). *See also* Roht-Arriaza, *supra* note 7, at 168.

186. Muttukumaru, *supra* note 185, at 267-68.

187. *Id.* at 268.

reparations by the perpetrators themselves, or through a trust fund.[188] The ICC has the authority to order reparations on an individual or collective basis, depending on its determination of "the scope and extent of any damage, loss and injury to, or in respect of, victims."[189] It may engage in such an assessment upon the request of a victim, or on its own motion, in exceptional circumstances.[190] The ICC may "make an order directly against a convicted person specifying appropriate reparations."[191] The ICC may not, however, order a State to make reparations, although it can request the cooperation of a State party in identifying, tracing, and freezing the proceeds, profits, and assets of crimes, and in carrying out fines and forfeiture orders.[192]

The ICC may also "order that an award for reparations against a convicted person be made through the Trust Fund" in cases where "the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate."[193] The Rome Statute requires States to establish a trust fund "for the benefit of victims of crimes within the jurisdiction of the ICC, and of the families of such victims."[194] The trust fund is funded through assets confiscated from perpetrators.[195] The ICC will likely draw upon the victims' trust fund more frequently than not when ordering reparations. Often individual perpetrators are indigent, or have sheltered their money in foreign bank accounts. Moreover, because all of the ICC's cases, as of this writing, involve mass atrocities, perpetrators most likely will not have sufficient assets to provide

188. Rome Statute of the Int'l Criminal Court, art. 75(1), (2) [hereinafter Rome Statute]. For a detailed analysis of the ICC's reparations scheme *see* Peter G. Fischer, *The Victims' Trust Fund of the International Criminal Court - Formation of a Functional Reparations Scheme*, 17 EMORY INT'L L. REV. 187 (2003).

189. Rome Statute, at art. 75(1). For a detailed analysis of the provision of reparations through individualized, case-by-case civil litigation, as opposed to collective, reparations programs, *see* Marieke Wierda & Pablo de Greiff,, *Reparations and the International Criminal Court: A Prospective Role for the Trust Fund for Victims*, INT'L CTR. FOR TRANSITIONAL JUST. (2004), *available at* http://www.vrwg.org/Publications/02/ICTJ%20Trust%20Fund%20Paper.pdf.

190. *See* Int'l Crim. Ct., R. of Procedure and Evid., 94, 95, U.N. Doc. PCNICC/2000/1/Add.1 (2000).

191. Rome Statute, at art. 75(2).

192. *Id.* at arts. 93(k), 109.

193. Int'l Crim. Ct., R. of Procedure and Evid., 98(3).

194. Rome Statute, at art. 79.

195. *Id.*

victims with meaningful reparations.[196]

The ICC's trust fund is likely to play a role similar to that of national reparations programs created after mass atrocities, and both are likely to face some of the same challenges. Given that the ICC's situations have, thus far, involved victims numbering in the hundreds of thousands (if not millions), the trust fund, like many transitional governments with limited budgets, will be greatly pressed by the need to raise enough funds for all of its situations.[197] Because the Victims Trust Fund will serve as an important alternative source for reparations, beyond the funds recovered from perpetrators, it is likely to "face significant challenges in building up a sufficient pool of resources to satisfy future reparations awards."[198] Despite these likely challenges, however, the manner in which the ICC designs collective reparations programs may ultimately influence the development of national reparations programs.[199] Thus, although the ICC's reparations scheme does not contribute directly to the development of the emerging norm of State responsibility for the provision of reparations, the fund itself may play an unusual role in shaping the development of national reparations programs.

II. Conclusion

As non-State actors have played increasingly prominent roles in armed conflicts since the end of the Cold War, State practice with respect to reparations has begun to develop accordingly. By adopting the recommendations of their truth and reconciliation commissions on the creation of reparations programs, Peru and Sierra Leone have accepted their responsibility to provide reparations for violations committed by non-State actors during their respective armed conflicts. In their articulations of this obligation, these commissions drew on relatively long-standing international human rights treaties, such as the ICCPR, and on the 1989 *Velásquez Rodriguez* case, which provides especially strong legal support on this issue. The TRC reports accepted by these States may represent a shift away from the weak stances espoused by States in

196. Di Giovanni, *supra* note 181, at 49.

197. *Id.* at 50.

198. *Id.* at 49.

199. *Id.*

the Basic Principles.

Yet this body of State practice is admittedly small and tenuous. In light of the poor implementation records of both Peru and Sierra Leone, it could be argued that these States have barely contributed to State practice on the duty of States to provide reparations for the violations of non-State actors in certain circumstances. In fact, their failure to implement reparations programs in a timely and meaningful manner could point to the current weakness of this norm in light of the often complicated politics of post-conflict States (particularly with respect to the allocation of the State budget). In addition, the contours of this norm have not yet been fully outlined, as little guidance exists on the exact circumstances in which this norm applies. Despite its current weakness and its blurry contours, this emerging norm may nonetheless play an important role in the design of future reparations programs, which will continue to feature in the world's many post-conflict societies.

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