

February, 12th - 14 th 2009

# The Rabat Report

## **THE CONCEPT AND CHALLENGES OF COLLECTIVE REPARATIONS**



Schweizerische Eidgenossenschaft  
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OF COLLECTIVE REPARATIONS**

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## CASE STUDIES

**Aceh Province (Indonesia):** Prepared by Ruben Carranza and ICTJ Research Intern Suzanne Baidon-Ciobanu, and inputs from ICTJ Indonesia Consultant Karen Campbell-Nelson; based on *Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective*, (ICTJ Jakarta 2008) by Ross Clarke, Galuh Wandita and Samsidar; on data available from the Aceh Reintegration Authority (BRA) and other public sources. February 2009.

**Colombia:** Prepared by Julie Guillerot with inputs from ICTJ Colombia staff member Angelica Zamora, and partially based on Catalina Diaz's prologue to the book, *Estudios de caso y análisis comparado*, Catalina Díaz (ed.). Serie Justicia Transicional, Centro Internacional para la Justicia Transicional, Bogotá, 2008. Also based on the report from a regional meeting on collective reparations held in Bogotá, October 2008. February 2009.

**Liberia:** Prepared by Ruben Carranza with inputs from ICTJ Liberia Program Associate Aaron Weah and ICTJ Liberia Program Associate Lizzie Goodfriend, February 2009, with further revision by Weah, June 2009. Recently, the Liberia TRC released the final volume of its report; the reparations recommendations in this volume make a general reiteration of the need for community reparations but are less clear on whether that form is preferred.

**Morocco:** Prepared by CCDH, February 2009, with additions from Julie Guillerot and Habib Nassar, July 2009.

**Peru:** Prepared by Julie Guillerot with inputs from Cristián Correa, February 2009.

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**Timor-Leste:** This summary was prepared by Ruben Carranza, with assistance from Research Interns Farrukh Lalani and Andrew Andrzejewski and inputs from Karen Campbell-Nelson. It relies on *Chega! (The Final Report of the Timor-Leste Commission for Reception, Truth and Reconciliation CAVR)*, on the report on “Gender and Reparations in East Timor” (now part of the publication “What Happened to the Women: Gender and Reparations for Human Rights Violations” [December 2006, The Social Science Research Council]) by ICTJ Jakarta Senior Associate, and former Deputy Director/Program Manager, East Timor’s Truth and Reconciliation Commission Galuh Wandita, Karen Campbell-Nelson, and ICTJ Timor-Leste Program Associate Manuela Leong Pereira that can be downloaded at <http://www.ssrc.org/blog/pdfs/rubiomarin/978-0-9790772-0-3-chapter6.pdf>), as well as on various updates previously issued by the CAVR Secretariat, available at <http://www.cavr-timorleste.org/CAVRupdate.htm>.

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**ACRONYMS**

AUC	<i>Autodefensas Unidas de Colombia</i> , United Self-Defense Forces of Colombia
BRA	<i>Badan Reintegrasi Aceh</i> , provincial Aceh reintegration authority
CAVR	Timor-Leste Commission for Reception, Truth and Reconciliation
CCDH	Moroccan Advisory Council on Human Rights
CMAN	Peruvian High Level Multisectoral Commission in Charge of Monitoring the Actions and Policies of the State in the Sphere of Peace and Collective Reparation and National Reconciliation
CNRR	National Commission on Reparations and Reconciliation of Colombia
CPA	Comprehensive Peace Agreement (Sierra Leone)
CR	Peruvian Council of Reparations
CTF	Indonesian-Timor-Leste Commission for Truth and Friendship
CVR	Peruvian Truth and Reconciliation Commission
DDR	Disarmament, Demobilization, and Reintegration
ELN	National Liberation Army of Colombia
EC	European Commission
FARC	Colombian Revolutionary Armed Forces
FCDG	<i>Fondation de la Caisse de Dépôt et Gestion</i> (Morocco)
GAM	Free Aceh Movement
GoI	Government of Indonesia
IACHR	Inter-American Court of Human Rights
ICTJ	International Center for Transitional Justice
IER	Moroccan Equity and Reconciliation Commission
IOM	International Organization for Migration
KDP	<i>Kecamatan</i> (community) Development Program (Aceh)
LoGA	Law on the Governing of Aceh
LUMASA	Lutheran Church Massacre, Survivors Association (Liberia)
MRTA	<i>Movimiento Revolucionario Tupac Amaru</i> , Revolutionary Movement Tupac Amaru (Peru)
NaCSA	National Commission for Social Action (Sierra Leone)
NASSIT	National Social Security and Insurance Trust (Sierra Leone)
NCDDRR	National Commission on Disarmament, Demobilization, Rehabilitation and Reintegration (Liberia)
NGO	Nongovernmental organization
PIR	Peruvian Comprehensive Plan of Reparations
PRC	Program of Collective Reparations (Peru)
RUF	Revolutionary United Front (Sierra Leone)
RUV	Peruvian individual and collective victims' registry
SCSL	Special Court of Sierra Leone

SL	<i>Sendero Luminoso</i> , Shining Path (Peru)
TRC	Truth and Reconciliation Commission
UN	United Nations
UNIFEM	UN Development Fund for Women
UNMIL	UN Mission in Liberia
UNDP	UN Development Program
UN PBF	UN Peace Building Fund
UNTAET	UN Transitional Administration in East Timor
URP	Urgent Reparations Program (Timor-Leste)

## 1. CONTEXT AND CONCEPT

### 1.1. Focusing on Collective Reparations

After transitions from armed conflict or repression, societies are often confronted by legacies of systematic or widespread human rights violations whose perpetrators remain unaccountable and whose victims remain unredressed. In some of these societies, political leaders and civil society organizations have used transitional justice mechanisms to pursue justice, establish peace, and promote reconciliation. These mechanisms have included criminal prosecution, truth commissions, and reparations programs, among others. In some cases, communities establish measures of remembrance, such as memorials, and make attempts at reconciliation. Among these transitional justice mechanisms, reparations programs are arguably the most focused on the rights and welfare of victims and survivors.

Reparations programs—which are usually recommended by truth commissions or may be the result of litigation, but are generally administered by state institutions—are intended to acknowledge and dignify victims as bearers of human rights. They are also intended to create space for victim participation in rebuilding society post transition. Above all, reparations programs are meant to provide material and symbolic gestures that might help repair the harms and assuage the pain suffered by victims.

Some victims, such as poor and marginalized groups who are already vulnerable economically and socially, suffer disproportionately and more acutely by being victimized further—whether as deliberate targets or indiscriminately harmed victims of repressive rulers or combatants. Entire communities or groups of victims sharing a common cultural identity, historical experience, or relationship to a specific location often end up suffering more damage than other victims. Understandably, poor or marginalized groups' post-transition demands may be directed at securing the basic elements of survival: housing, food, healthcare, and a means of livelihood. In this sense, reparations—or at least some victims' expectations of what it *might* include—intersect with the state's duty to fulfill its citizens' most basic social and economic rights.

In developing countries, governments struggle with difficulty—at times because of their own leaders' making, but also because of structural and historical causes—to develop their economies and thereby provide basic services for their citizens. But in developing countries emerging from conflict and dictatorships, the impact of human rights violations on the most socially and economically vulnerable victims overlaps with the state's obligation to address the social and economic needs of citizens in general.

Beyond the conceptual dilemmas of where reparations and development meet, this overlap raises complex practical challenges. As it is, limited financial resources, weak administrative capacity, and post-transition governments' often absent political will combine to make transitional justice initiatives elusive. These same limitations present even harder dilemmas for reparations advocates within governments, among victims, and in civil society.

While not seen as sufficient in and of themselves as a means of reparation, the concept of “collective reparations” has been one of the ways in which reparation advocates have responded to these challenges and to the overall complexity of responding to massive violations of human rights.

Collective reparations are conceived from the perspective of *who* they are meant to benefit.<sup>1</sup> They are focused on delivering a benefit to groups of victims that suffered from human rights violations. These groups may be bound by a common identity, experience, or form of violation. Collective reparations may address the gender-based aspects of individual violations, such as sexual violence committed against individual women. In other instances, they might address violations affecting the population of an area—such as those involving massacres of entire villages, the deliberate destruction or displacement of indigenous communities, or the targeting of civilian organizations seen as resisting a regime or opposing combatants in a conflict. The impact of these violations may be felt in different forms and suffered in various degrees by individual victims and whole communities. Massive or systematic rights violations may also affect means of subsistence, or dismantle organizations or destroy public trust among residents. In such contexts, collective reparations may offer an effective response to damage to community infrastructure, identity, and trust, by supporting, for example, a community-generated project to locate missing relatives or to build a meeting lodge and promote renewed community life and governance.

