

EXECUTIVE SUMMARY

Advancing Victims' Rights and Rebuilding Just Communities

Local Strategies for Achieving Reparation
as a Part of Sustainable Development

November 2023



Cover Image: A Kaneleng woman sings for immediate reparations for victims of human rights abuses in The Gambia at an ICTJ-organized festival celebrating women and their role in the country's transitional justice process in the town of Basse in December 2022. Kaneleng are socially marginalized women in The Gambia who use music and song to convey messages of peace and resistance, promote human rights, and criticize society's wrongs. (Loum Patience/ICTJ)

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Acknowledgments

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Contributors

This report is the product of a collaborative effort among ICTJ's country offices in The Gambia, Uganda, Tunisia, and Colombia, and its headquarters in New York. Contributing individuals include the following: Didier Gbery and Tuti Nyang in The Gambia; Marianne Akumu, Sarah Kasande, and Daniela Diaz Villamil in Uganda; Salwa El Gantri in Tunisia; Veronika Hoelker and Maria Camila Moreno in Colombia; and Ruben Carranza, Roger Duthie, Emma Merritt-Cuneo, Kelli Muddell, and Elena Naughton in New York.

About ICTJ

The International Center for Transitional Justice (ICTJ) works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

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For societies that have experienced violent conflict and repression, moving forward often requires addressing the legacies of widespread and serious human rights violations, which include the harms, losses, and marginalization experienced by victims and affected communities. These legacies can constitute or create significant and long-term obstacles to individual and collective well-being. In these contexts, societies often respond to such legacies through a combination of transitional justice measures that seek the complementary or overlapping aims of acknowledgment, repair, accountability, and prevention.

Reparation for victims of massive human rights violations for the harms they have suffered is an obligation of governments that either caused or failed to prevent those violations.¹ Reparations are intended to acknowledge victims, repair the harm done, affirm victims as rights bearers, and reduce the likelihood that violations will recur. Reparations programs can provide material and symbolic support at the individual and collective levels. Complementary justice measures, such as criminal accountability and reform, can also have reparative elements.

In directly responding to harms experienced by victims, transitional justice measures such as reparations programs work to fulfill the right to remedy enshrined in the corpus of international human rights instruments. Given the impact of these harms on overall well-being, however, such measures can also be understood as an element of sustainable development—a global agenda for improving people's well-being and establishing more equal, peaceful, just, and inclusive societies. Transitional justice can help to overcome obstacles to development by improving people's agency, rebuilding social relationships, and addressing the underlying causes of violence and exclusion.²

Embodied in the 2015 Sustainable Development Goals (SDGs), the sustainable development agenda includes both a universal call to action and a recognition that each country faces specific challenges. As has been recognized in international policy, transitional justice measures can serve as a mechanism to shape sustainable development to local contexts. As a central element of transitional justice, reparation explicitly demonstrates this potential contribution, and reparations programs can be designed

¹ See 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," A/RES/60/147, December 16, 2005.

² See most recently: Working Group on Transitional Justice and SDG16+, "Toward Victim-Centered Change: Integrating Transitional Justice into Sustainable Peace and Development," 2023; UN Human Rights Council, "Human Rights and Transitional Justice," Resolution A/HRC/51/23, September 30, 2022; UN General Assembly, "Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Fabián Salvioli. Sustainable Development Goals and Transitional Justice: Leaving No Victim Behind," A/77/162, July 14, 2022; UN Human Rights Council, "Human Rights and Transitional Justice: Report of the Office of the United Nations High Commissioner for Human Rights," A/HRC/49/39, January 12, 2022; Working Group on Transitional Justice and SDG16+, "On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations," 2019.

in ways that enhance their contributions to sustainable development in terms of both process and outcomes.

Nevertheless, governments in countries affected by conflict and repression often do not prioritize reparations or reparative justice, while those that do implement reparations often fail to take victim-centered and gender-sensitive approaches or embed their programs in broader processes of change, leaving the underlying drivers of marginalization, violence, and abuse to persist.³ Further, recognition in international policy of the role that transitional justice plays in development has yet to translate into the type of external support that would most benefit local actors and push the reparations agenda forward.