“Collective reparations can also be formulated as a way of simplifying delivery of reparations either in the contexts of practical limitations or of concerns about drawing too stark a line between classes of victims or between victims and non-victim groups. [...] Collective reparations avoid the potentially disruptive effect individual payments can have on communities”.<sup>2</sup>

In all countries, despite the differences in the range of violations experienced and the manner in which transitions have unfolded, similar questions arise about how to ensure that collective reparations do not

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<sup>1</sup> Magarrell, Lisa, *Reparations in Theory and Practice*, Reparative Justice Series (International Center for Transitional Justice, 2007) 5-6.

<sup>2</sup> *Ibid.*, 6.

become confused with humanitarian aid or with development projects, and that they are seen as a response to human rights violations. In many contexts where reparations are delivered collectively or to a community, they may end up benefiting perpetrators as well as others who are not necessarily victims of violations. This also raises questions about how to ensure that reparations are not perceived as unjust, or as strengthening divisions or tensions in a society. Thus, despite apparent advantages, collective reparations programs have their own challenges. They are not easy to implement and individual victims may resist them because they do not respond to the often intimate, individual nature of human rights violations and victims' suffering. Often it is difficult to define the communities that should benefit from programs, or to justify benefiting some while excluding others. Moreover, the process can be used for political gain and reparations programs can become confused with development policies that recipient communities are entitled to anyway.

## **1.2. Conference Goals**

The International Meeting on Collective Reparations was co-organized by the Advisory Council on Human Rights of Morocco (known by its French acronym, CCDH) and the International Center for Transitional Justice (ICTJ). The meeting was held in Rabat, Morocco on February 12–14, 2009.

About 40 representatives of civil society organizations and state institutions from Colombia, Indonesia, Liberia, Morocco, Peru, Sierra Leone, and Timor-Leste attended. All participants are directly involved in designing, implementing, or monitoring community or collective reparations programs. The meeting sought to provide an opportunity for participants to share their experiences, to debate about their assumptions and approaches, and to generate new ideas for meeting the challenges of collective reparations.

CCDH and ICTJ identified three specific objectives for the conference:

- Analyze the different perceptions about the nature and significance of collective reparations in relation to specific country contexts;
- Share lessons and practices and consider their broader applicability;
- Consolidate local capacity and expertise within state institutions and civil society organizations with respect to the design and implementation of collective reparations programs.

Participants attended sessions for the first two days; on the third day field visits included a visit to a Moroccan neighborhood where community reparations are being implemented.

### 1.3. Morocco's Relevance

Morocco was a particularly appropriate location for this international discussion. It is the first country in the Middle East and North Africa region to attempt to pursue transitional justice; in doing so, it has pioneered a significant and unique approach to collective reparations. Morocco initially decided to address the consequences of political violence and serious human rights violations committed between its independence in 1956 and 1999, when King Hassan II established the Independent Arbitration Panel—a commission in charge of delivering compensation to the victims of disappearance and arbitrary detention. Five years later, in 2004, King Mohamed VI, who succeeded his father in 1999, established the Equity and Reconciliation Commission (known by its French acronym, IER). The 43-year period covered by the IER mandate is the longest time period addressed by a truth commission. By means of victim testimonies, field research, documentation, and archival examinations, the IER attempted to gain an understanding of the context of certain violations such as enforced disappearances, arbitrary detention, torture, and the use of excessive force against protesters. In the course of its work, the IER reviewed and made decisions on a total of 16,861 individual petitions for reparations.

The IER concluded that, along with compensation and other individual reparations measures, reparations must include a community dimension. Given its finding that some regions and communities suffered human rights violations and the consequent political violence collectively, the IER recommended the adoption of a community-based reparations program, whose main purpose would be the economic and social rehabilitation of those regions. The IER likewise proposed the establishment of various memorialization programs in these areas.

February 2009 marked a year and a half since Morocco launched its community reparations program. CCDH and ICTJ agreed that, given the progress in Morocco's community reparations program, holding a meeting on this topic in Morocco was appropriate. The co-organizers also agreed that it was important to visit the offices and communities directly involved in the implementation of the community reparations program. Thus, on the third day of the conference, participants met with officials of the *Fondation de la Caisse de Dépôt et Gestion (FCDG)*, which has been involved in the implementation and management of Morocco's community reparations program. They then traveled to Casablanca to meet the local community reparations coordination body in the district of Hay Mohammadi,<sup>3</sup> and

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<sup>3</sup> The district of Hay Mohammadi (Casablanca) is one of the beneficiaries of the community reparations program. The coordination body of Hay Mohammadi is the local counterpart of the Program Management Unit, in charge of promoting local participation and guaranteeing the visibility and technical activity of the local program in this district.

visited specific locations in the district that demonstrated some of the approaches to realizing the idea of collective reparations.

#### **1.4. Report Goals**

This report includes a compilation of case studies from the countries that were represented at the conference. These country case studies were prepared by ICTJ's Reparations Unit (including staff from its country offices) and by CCDH. The summaries have been updated with post-conference developments, where relevant. The report then provides a digest of the 19 presentations, analyses, and discussions that took place over the two conference days. It pulls together some of the major issues that emerged from these discussions and highlights the main points that were made.

Hopefully through this report the conference participants will have a way of assess the value of the conference for their own work, while others who are working on transitional justice, reparations, human rights, and even the areas of development and humanitarian relief may benefit from the report in the course of working in their invariably overlapping fields.

We also hope that for those working in transitional justice—particularly with victims and their communities—this report can promote an understanding of the dynamics surrounding the conceptualization and implementation of collective reparations programs. Readers can see how the challenges they pose have—or have not—been overcome in different social, economic, and cultural contexts. CCDH and ICTJ deliberately put emphasis on an exchange of experiences among those working in developing countries because of how many of these challenges are common not only to the countries represented in the conference but to many others as well.

## 2. CASE STUDIES

Various countries are currently trying to respond to the collective dimension of massive human rights violations; the idea of collective reparations is prominent among the policies being proposed or implemented in such countries as Colombia, Liberia, Morocco, Peru, Sierra Leone, Timor-Leste, and Aceh Province in Indonesia. Each of these countries is at a different stage in reparations design and implementation and presents a different context. The case studies provide a background to the different yet related dilemmas arising from the effort to implement collective reparations.

Morocco and Peru are, in a sense, the most “advanced” cases in terms of implementing collective reparations programs. However, they both are struggling to turn truth commission recommendations for collective reparations programs into viable programs. Both countries defined the conceptual basis of “collective reparations” and the types of reparations that can be considered community-based or collective. It is important that both have sought to encourage victim participation in defining reparations policy and in designing actual reparations measures. They also have had to build the operational and decision-making structures for implementing collective reparations. Drawing on these two experiences—their similarities as well as their differences—will help to deepen an understanding of the dynamics inherent in designing and implementing collective reparations.

States often pursue transitional justice in general, and reparations policy in particular, in a context of social and economic underdevelopment, scarce resources, and competing needs. This is not only because armed conflict and authoritarian regimes can have an immensely negative socioeconomic impact at the national, macroeconomic level, but also because many victims of human rights violations are often already marginalized. This common context has created parallel experiences in a number of countries.

In Sierra Leone and Timor-Leste, where their respective truth commissions recommended health services and education benefits be part of reparations, implementers and civil society activists grapple with whether these forms of reparation are appropriate for victims and their families because they experienced human rights violations that may not correspond with the benefits that these social services are meant to provide. The broader question raised by this example is either: Can social services substitute for reparations? Or can social services constitute an essential or foundational part of reparations? In either approach, what are the implications in terms of acknowledging the harm suffered by victims? This of course brings up the relationship between state obligations that

apply to all citizens and state responsibility to provide redress for victims of human rights violations.

In Aceh Province (Indonesia) and in Colombia, there is some confusion over what constitutes collective reparations and what is delivered as humanitarian aid. This has come about in Aceh because the process of implementing post-conflict collective reparations has overlapped with humanitarian relief efforts to address the needs of those devastated by the tsunami that had ushered in a peace agreement between separatists and the Indonesian government. In Colombia, the political situation has led to the emergence of reparations initiatives even while the conflict continues and violations still occur. These two cases lead to a question of what role reparations should play alongside immediate humanitarian relief efforts in addressing the needs of victims of an ongoing conflict or of a natural calamity.

Finally, while Liberia is at a very preliminary stage in dealing with reparations (as of this writing the Truth and Reconciliation Commission had just released its final report, including recommendations for “community reparations”), lessons from elsewhere may inform Liberia’s options. These experiences—whether from Liberia’s immediate neighbor, Sierra Leone, or from outside the region—offer a chance to anticipate the challenges of opting for community or collective reparations.

## **2.1. Aceh Province (Indonesia)**

### **2.1.1. Conflict Overview**

The separatist conflict in Indonesia’s Aceh province goes back to the 1950s, when the Free Aceh Movement (GAM) sought to establish an independent Islamic state. Control over revenues from Aceh’s gas fields was a key factor in GAM’s formation and was a prominent issue throughout Aceh’s protracted conflict. GAM unilaterally declared Acehnese independence in 1976 and the conflict continued for more than three decades. The violence escalated under then President Suharto’s New Order regime, during which Aceh Province was declared a “military operations area,” authorizing the Indonesian military to use even more repressive measures in the region. The 2004 tsunami that devastated the province became an impetus for peace and led to the 2005 signing of a peace agreement between GAM and the Government of Indonesia (GoI) in Helsinki, Finland.

It is estimated that during the conflict, thousands of civilians were killed and thousands more tortured and disappeared. Rape and sexual violence were widespread, along with arbitrary arrests, detentions, mass displacements, and recruitment of child soldiers. The conflict in was far

reaching, affecting the entire region either through direct abuses or their impact on education, health, and livelihoods.

### **2.1.2. Progress in the Area of Transitional Justice**

As part of the terms of the Gol-GAM Helsinki peace agreement, the two parties established a transitional justice framework that included amnesties for GAM-associated political prisoners; the demobilization, disarmament, and decommissioning of GAM and Indonesian security forces in Aceh; a “reintegration” agenda for former combatants, political prisoners, and “civilians who suffered a demonstrable loss”; the establishment of a human rights court and a truth and reconciliation commission for Aceh; and specific rule-of-law institutional reforms.

In August 2006, the Indonesian Parliament passed the Law on the Governing of Aceh (LoGA). The LoGA established the human rights court and a truth and reconciliation commission for Aceh, but limited the court’s jurisdiction to future abuses and made the Aceh Truth and Reconciliation Commission (TRC) an “inseparable part” of a prospective national TRC. The creation of a national TRC suffered a setback when the Indonesian Constitutional Court declared its founding law unconstitutional. Since the signing of the Helsinki agreement, no comprehensive efforts have been made to gather information about past abuses in Aceh.

### **2.1.3. The Status of Reparations as a Transitional Justice Measure**

Gol, GAM, and civil society representatives established a provincial Aceh reintegration authority (known as BRA or *Badan Reintegrasi Aceh*) in 2006, but due to internal political disputes GAM and civil society representatives withdrew.

Originally BRA’s reintegration program was meant to fund various projects proposed by victims and communities. After receiving more than 45,000 project proposals, BRA dismissed the original concept and redesigned the reintegration program with World Bank assistance. It now consists of a range of measures:

- “Economic empowerment” financial packages for ex-combatants. Approximately \$2,500 was provided to each of the 3,000 GAM ex-combatants and around \$1,000 to each of the approximately 6,500 members of anti-separatist militia groups.
- A separate assistance program managed through the World Bank’s national *Kecamatan* Development Program (KDP). Village mediators hold discussions with community members and determine development projects to be funded at the community (*kecamatan*)

level. Beneficiaries may be individuals, groups, or the village as a whole. In the first phase of this program, which ended in June 2007, the BRA distributed \$26.5 million to 1,724 villages. Grants ranged from 60 million to 170 million *rupiah* (US\$5,000 to \$14,000) per *kecamatan*, depending on conflict intensity and population size. According to the World Bank, 85 percent of BRA-KDP funds were spent on living expenses, such as the purchase of seeds and cattle, and 17 percent on village infrastructure.

- *Diyat* or compensation payments. Payments ranging from \$200 to \$300 yearly were provided to families of those who died or are missing because of the conflict.
- Social services. Various social services were provided, including housing assistance for those whose houses were burned or destroyed during the conflict, health services for victims as well as for disabled ex-combatants, and scholarships for those orphaned due to the conflict.

Aside from issues regarding eligibility and transparency, many civilian victims have expressed the desire to receive reparations in the form of social programs that promote sustainable livelihoods, long-term healthcare, and education. Moreover, under the existing criteria for beneficiaries, BRA has overlooked victims of sexual violence during the conflict.

#### **2.1.4. The Approach to Collective or Community Reparations**

Many of the state-organized initiatives that have been implemented in Aceh have been subsumed by the focus on reintegration and reconstruction. As a result, the state has prioritized ex-combatants over civilian victims and provided victim communities with funding for reconstruction, rather than targeted forms of reparations for specific violations. In some instances, this has created tension between communities. The absence of a clear link between victims' pain and losses—whether combatants or civilians—and the reintegration benefits they are entitled to, takes away the recognition element that is the foundation for reparations in international human rights law and practice. The absence of mechanisms to pursue accountability—whether by criminal prosecution or through truth-seeking—also weakens any intent to provide reparations to victims. In a sense, the lack of a victim-centered approach in the reintegration process is traceable to the language of the Helsinki peace agreement. It contains no mention of victims of human rights abuse but instead uses the term “affected civilians.”

## **2.2. Colombia**

### **2.2.1. Conflict Overview**

Colombia is plagued by the longest internal armed conflict in the western hemisphere. Throughout the conflict, the Colombian Revolutionary Armed Forces (known by its Spanish acronym, FARC), the National Liberation Army (known by its Spanish acronym, ELN), guerrillas, state security forces, and state-sponsored paramilitary groups have committed massive human rights violations. In addition, the country faces one of the most acute humanitarian crises in the world with more than three million internally displaced persons. The conflict has severely weakened the rule of law and has blurred distinctions between guerrilla and paramilitary activity, on the one hand, and drug-trafficking on the other.

The Supreme Court of Justice uncovered the collusion between paramilitary groups and state security forces as well as between paramilitary groups and political leaders at the local and regional levels—popularly called the “parapolitics” scandal—after its investigations and through depositions given by demobilized paramilitary combatants who were participating in special proceedings under the Justice and Peace Law passed in 2005. As a result of this scandal, academics, human rights activists, victims, and community leaders initiated a national debate on how the demands for justice and accountability can be met alongside negotiations for demobilization of combatants and future peace agreements. Government and nongovernment actors have increasingly used the “rights rhetoric” (right to truth, justice, and reparation) to advance proposals for balancing the peace and justice equation.

### **2.2.2. Progress in the Area of Transitional Justice**

In mid-2003, a paramilitary federation called the United Self-Defense Forces of Colombia (known by its Spanish acronym, AUC) committed itself to demobilization and disarmament in exchange for a promise from the government to reduce to a minimum the threat of long prison sentences for AUC members, including the most serious human rights violators. This made the peace and justice debate in Colombia even more intense and brought up issues regarding truth, reparation, and accountability. Initially the government proposed a law that would have replaced prison time with alternative penalties but would have fallen short of international law protecting victims' rights. After a long and complex legislative debate, the Colombian Congress approved the controversial law 975 (Justice and Peace Law), in July 2005. The law immediately came before the

Constitutional Court.<sup>4</sup> The court did not strike down the law but it introduced key revisions in provisions that it found unconstitutional. With the court's revisions, the law establishes a special "justice and peace" criminal proceeding in which demobilized members of illegal armed groups who cooperate fully with the state may receive a reduction of prison sentences; such cooperation can be made by telling the truth and clarifying facts about crimes committed, turning over their assets to an official reparations fund, and cooperating in the process of dismantling illegal armed groups. The members of paramilitary groups who do not confess to their crimes, fail to give their assets to the reparations fund, or get involved in new crimes, will lose the benefit of a reduced sentence. The reduced sentences will not be more than eight years or less than five years.

### ***2.2.3. Status of Reparations as a Transitional Justice Measure***

Colombia initially chose the Justice and Peace Law criminal proceedings as the way to provide reparations for victims. The law allows victims to claim reparations, even if they cannot identify or name an individual as the perpetrator of the violations committed against them; the victims need only demonstrate the link between the harm they suffered and an illegal act carried out by a particular group. The law also requires the state to set up a Fund for Reparations to Victims, which will consist of assets handed over by perpetrators, contributions by the government, and possibly funds from the international community. It is important to note that in ruling on the constitutionality of the Justice and Peace Law, the Constitutional Court has said that it is the state's responsibility to provide reparations when the assets of the perpetrator or its respective group are not enough to cover reparations owed to the victim.