This study examines the efforts and strategies of local actors to advocate for and shape reparations programs and reparative justice and highlights the synergies between these efforts and sustainable development in four contexts—The Gambia, Uganda, Tunisia, and Colombia. These countries represent a range of different situations where the progress made, the challenges faced, and overall political and institutional contexts vary significantly. In The Gambia, the truth commission's recommendations and reparations legislation have created expectations among victims that they would receive reparation, but a national program has yet to be implemented. In Uganda, the government has established the legal and policy framework for reparations, but because of stalled political will at the national level, there is no enabling legislation or mechanism to provide them. In Tunisia, the truth commission recommended a reparation program, but the political and economic situation have made progress on its operationalization unlikely in the near future. In Colombia, the challenges faced in implementing administrative reparations have informed the design of restorative sanctions that include reparative projects, although they have not yet been judicially awarded.

Nevertheless, a comparison of local actors' goals and strategies across these four contexts offers valuable insights for those working in these and other countries. These insights relate to the following: the specific ways in which reparations can contribute to well-being and development; innovative and effective approaches to ensuring victims and communities receive reparations and support; the integration of victims' needs into development policies, which with explicit purpose can constitute reparation; and the reparative elements of complementary accountability and reform measures that address corruption and marginalization and provide pathways to recognition and compensation.

In The Gambia, the specific focus may currently be on coordination among civil society and engagement with the government; in Uganda, it may be on organizing community-level initiatives with victims and survivors; in Tunisia, it may be on the need to address regional marginalization and gender discrimination; and in Colombia, it may be on both administrative reparations and restorative sanctions projects. Within a broad reparative and development lens, however, these are complementary strategies that are likely to evolve over time and can benefit from cross learning. In their different ways, they can all help to ensure that reparative justice not only contributes to development but also plays an important role in making it more inclusive and sustainable. The study therefore offers practical guidance and policy considerations on approaches to advancing reparation for massive human rights violations as an integral element of broader societal efforts to bring about meaningful and long-term change.

3 See, for example, Pablo de Greiff, *The Handbook of Reparations* (Oxford: Oxford University Press, 2006); Sarah Kasande and Eva Kallweit, "Building Blocks for Reparations: Providing Interim Relief to Victims Through Targeted Development Assistance," ICTJ, 2020; Ruben Carranza, Cristian Correa, and Elena Naughton, "Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations," ICTJ, 2017; Ruben Carranza, Cristian Correa, and Elena Naughton, "More than Words: Apologies as a Form of Reparations," ICTJ, 2015.

Findings

Legacies of violations as obstacles to sustainable development: The legacies of massive human rights violations—not just violations of political and civil rights but also of economic, social, and cultural rights—create significant obstacles to individual and group well-being and sustainable development. At the individual level, victims and survivors of violations suffer physical, psychological, social, economic, and political harms and losses, while groups, communities, and regions are often targeted by different forms of destruction, marginalization, and exclusion and experience social and political division and fragmentation. At the structural level, a series of drivers or root causes of violence and exclusion—including poverty, inequality, economic crises, patriarchal systems, migration, limited civic space, institutional capacity and integrity deficits, and limited political and structural transitions from repression or conflict—can reinforce these harms. The same root causes of violence and exclusion then constrain societal responses to them, including reparations for victimized and marginalized populations. The failure to reconsider the development paradigms that worsened poverty, reinforced inequality, enabled corruption, and sparked conflict or political violence, and the invariably unquestioning continuation of those paradigms after a transition, makes the promise of “never again” unlikely. The International Center for Transitional Justice’s (ICTJ) global research and field work, including discussions in workshops held in The Gambia, Tunisia, and Uganda, make it clear that when we speak of legacies of the past that are obstacles to sustainable development, they include the very same unjust development policies prescribed to and implemented by deposed or former rulers.