The government tasked the National Commission on Reparations and Reconciliation (known by its Spanish acronym, CNRR) with creating criteria for the "Justice and Peace" tribunals to use in order to make decisions about reparations. In issuing these criteria, the CNRR incorporated principles from both domestic and international law on reparations. Three years after the "Justice and Peace" criminal proceedings began, the implementation of reparations measures seems far off and uncertain despite the more than 150,000 victims and family members who have registered with the special "Justice and Peace" prosecutors. To address this, various institutions—including the CNRR—proposed that the government create an administrative reparations

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<sup>4</sup> The Justice and Peace Law prompted ICTJ to submit an amicus brief to the Constitutional Court of Colombia. This brief provided comparative information on how other countries have worked to ensure accountability and clarify the truth about past abuses, even in politically challenging circumstances. Specifically the ICTJ brief argued that as originally configured the Justice and Peace Law would affront victims' rights by trivializing investigatory standards for human rights violations, restricting access to trials, and limiting access to reparations.

program instead of relying on the existing judicial mechanism to run the program. As a result, in April 2008, a presidential decree established an administrative reparations program for individual victims. While this decree can be seen as a positive step toward addressing the urgent situation of victims in Colombia, it has very problematic elements. The decree excludes victims of violations committed by state agents from the reparations program. In addition, the reparations program is premised on a notion of “solidarity,” rather than on a basis of state responsibility. Furthermore, the decree is problematic in that it calls for humanitarian relief already received by victims to be deducted from the amount of reparations they would receive through this program;<sup>5</sup> and it only focuses on monetary compensation, leaving all other forms of reparations to be addressed by other government institutions.

#### ***2.2.4. The Approach to Collective or Community Reparations***

Collective reparations could come about either through the administrative reparations program or the judicial process. The Justice and Peace Law defines a victim as one who individually or “collectively” suffered harm as a result of actions that “violate the law” and that were committed by illegal armed groups. Thus, the judicial process opens the possibility for individual and collective victims to claim reparations. The Justice and Peace Law states that “collective reparation must focus on the psychosocial reconstruction of the populations affected by the violations,” and that this type of reparation, “is provided especially for communities affected by systematic violence.”<sup>6</sup> On the other hand, the Justice and Peace Law tasks the CNRR with the duty of proposing an institutional plan for collective reparations that would be implemented by the national government. This program would include measures to restore the rule of law and the institutions responsible for satisfying social and economic rights, to restore and promote the rights of affected citizens, and to acknowledge and dignify victims.

With the goal of drafting a proposal on collective reparations, the CNRR decided to undertake a pilot project in order to gain experience that could help it design a reparations plan. The CNRR decided that its responsibility would be to lead, coordinate, and supervise the implementation and evaluation of the pilot projects, but not to directly implement the collective reparations measures themselves, because it only legally has a mandate to formulate proposals, not implement reparations measures. The CNRR decided to use a participatory approach; in each case the citizens participate in every phase of the pilot project, resulting in the production of a document detailing the collective reparations measures.

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<sup>5</sup> This has since been overturned by the Constitutional Court, after it was challenged by several civil society groups, with ICTJ filing an amicus brief in the case.

<sup>6</sup> Law 975, Article 8, (July 2005).

In January 2007, the CNRR approved 10 cases for the collective reparations pilot project, using criteria that included the impact of the violence, as well as the cultural, ethnic, geographic, and socioeconomic diversity of the communities. Eight of the 10 communities selected decided to take part in the pilot project. The pilot projects occurred in two stages: an initial contact with each community, which involved a process of dialogue and assessment, followed by the intervention phase. Drawing upon various participatory exercises, the project will compile an account of the various violations and harms suffered by each community or group. The community or group will validate the assessments so that it can design reparations measures based on this analysis. The CNRR team responsible for the pilot projects is now working on a document that draws on the results of the project to make recommendations for the creation of an administrative collective reparations program. However, the implementation phase of the projects has not yet begun nor has the CNRR team estimated the cost of the proposals suggested by the victims in the cases where they have already drafted proposals.

## **2.3. Liberia**

### **2.3.1. Conflict Overview**

Liberia is a small country in West Africa with a population of about 3.4 million. For more than 130 years, the country was ruled by a small, non-indigenous community of Americo-Liberians freed from slavery in the United States. Although they constituted only five percent of the population, Americo-Liberians repressed the indigenous majority and dominated the country's politics and economy. In April 1980, an indigenous (Krahn) Liberian soldier named Samuel Doe overthrew the last Americo-Liberian President. Doe's regime soon proved to be corrupt and brutal. In December 1989, Charles Taylor led a rebel movement called the National Patriotic Front against Doe. The movement later had its own internal conflict and eventually gave rise to various splinter groups. The ensuing armed conflict between and among these factions continued for 14 years, through nine failed peace agreements, and expanded into Sierra Leone.

In 2003, the various political factions and parties to the armed conflict signed a Comprehensive Peace Agreement (CPA) establishing a National Transitional Government, a process for disarmament, demobilization, and reintegration (DDR), the formation of a Truth and Reconciliation Commission (TRC), and national elections. The CPA calls on the government to give "particular attention to the issue of the rehabilitation of vulnerable groups or war victims (children, women, the elderly, and the disabled)." In 2005, Ellen Johnson Sirleaf won the presidential election and became the first female head of state in Africa.

Meanwhile, Nigeria turned Charles Taylor over from exile to the custody and jurisdiction of the Special Court of Sierra Leone (SCSL), where he is on trial for war crimes and crimes against humanity.

### ***2.3.2. Progress in the Area of Transitional Justice***

Two main transitional justice mechanisms have been pursued in Liberia: the TRC and a series of DDR measures for ex-combatants. The TRC began its work in 2006, with a mandate to investigate gross human rights violations, violations of international humanitarian law and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to October 14, 2003. The TRC was also tasked to identify “those responsible for the commission of the violations ... as well as their impact on victims.” The TRC released the first volume of its final report to the national legislature in December 2008.

In 2003, the United Nations Development Programme (UNDP) handed over the DDR program to the National Commission on Disarmament, Demobilization, Rehabilitation and Reintegration (NCDDRR). According to the UN Mission in Liberia (UNMIL), at the end of the country-wide disarmament program in November 2004, 103,912 fighters were disarmed and demobilized but only 75,000 had been placed in donor-funded training programs to learn livelihood skills. In 2006, following President Ellen Johnson Sirleaf’s inauguration, the program transitioned to the reintegration and rehabilitation phase, which had mostly been involved with enrollment of ex-combatants into secondary and vocational schools. On April 14, 2009, the official mandate for the NCDDRR ended; however, there are attempts presently underway to continue with the reintegration and rehabilitation component in a different form. The government is preparing a draft law for submission to the national legislature seeking to transform the concept of reintegration and rehabilitation into a community-based initiative targeting people affected by the war.

### ***2.3.3. The Status of Reparations as a Transitional Justice Measure***

The law creating the TRC contains specific provisions on reparations, including the following:<sup>7</sup>

- The commission shall make recommendations regarding “reparations and rehabilitation of victims and perpetrators in need of specialized psychosocial and other rehabilitative services.”<sup>8</sup>

<sup>7</sup> The full name of the law that created the TRC is “An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, May 12, 2005” (hereafter referred to as the Liberia TRC Act)

<sup>8</sup> *Liberia TRC Act*, Section 26, (May 12, 2005).

- The commission shall also adopt “specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender-based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experience addressing concerns and recommending measures to be taken for the rehabilitation of victims of such violations in the spirit of national reconciliation and healing.”<sup>9</sup>
- The TRC shall create “a trust fund for the benefit of victims and survivors of the crises,” and will have the corresponding power to “appoint trustees and determine beneficiaries as part of the outcome of the proceedings, findings and recommendations” of the commission.<sup>10</sup>

While the TRC law itself does not suggest a preference for a particular form of reparations, the commission issued a set of policy statements in March 2008 that declared a preference for collective forms of reparations. A policy statement on reparations<sup>11</sup> said:

Recommendations for reparation will not be individual-driven. It will target a whole community, village, town, district, county, institution or a group of individuals. Only in extreme cases of individual need, *especially with respect to violence against women and children* lying within the exclusive discretion and wisdom of the Commission, for physical, health, mental, psycho-social and other rehabilitative services and needs without which a reasonably normal life will not be possible. (Emphasis added.)

In the first volume of its final report, however, the TRC made a less categorical declaration about reparations, stating only the following: “(a) form of both individual and community reparation is desirable to promote justice and genuine reconciliation” and that “(t)he Commissioners of the TRC reserve the right to and will make individual and community reparations to any persons, groups, entities or communities, and to establish Reparations Trust Fund(s) as it deems appropriate.”<sup>12</sup>

### **2.3.4. The Approach to Collective or Community Reparations**

The TRC did not articulate a more specific set of criteria by which cases of “extreme...individual need” might be identified or categorized in relation to

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<sup>9</sup> Ibid., Section 4(e).

<sup>10</sup> Ibid., Section 38.

<sup>11</sup> *Policy Paper on Reparation, Prosecution & Amnesty*, 2008, TRC Public Bulletin No. 04.

<sup>12</sup> Liberia TRC, “TRC Final Report,” volume 1, 9-10 and 77, (2009), <https://www.trcofliberia.org/reports/final>

its earlier preference for community reparations. How that earlier position relates to the reparations declaration in its final report is also unclear.

Regional consultations have demonstrated that most Liberians are interested in reparations, but few are calling for individual compensation. Most reparation requests are coming in the form of developmental priorities, including the provision of medical and educational facilities. However, there are only a few organized groups working to demand reparations—for example, the Association of Disabled Women (not all of whom are disabled because of the conflict) and a newly formed group of survivors called the Lutheran Church Massacre Survivors Association (LUMASA). Victims of the July 1990 massacre at St Peter’s Lutheran Church, where government forces killed more than 600 people, organized this victims’ group following the TRC special hearings conducted in July 2008. Since its formation, LUMASA has been actively consulting with the TRC and ICTJ for technical advice on how to mobilize victims.

Due to Liberia’s extreme economic hardship, the government appears skeptical and hesitates to discuss the potential implementation of reparations recommendations. Thus, funding any comprehensive reparations agenda will undoubtedly prove to be a challenge, although the TRC seems poised to try to establish a reparations trust fund before it finalizes its work (see above). Assets seized in connection with investigations and proceedings involving past economic crimes could be put toward funding a reparations program (as of this writing, the TRC is said to be separately preparing a report in connection with its economic crimes mandate). Although the UN Security Council has placed a number of people on an assets freeze list for their illicit activity in Liberia, only a fraction of suspected ill-gotten assets have been frozen, in part because identifying and tracking those assets is very difficult. At the moment, Liberia does not have legislation that allows the government to freeze assets. In mid-2008, the legislature rejected a draft law that would have given the government this power. Prominent Liberian politicians who are on the assets freeze list lead opposition to the law. Liberians are also looking to the Sierra Leonean example in which the international community, through the Peace-building Fund, has provided a small but significant “start-up” fund for the implementation of a reparations program in that country.

## **2.4. Morocco**

### **2.4.1. Context**

After existing as a French protectorate in the south and a Spanish protectorate in the north from 1912 to 1956, Morocco regained its independence in 1956 under the reign of Mohammed V. Since then, the

Kingdom of Morocco has faced several periods of political instability and turbulence, including human rights violations, such as: upheaval and political killings in the Rif region in 1956-1958; increased violence during the 1960s and 1970s when the government violently repressed popular riots, armed actions, and attempted coups and resorted to enforced disappearance and arbitrary detention against political dissidents; excessive and disproportionate use of public force in response to social protests occurring during the years 1981, 1984, and 1990. Human rights violations were massive during this period, which subsequently became known as the “Years of Lead.”

#### ***2.4.2. Progress in the Area of Transitional Justice***

After years of denying that human rights violations were being committed, a gradual process of liberalization began in the early 1990s. This process encouraged both the exercise of civil liberties and the acknowledgment of past human rights violations. King Hassan II established the Advisory Council on Human Rights (CCDH) to reinforce institutional guarantees for the protection of human rights. The legislature passed important constitutional and legislative reforms during that time, including measures that introduced civil rights, election regulations, and family law. The king established the Independent Arbitration Panel in 1999, a commission that had the limited mandate of delivering individual compensation to victims of enforced disappearances and arbitrary detention.

In this context, responding to civil society demands to address more comprehensively past violations, King Mohammed VI who succeeded his father Hassan II in 1999 established on January 7, 2004 the Equity and Reconciliation Commission. The IER was composed of a president and 16 members that included former political prisoners, with half of the membership coming from CCDH. The IER spent 23 months examining the 43-year period covered by its mandate, which started with Moroccan independence in 1956 and ended with the establishment of the Independent Arbitration Panel in 1999.

The IER had a wide-ranging mandate, which was to investigate gross human rights violations that had a systematic or a massive nature, including enforced disappearances, enforced exile, arbitrary detention, torture, sexual violence, and violations of the right to life as a result of the excessive use of force. The IER was also expected to make recommendations on preventing further gross human rights violations and to foster dialogue and a foundation for reconciliation. The IER submitted its final report to the king in November 2005. Its research and analysis of past violations and their contexts formed the basis for its recommendations regarding the preservation of memory, guarantees of non-repetition, addressing legacies of abuse through reparations, and the restoration of confidence in state institutions, the rule of law, and human rights.

### ***2.4.3. The Status of Reparations as a Transitional Justice Measure***

The IER saw reparations as representing all measures and processes aimed at establishing the rights of victims of human rights violations. Combining this approach with international legal standards and the experiences of preceding truth commissions elsewhere, the IER sought to relate its reparations policy with its truth-seeking, justice, and reconciliation mandates.

In terms of individual measures, the IER devoted special attention to financial compensation. It began by assessing the earlier work of the Independent Arbitration Panel and then adopted its own principles and criteria, taking into consideration the type of violations suffered, the social situation of the victim, and considerations of gender, equality, and solidarity in determining the amounts of compensation and other forms of reparation it would provide. The IER provided financial compensation only or financial compensation with other forms of reparations to 9,779 victims of enforced disappearance, arbitrary detention, political killings, and injuries during urban riots, forced exile, or sexual violence. The IER also recommended other individual measures, including medical and psychological rehabilitation, social reinsertion, the restoration of civil rights, and the restitution of confiscated personal property.

### ***2.4.4. The Approach to Collective or Community Reparations***

The IER's enabling statute mentions the notion of reparations at a public or community level. The IER sought to adopt a participatory approach in arriving at what these measures of reparation should be. It held seminars in various cities and regions. It organized a national forum on reparations that involved more than 200 organizations and 50 national and international experts and conducted consultative meetings with both government institutions and civil society actors.

Certain regions and communities see themselves as having suffered collectively, directly or indirectly, from political violence and the ensuing human rights violations and economic harm, including social marginalization and exclusion from development programs and public services. For these regions and communities, the IER recommended "community reparations."

Programs for socioeconomic development and memorialization were proposed for various areas that experienced mass repression, denial of public services, or deprivation of state development funding as a form of collective punishment for regions considered by the government as centers of political resistance and dissent. Some of the regions where secret detention and torture facilities were located have also been selected

as beneficiaries of the program since they were affected and marginalized as a result of the presence of clandestine prisons. The beneficiary regions are Figuig, Nador, El Hoceima, Errachidia, Khenifra, Ouarzazate, Zagora, Hay Mohammadi (Casablanca), Tantan, Azilal, and Khémissat.

The community reparations program comprises a development component, as well as a symbolic one. The development dimension of the program aims to redress the damage and respond to social and economic needs of the targeted communities through capacity building, socioeconomic development, and environmental preservation. The symbolic dimension aims to acknowledge the harm and preserve memory through the organization of commemorative activities, and the construction of memorials, including the conversion of former secret detention centers into sites of memory.

In its first year of implementation, the CCDH as the policymaking body, together with the *Fondation Caisse de Dépôt et de Gestion* (a non-profit foundation established and funded by a state-owned financial institution) as the project management agency, accomplished the following:

- Established an institutional structure consisting of four bodies: a national steering committee, a central management unit, a council of coordination bodies, and coordination body for each of the 11 regions benefiting from the program;
- Launched the first series of local training sessions on gender, participatory approaches, conflict management, good governance and the development of community reparations projects.

Community reparations projects will be carried out by government bodies and agencies through agreements signed with the CCDH and by local NGOs through calls from proposals funded by government agencies or international donors.

The CCDH has so far signed more than 10 agreements with ministries and state agencies for the implementation of the program. In accordance with these agreements ministries and state agencies will directly carry out community reparation projects, and the 11 regions covered by collective reparations will benefit from “positive discrimination” in the provision of public services.