Reparations as an element of sustainable development: Reparations programs can help to reduce obstacles to well-being and development through the forms that they take and the various processes through which they are designed and implemented. This is clear from the priorities that victims most often express, that truth commissions commonly cite in their recommendations, and that governments build into administrative reparations programs to be as comprehensive and transformative as possible. While compensation is often a priority for victims, material reparation can also take the form of the following: medical and health care services, mental health and psychosocial support, livelihood support, employment opportunities, housing, land, education, and public transportation. Collective reparations for affected communities and regions can take the form of infrastructure and reconstruction, hospitals and clinics, schools, environmental programs, and other community development projects. Symbolic reparations include apologies and memorialization. Reparations programs can contribute to agency, empowerment, and rights awareness to the extent that they are participatory, consultative, and accessible. The challenges faced by reparations programs include a lack of inclusiveness and, above all, a lack of implementation.

Collective action among victims, survivors, and civil society: Collective action is a fundamental strategy for advocating for the operationalization of reparations programs that address the needs of victims and reduce the barriers to development that result from massive human rights violations. Collective action in the context of reparations includes victims and survivors themselves and their representation in victims’ groups and networks and other civil society organizations (CSOs). Increased collective action can constitute an element of sustainable development, given its role in increasing agency, empowerment, inclusion, and social cohesion. Moreover, when alliances and coalitions are formed across civil society actors with a range of mandates, collective action can increase the likelihood that reparations programs contribute to changing underlying structures of marginalization.

Direct engagement with government: While collective action among victims and civil society can constitute an element of development, strategies to push for the operationalization of a

reparations program often include direct engagement with relevant government institutions. This can include: advocacy; lobbying; bringing victims, community members, and decision makers together; mobilizing and training victims to take a leading role in this process; and raising awareness among legislators and policymakers. The targets of this work include not only the bodies in charge of transitional justice policies, like the ministry of justice, but also a range of other ministries and departments involved in the implementation of comprehensive reparations—including ministries of finance, welfare, land, health, and education and legislative bodies, such as parliament, local government councils, and national assemblies.

Direct support to victims and affected communities: In contexts where reparations programs have not been implemented, especially where one is not expected to be instituted soon, civil society actors can step in, working outside of a reparations program to provide direct support to victims and affected communities in a range of ways. This can include assistance in the areas of collective healing, child tracing (connecting children born of war to their paternal family or clan), financial support, livelihoods, housing, land, education, medical care, psychosocial support, skills training, legal aid, and reintegration, all of which have a direct bearing on development. This type of support has shown to be particularly valuable for specific groups that face social barriers, such as youth activists and those who suffered sexual and gender-based violence (SGBV) and children born of war. Given that this type of initiative is often initiated at the community level, where patriarchal systems and views may be prominent, efforts like community sensitization may be needed to minimize stigmatization associated with participation. While this form of support can help to partially fill the gap left by the absence of a reparations program and inadequate development programs, however, it does not involve state acknowledgment of wrongdoing and therefore does not fulfill the obligation to repair. While it can offer valuable lessons for future reparations programs, unlike reparation programs, it may not restore victims' dignity or help rebuild their relationships in the community.

Victim-sensitive development policies: Another strategy outside the framework of a reparations program is to advocate for development policies and programs to orient more to the needs of victims and affected communities at both the national and local levels. In most cases, government development priorities in transitional periods will consist of general infrastructure reconstruction and economic development, not addressing and removing the specific obstacles to well-being that victims and communities face as a result of violence and repression. Opportunities may exist, however, to develop synergies between these two goals. For example, development plans in areas such as poverty reduction, land, education, and health can facilitate or reinforce the operationalization, impact, and acknowledgment components of reparations programs. Moreover, development programs can prioritize victims and affected communities, addressing their needs and potentially providing “building blocks” for future reparations. This may be an underutilized avenue of advocacy, because victims and civil society often do not see development programs through this lens while governments often ignore the reparative potential of development programs. But it also raises the risk of conflating reparations with development.

Operational challenges: In the difficult contexts following periods of violent conflict and repression, civil society faces a series of significant challenges in the operationalization of efforts to advocate for and shape reparations programs, provide direct support, and make development policy more victim centered. This includes having limited data about victims, the harms that they suffered, and their needs, which hinders the effectiveness and reach of reparations. Another challenge is a lack of civil society coordination, which can be constrained by the lack of capacity and experience in civic engagement, especially if organizations with differing mandates and objectives compete for support and opportunity. A lack of coordination among government

institutions may exacerbate the problem, reducing the impact of direct engagement with government. In addition, local actors, especially those at the grassroots level, face challenges accessing funding due to limited capacity, procedural barriers, and divergence from donor priorities. Finally, civic space is often limited by restrictions, fear of reprisals, and government interference, which speaks to the need for broader reforms.

Accountability and reparation: A broad understanding of accountability includes an element of reparation, therefore allowing for direct synergies between criminal justice processes and reparations and, in turn, development. To the extent that criminal accountability processes are participatory and accessible, for example, they can complement reparations programs in increasing the agency of victims and communities and in court judgments awarding reparations in the form of compensation for victims—for instance, for loss of property or natural resources or the imposition of restorative sanctions on perpetrators. In criminal justice processes, civil society actors can play a role by providing legal aid and psychosocial support, with the latter particularly important in cases of SGBV due to the stigma attached to it. At the informal level, victim-led documentation and storytelling processes can increase victims' agency while providing material for potential future criminal investigations. In some contexts, especially rural areas, traditional justice and reconciliation processes include elements of acknowledgement and repair in the form of dialogue and ritual. While these processes can bring challenges in relation to gender, youth, and community conflict, their potential contributions to areas such as reintegration of former combatants and access to land make the relevance to development clear. Accountability efforts to address corruption and economic crimes can also be reparatory by potentially generating funds through asset recovery and exposing exclusionary economic systems. In practice, the benefits of such efforts often remain unrealized, in part because they are accompanied by limited political transition and systemic change. Finally, sanctions for perpetrators that are imposed within a restorative justice paradigm demonstrate that retribution, reparation, and development can be combined at the design level and ideally in practice as well.

Synergies between reform and reparation: The reparative and transformative impact of reparations and reparative justice is likely to be limited if they are not embedded in broader processes of reform that seek to: prevent the recurrence of violations and marginalization, dismantle exclusionary and corrupt systems, and build more just and inclusive societies. Such processes can include constitutional reform, which can set up more inclusive legal and administrative frameworks; security sector reform (SSR), which is often understood as a key element of development, with substantive components of accountability and repair; and institutional reform in a range of sectors, including the judicial, health care, and education systems, which have important bearing on access to justice and enjoyment of economic, social, and cultural rights. It is also important not to ignore the transnational element of exclusive and abusive systems, including the role of international financial institutions and donor governments in maintaining unjust development models. Finally, the need to embed reparation within broader reform is demonstrated in the area of gender justice and equality, where violence, discrimination, and marginalization are integrally connected and require change at the political, social, economic, and cultural levels. While the scope and complexity of these structural problems are daunting, these areas of potential reform offer valuable opportunities for local actors.

Policy Recommendations

- Recognize the role played by legacies of past human rights violations, including violations connected to violence, repression, and unjust development paradigms, in creating obstacles to well-being and sustainable development for both individuals and communities.

- Consider reparations for victims of human rights violations—including of economic, social, and cultural rights—and communities affected by marginalization as a mechanism to overcome obstacles to well-being, agency, and inclusion and, therefore, as an integral element of sustainable development.
- Support collective action among victims, survivors, and civil society actors across different sectors in order to increase their influence on the design and implementation of state reparations programs and to overcome coordination deficits.
- Facilitate efforts to make connections between victims, survivors, and civil society and the entire range of government actors relevant to the operationalization of comprehensive reparations programs, including by increasing coordination among government actors themselves.
- Support civil society and grassroots initiatives that provide direct support to victims and affected communities outside the framework of official reparations programs, including by making it easier to access funding opportunities.
- Promote more victim-centered development policies and plans at the local, national, and international levels that respond to the specific needs and priorities of victims and affected communities, without conflating reparation with development.
- Support criminal accountability mechanisms that complement reparations, including by making them more victim centered through participatory and accessible processes, informal justice and reconciliation practices, efforts to address corruption and economic crimes and recover assets, and restorative sanctions.
- Promote broader reform processes that increase the impact of reparations by dismantling abusive and exclusionary systems—including their transnational elements—to foster constitutional and institutional reform and advance gender justice and equality.

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ICTJ New York
50 Broadway, 23rd Floor
New York, NY 10004
www.ictj.org