In July 2008, the *Fondation Caisse de Dépôt et de Gestion* launched the first call for proposals for community reparations projects to be implemented by local NGOs. The total available funding for the first call for proposals was 14 million dirham (approximately US\$1.8 million). This call for proposals was funded by the European Commission (EC) and by the

Moroccan government's Agency for the Development of the Eastern Provinces and covers the regions of Figuig, Zagora, Ouarzazate, Errachidia, Khenifra, Al Hoceima, Nador, and Casablanca-Hay Mohammadi. The call for proposals included the following themes:

- Building the capacity of local stakeholders particularly in areas of local governance;
- Promotion of human rights and citizenship;
- Memorialization through the development of sites of memory, and data collection on the Years of Lead;
- Support for income-generating activities for the communities targeted by the program;
- Gender mainstreaming;
- Environment protection.

By the end of February 2009, 33 projects were selected out of 91 applications submitted. This included 10 in Ouarzazate, three in Errachidia, four in Nador, three in Casablanca-Hay Mohammadi, five in Zagora, five in Figuig, one in Al Hoceima, and one in Khenifra. These projects will be implemented by 30 local NGOs over 12 to 24 months. The amount of the funding granted for each project varies between 50,000 dirham and 500,000 dirham (US\$6250 and US\$62,500).

Two other calls for proposal were launched in 2009 for a total of 20.5 million dirham (US\$2.57 million).

## **2.5. Peru**

### **2.5.1. Conflict Overview**

The internal conflict in Peru that lasted from 1980 to 2000 was the most bloody and prolonged since its independence and left approximately 69,280 people dead. The Truth and Reconciliation Commission (known by its Spanish acronym, CVR) found that the poor and indigenous populations in rural areas suffered the most during the conflict and disproportionately bore the largest percentage of casualties. The CVR found that the immediate cause of the conflict was the decision by the armed group *Sendero Luminoso* (SL) to incite armed struggle against the "old State," contrary to the will of the majority of Peruvians, at a time in which democracy was being restored. The CVR said that SL was the principal perpetrator of assassinations and selective disappearances as well as of

massacres and destruction, primarily of communities and peasant populations in the poorest areas of the country.

The violence surged in 1984 with the appearance of another armed group: the Revolutionary Movement Tupac Amaru (known by its Spanish acronym, MRTA), which carried out assassinations, kidnappings, and hostage taking. The national government eventually abdicated authority to the state security forces to respond to both the SL and MRTA. This led to an anti-terrorist policy framework favorable to impunity. The security forces resorted to indiscriminate repression and committed numerous human rights violations. These violations were systematic and generalized in certain parts of the country and over significant periods and were never adequately addressed through judicial means.

### ***2.5.2. Progress in the Area of Transitional Justice***

The fall of Alberto Fujimori's government in 2000 led to the return of democratic institutions, the restoration of the rule of law and relative respect for human rights, and the creation of the CVR. Unlike other transitional justice experiences in the region, the creation of the CVR was not due to the impossibility of judicial prosecutions. In fact, the Inter-American Court of Human Rights (IACHR), in its decision in the *Barrios Altos* case,<sup>13</sup> had already invalidated two Fujimori-era amnesty laws, permitting the reopening of a large number of cases involving human rights violations. This also created space for truth-seeking under the CVR as a complement to judicial prosecutions.

The CVR's mandate was to investigate in depth the causes of the conflict and to identify the responsibilities of the various actors involved. In August 2003, it submitted its final report, which consists of nine volumes. The final report relates the causes, magnitudes, and consequences of the armed internal conflict and it offers a new version of the social truth about the two decades of conflict with respect to the social-demographic profile and number of victims. In addition, the final report includes a set of recommendations for the Peruvian state aimed at preventing the recurrence of such violence.

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<sup>13</sup> The Barrios Altos massacre took place on 3 November 1991, in the Barrios Altos neighborhood of Lima. Fifteen people, including an eight-year-old child, were killed, and four more injured, by assailants who were later determined to be members of *Grupo Colina*, a death squad made up of members of the Peruvian Armed Forces. The victims were partygoers allegedly mistaken for Shining Path members.

### ***2.5.3. The Status of Reparations as a Transitional Justice Measure***

The CVR's mandate called for the design of "proposals to repair and dignify the victims and their relatives" and recommended the Comprehensive Plan of Reparations, which became law in 2005 by means of the Law that Creates the Comprehensive Plan of Reparations (known by its Spanish acronym, PIR) and regulations that followed in 2006. The law establishes "the normative framework of the PIR for the victims of the violence occurring during the period from May of 1980 to November 2000, conforming to the conclusions and recommendations of the CVR report." The PIR is composed of seven programs (civil rights restitution, reparations in education, reparations in health, collective reparations, symbolic reparations, economic reparations, and access to housing) whose content is developed in the 2006 regulations. It defines the notion of victims, beneficiaries, and excluded cases. The PIR defines victims as the individuals or groups that have suffered acts or omissions that violate human rights norms and divides beneficiaries in two categories: individual beneficiaries—relatives of dead or disappeared individuals, direct victims, and indirect victims—and collective beneficiaries. However, in contradiction with international law standards, the PIR excludes from its definition victims suspected by the state of being connected with SL, MRTA, or other alleged subversive organizations.

The reparations program is structured around two institutions: the High Level Multisectoral Commission in Charge of Monitoring the Actions and Policies of the State in the Sphere of Peace, Collective Reparation and National Reconciliation (known by its Spanish acronym, CMAN) and the Council of Reparations (CR). CMAN oversees the creation and implementation of policies and actions related to collective reparation and national reconciliation. The CR administers the individual and collective victims' registry (known by its Spanish acronym, RUV).

The implementation of this policy has been slow, with the registry only beginning to be developed in mid-2007. By August 2009, about 58,000 of an estimated 280,000 victims (including direct victims and their beneficiaries) had been registered in the individual registry, and about 5,000 of an estimated 9,000 communities had been registered. So far the government has implemented isolated individual reparations measures—for example, registering victims in the public health system, providing a limited number of scholarships for victims, and organizing concerted campaigns for the distribution of identity documentation—which are important but have little reparative effect as they fail to be articulated with each other and to answer to the comprehensiveness of the PIR.

#### ***2.5.4. The Approach to Collective or Community Reparations***

The Peruvian government launched the Program of Collective Reparations (PRC) in the framework of the Law that Creates the PIR in June 2007. Government's argument to begin with the implementation of collective reparations (and not the whole PIR) was that the state could not implement individual reparations until victims and beneficiaries were individually identified. Since the Council of Reparations had just begun its work on the victims' registry, this information was not yet available. The government, however, announced that once the victims were registered, CMAN would coordinate the implementation of PIR's other programs, demonstrating a certain commitment to the concept of comprehensive reparations established in the law.

The PRC, which is currently underway, has the objective of contributing to the reconstruction of social and institutional capital, material and economic productivity of the families and rural and urban communities affected by the process of violence. Specifically, it seeks to rebuild the social links between the state and the community, which were destroyed as a consequence of two decades of violence.

In 2007, using a census completed by the Ministry of Women and Development (and not the RUV being elaborated by the CR), CMAN selected 440 peasant or native communities affected by the violence to receive investment projects of up to 100,000 soles (approximately US\$33,000) for each community. In 2008, based on a combination of the mentioned census and the CR results, another 463 communities were added, thus making a total of 903 communities. As of April 2009, CMAN had approved the financing of 688 projects and effectively financed 310 projects. In turn, the almost 4,000 communities that the council has registered in the RUV have been ordered according to the level of impact they suffered, with five levels: very high, high, medium, low, and very low. This categorization should help make the criteria for the PRC's prioritization of certain communities clear and more transparent in the future. However, this program is flawed because CMAN does not take conflict intensity, or population size, into consideration when it decides which communities are allotted 100,000 soles.

The methodology proposed by the PRC is that, keeping with its priorities and through a consultative process, each community identifies the form of reparations from which it would benefit within the following framework: (1) the recovery and reconstruction of economic, productive, and commercial infrastructure, and the development of skills training and access to economic opportunity; and (2) the recovery and expansion of basic services of education, health, sanitation, rural electrification, recovery of community heritage, and other projects in which the collective has a stake.

Although this participatory methodology is encouraging, the PRC faces the challenge of ensuring that this policy is seen as constituting reparations and not just development projects. Faced with an urgency to show concrete results in the area of reparations, the government has failed to give this program the stamp of “reparations.” In particular, the government has failed in communicating the rationale for these projects as an acknowledgment of harms suffered by the community as a result of the conflict. Surveys carried out by Peruvian NGO *Asociación Pro Derechos Humanos* and ICTJ have shown that it is not sufficient to only mention a project’s reparative aspect at the outset. Community members are hardly aware of the motives for which they have been selected for these projects and assume that they are related to development initiatives that do not have a reparation component.

In addition, the PRC has given little attention to women in the participatory process of project selection, which has resulted in men having the final say in how project funds are allocated. In addition, there has been little effort to include an intercultural focus, even though the law states that the PIR must ensure the establishment of respectful and egalitarian relationships during the reparations process.

Also, the PRC administrative process that communities and local governments must follow is complicated for many: communities and local governments have difficulty making informed decisions regarding which project to implement, how to fulfill implementation requirements, and how to correctly manage the approved project. But there has been little effort from CMAN to give technical administrative support; most communities do not have access to reliable information and therefore cannot receive answers to their questions about the process. Nevertheless, the implementation of the collective reparations program is an important step forward, and one that offers the state the possibility to strengthen its relations with affected communities.

## **2.6. Sierra Leone**

### **2.6.1. Conflict Overview**

The Lomé Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front (RUF) in 1999 brought an end to the country’s 10-year conflict. The war brought massive civilian suffering and the country’s devastation. Article VI of the peace agreement provided for the establishment of a truth and reconciliation commission (TRC) and Article XXVI obliged the commission to recommend measures to be taken for the rehabilitation of victims of human rights abuses.

### **2.6.2. Progress in the Area of Transitional Justice**

The TRC was set up in 2000, with the TRC act expressly directing the commission to respond to the needs of victims and promote reconciliation. The TRC started operations in 2002 and issued its final report in May 2005. It is important to note that the TRC act made the commission's recommendations obligatory for government to implement. The Government of Sierra Leone designated the National Commission for Social Action (NaCSA) as the lead agency to implement the recommended reparations measures. In 2006, NaCSA worked with other stakeholders including civil society organizations in a reparations task force that then released a proposed framework for implementing reparations.

### **2.6.3. The Status of Reparations as a Transitional Justice Measure**

In recommending reparations, the TRC wrote that while the state should acknowledge the suffering of all Sierra Leoneans, reparations shall prioritize the most vulnerable victims of the conflict, including those in the following categories:<sup>14</sup>

- Amputees or those who lost their upper/lower limb(s) or both as a result of the conflict;
- “Other war wounded” or those who have become temporarily or permanently physically disabled, either totally or partially, as a consequence of the conflict and who as a result have experienced a 50 percent or more reduction in earning capacity;
- Women and girls who were subjected to rape, sexual slavery, mutilation of genital parts or breasts, and to forced marriages, as well as boys and men who suffered similar forms of sexual violence;
- “War widows” or women who lost their husbands as a direct result of human rights abuses during the conflict;
- Children who suffered either as victims of physical and/or psychological violence and children who are dependents of eligible victims.

The TRC recommended as reparations free physical healthcare, mental health counselling and psychosocial support, educational support to children, skills training, microfinance grants for individuals and collective beneficiaries, community reparations, housing, pensions for individual beneficiaries, and symbolic reparations.

<sup>14</sup>Sierra Leone TRC, “TRC Final Report,” volume 2, chapter 4, paragraphs 90-99, <http://www.sierra-leone.org/TRCDocuments.html>

While the TRC act and the commission's report state the sources of financing for a war victims' fund that would support reparations, none of these sources has yet been mobilized. Instead, it was a \$3 million grant in 2007 by the UN Peace Building Fund (PBF) that moved the implementation of reparations forward, along with a Sierra Leone government commitment to match this grant with resources for administration and overhead expenses. The UN PBF asked the International Organization for Migration (IOM) to manage the disbursement of its grant. In September 2008, NaCSA established a directorate of reparations to implement reparations policy formulated by a national steering committee co-chaired by NaCSA and IOM and which includes representatives of various government ministries, as well as two representatives each from civil society and victims' groups.

In NaCSA's original plan, the first year of implementation would begin with registering potential beneficiaries and providing an initial set of benefits, including the following measures:

- Amputees: free physical healthcare, education, and housing for the most vulnerable;
- Other war wounded: free physical healthcare to the degree their injury or disability requires, surgery for those in need, and housing for the most vulnerable;
- Victims of sexual violence: free physical healthcare, free fistula surgery for those in need, free HIV/AIDS and Sexually Transmissible Infections testing and treatment; subject to availability of funds, housing may also be provided for the most vulnerable victims;
- Children: free physical healthcare, and educational support;
- Community/symbolic reparations: commemoration ceremonies, memorials, symbolic reburials;
- Free mental healthcare (counselling and psychosocial support) in all chiefdoms in the country.

However, with NaCSA facing various challenges, some of the measures were postponed. The \$3 million PBF grant was used to register victims, to provide an \$80 interim payment to 21,700 victims, and fistula surgery for female rape victims (235 were examined to determine their treatment). NaCSA also requested resources for emergency surgery for the direct consequences of wounds suffered by 31 war-wounded victims. The minister of health has requested the postponement of other health-related measures and NaCSA has requested a cost analysis by the National Social

Security and Insurance Trust (NASSIT) agency of the pension scheme recommended by the TRC.

In September 2008, NaCSA's outreach unit developed a strategy to ensure the effective engagement of all stakeholders, the timely dissemination of accurate information on reparations, the management of expectations, and two-way communication between NaCSA and all stakeholders. The unit established outreach structures across the country through the formation of reparations stakeholder committees in all districts. The committees comprise representatives from local councils, traditional leaders, civil society, religious groups, victims' organizations, and other partners.

The registration of eligible victims started in December 2008 and continued until June 2009. Registration centers were located at NaCSA district offices staffed by a male and female pair of registration officers. In addition, mobile registration units traveled to the chiefdoms to register eligible victims. After the registration period, there were 29,733 registrants, including those who applied as war widows (11,161), child beneficiaries (9,431), war-wounded (4,675), victims of sexual violence (3,181), and amputees (1,285). The verification of the registration statements started in June 2009. It is understood, however, that this process was an initial attempt and that registration will continue in the future, when the problems experienced in the initial registry process will be addressed.

NaCSA continues to look for funding for what it contemplates will be a five-year reparations program. The government has expressed its intention to allocate US\$500,000 to a reparations fund and is waiting for the UN PBF to evaluate what has been implemented so far and decide whether to contribute additional resources.

#### ***2.6.4. The Approach to Collective or Community Reparations***

The TRC report calls for a number of symbolic reparations including public apologies, memorials, commemorations, and mass reburials. Under that category, there is a brief mention of "community reparations" in which the report says that the government should rebuild institutions. There is a separate reference to microcredit projects for both individual and collective beneficiaries.

By July 2009, NGOs hired by NACSA had conducted symbolic reparations activities in five chiefdoms in the country. NaCSA and other agencies went to Bomaru in Kailahun district to commemorate the 18<sup>th</sup> anniversary of the start of the conflict. NACSA and the community performed a reburial ceremony for victims buried in mass graves, and a "peace tree" was planted. This activity—along with prayers in mosques and churches, as well as the symbolic pouring of libation to the dead, the cleansing of

sacred bushes, and symbolic reburials for those whose remains have not been recovered—is meant to be replicated in all 149 chiefdoms in the country as well as in Freetown, the capital. The activity will be led by NaCSA and, in some cases, by different NGOs that are given NaCSA funding for that purpose. NaCSA estimates that a total amount of US\$5,000 will be spent in each chiefdom. So far, the commission has conducted the activity in Sowa and Penga Kabonde in Pujehun district; Bombali Shebora in Bombali district; Tane in Tonkolili district; and Maforki in Port Loko district.

Separately, a monument will be erected in central Freetown—between the law courts building and the state house—to honor the more than 50,000 people who died in the conflict. The monument will be managed by the newly established Monument and Relics Commission and the Freetown City Council.

## **2.7. Timor-Leste**

### **2.7.1. Conflict Overview**

After centuries of Portuguese colonial rule over East Timor, a left-wing coup in Portugal opened the way for East Timor’s decolonization. It also led to tension and violence as East Timorese political parties competed for post-colonial political power, some of them with neighboring Indonesia’s backing. In 1975, Indonesia invaded East Timor and incorporated the territory as a province of Indonesia the following year. For the next 25 years, a violent conflict between the Timorese resistance and Indonesian security forces devastated the local population. During this period, the Indonesian military carried out widespread killings, disappearances, torture, rape, displacement, and destruction of property in an attempt to destroy the Timorese resistance. Deliberate violations of social and economic rights contributed to the heavy death toll during the occupation. More than 80,000 people died from hunger and illness due to forced displacement and destruction of food and water sources by the Indonesian military. Corrupt and unsustainable patterns of natural resource exploitation further violated the rights of the Timorese people.

The 1998 collapse of the Suharto regime precipitated a change in Indonesian policy on East Timor. Interim President Habibie decided to offer the East Timorese people a choice between independence and special autonomy. Another wave of violence resulting in more deaths and displacement took place before and immediately after the UN-sponsored referendum in 1999 that finally led to Timor-Leste’s independence.

The 24-year conflict with Indonesia sowed deep divisions within Timorese society and entrenched a culture of violence that continues to affect stability in Timor-Leste today.

### ***2.7.2. Progress in the Area of Transitional Justice***

In 2001, Timor-Leste established the Commission for Reception, Truth and Reconciliation (known by its Portuguese acronym, CAVR) to investigate the truth regarding human rights violations that took place between 1974 and 1999, promote reconciliation, restore the dignity of victims, and assist the reintegration of individuals back into their communities. The CAVR found that a minimum of 102,800 people died due to conflict-related causes. Of this total, about 18,600 civilians were unlawfully killed or disappeared. Thousands more were tortured, detained, and subjected to sexual violence. All parties to the conflict were guilty of human rights violations, although the Indonesian security forces bore responsibility for the majority of violations.

The Special Panels for Serious Crimes, established by the UN Transitional Administration in East Timor (UNTAET), convicted 81 perpetrators responsible for the 1999 violence. However, more than 300 of those indicted, including the military personnel primarily responsible for the 1999 campaign of violence, remain at large in Indonesia. Meanwhile, Indonesia established an ad hoc human rights court in Jakarta to try those responsible for the violence and abuses connected with the 1999 referendum in East Timor. This has not led to accountability; all of the 17 accused Indonesian military, police, and civil service officers, and one Timorese militia leader were acquitted by the ad hoc court either at first instance or on appeal.

In 2005, the joint Indonesian-Timor-Leste Commission for Truth and Friendship (CTF) was established to determine the “conclusive truth” regarding the 1999 violence and to promote cooperation and friendship between the two countries. The commission had the power to recommend amnesties, but not prosecutions. The CTF report, issued in 2008, concludes that Indonesian military and police, as well as the civilian government and militia groups bear institutional responsibility for crimes against humanity committed in 1999.

### ***2.7.3. The Status of Reparations as a Transitional Justice Measure***

Despite UNTAET-period legislation calling for the creation of a trust fund for serious crimes victims and their families, such a fund was never established. The CAVR administered an Urgent Reparations Program (URP), which assisted more than 700 of the most vulnerable victims to access healthcare, counseling, and general support services, as well as

providing them with a one-off grant of US\$200. Since then, the only material assistance provided to victims of the 1975-1999 occupation has come from NGOs working at the community level. Most of these programs, however, have now ceased and NGOs have turned their attention to present-day victims of violence or abuse.

In 2006, Timor-Leste passed a law granting pensions and other benefits to veterans of the independence struggle. The law determines eligibility according to years of full-time service as a member of either the armed, clandestine, or diplomatic fronts of the resistance. Approximately 12,000 people have been identified as beneficiaries under this scheme but complications with verification processes have delayed implementation.

Both the CAVR and the CTF final reports recommended the establishment of a reparations program for victims. The Timorese president presented the CAVR report to the parliament for consideration in November 2005. In 2008, prompted by the formal submission of the CTF report to the parliament, the parliamentary committee responsible for justice matters passed resolutions endorsing implementation of both the CAVR and CTF recommendations on victim reparations. These resolutions are yet to be adopted by the parliament.

#### ***2.7.4. The Approach to Collective or Community Reparations***

A working group consisting of various NGOs and government human rights bodies developed a concept paper for a national reparations program in Timor-Leste based on the CAVR's recommendations for reparation. The working group sent the paper to the parliamentary committee responsible for the CAVR report.

The CAVR recommended:

- Collective material reparations for communities seriously affected by the conflict;
- Symbolic reparations for all victims;
- Individual material reparations for only the most vulnerable victims.

The CTF also recommended:

- A number of reparatory measures such as healing workshops for victims, an apology from the Indonesian and Timorese heads of state to the victims;
- Scholarships for children affected by the violence;
- Investigations on the whereabouts of disappeared persons.

The collective material reparations proposal contemplates a program tailored to meet the specific needs of communities that suffered the most from violations. Some of the suggested measures, which may be provided by government agencies or by NGOs, include group therapies, collective livelihood training, community projects, and the establishment of social service delivery points within communities to meet special healthcare, educational, or social needs. By way of symbolic reparations, some of the proposals that may have an impact on victims' collectives or on specific communities include:

- The establishment of a national register for persons killed or disappeared between 1974 and 1999, with a team of dedicated staff working on outreach and research to encourage family members to participate in this effort;
- A program to locate bodies and/or provide reburials for families of those killed or disappeared;
- A program to work with communities that seek to achieve these objectives through the establishment of memorials or by marking the sites of detention or mass graves.

### 3. CONFERENCE OVERVIEW: EXPLORING COLLECTIVE REPARATIONS

#### 3.1. The Idea of Collective Reparations

Participants started the discussion by sharing their general understanding of collective or community-based reparations,<sup>15</sup> the basis and rationale for developing collective reparations, and the criteria for defining a “collective victim.” Several of the issues addressed in this first section will be explored more extensively later in the report.

##### 3.1.1. General Understanding

Participants first recognized that the option to implement reparations through collective reparations programs is tempting because it is more likely to be feasible in countries such as those represented in the conference—where reparations have to compete with other state obligations, considerations of scale, and severe budgetary limitations.

However, some participants warned of the risk of using collective reparations as a strategy for not providing individual reparations and stated that “collective reparations cannot substitute for individual reparations; both are needed.” Others noted that, “collective reparations may fragment transitional justice and make it just another form of development” and highlighted the problem of providing basic services as a way of delivering collective reparations. One example from Colombia involved a school that was built in a town as a reparations measure. The mothers of the victims in this case complained that it was a disgrace that their children had to die to get a school built there. In the end, both the social service *and* reparations measure were undermined. In Peru, one of the objectives of the reparations programs is to convey to the community that the state has not forgotten them. To reach this goal, the state agency in charge of reparations programs has tried to combine the need to use their resources efficiently, maximize results, and leverage impact from projects as public investment, with the need to provide meaning to such projects as reparations.

Participants noted that “it is important to recall the nature of the conflict and to look at the specifics of the context, to determine the nature of appropriate benefits.” A conflict’s characteristics and political context

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<sup>15</sup> In the course of this session, there were views that tried to distinguish these concepts. Some consider there is a ‘reconciliation’ component in community reparations (and not necessarily in collective reparations): one participant says that because relationships *within a community* have been broken, there has to be a community-based approach and the aspect of reconciliation distinguishes ‘community’ from ‘collective’ reparations. One other theory was that some forms can inherently be ‘collective’ and exclusive (e.g. specialized health services for specific categories of victims) and some are community-oriented and not exclusive (e.g. schools). But there were many more views that sought to blur the distinction, often because they see the distinction as having no practical value. Therefore, community or collective reparations will be used as synonyms in this report.

generally determine the appropriate type of reparations that would form part of a broad transitional justice process. This includes determining whether reparations should be collective or not, but also how collective reparations should be related to individual reparations. This will also involve decisions on how such reparations relate to other transitional justice measures, such as institutional reform, prosecutions, or truth-seeking. For some conference participants, the concept of reparations could change over time in any society, and policymakers should have to consider the effects of harm on victims' changing situations and the inter-generational transmission of harm on the descendants of the primary victims.

As part of a broad transitional justice concept, policymakers should avoid a narrow perspective on reparations and “reparations should not be understood as an isolated solution” to past atrocities. It appears that there is also a strong need to acknowledge responsibility and to recognize and preserve historical memory, both linked to the concept of collective reparations. The recovery of memory should be the basis for the participatory definition of collective reparation measures. Thus, there is also a need to reflect on the symbolic dimension or reparations measures and on the interaction between symbolic and material collective measures.

On the question of how to distinguish between collective reparations and normal state obligations to invest in communities, some participants suggested that the answer is not so much in the content of the project but its design and implementation. How victims perceive a project will depend largely on how it is implemented and what official message it conveys. A new attitude by the state toward victims is necessary to demonstrate a clear shift from a repressive relationship to a respectful and protective one. Policymakers may achieve this new relationship by encouraging participation among collective beneficiaries in choosing their reparations measures. However, in some cases, it can be difficult to decide how to distinguish perpetrators from victims insofar as their entitlement to collective reparations—in contrast, with individual reparations it is clear that only victims receive benefits. Participants mentioned Liberia as a country that will face this problem; one Liberian participant suggested that the focus on collective reparations should be on reestablishing relationships, and that there may be reason to not differentiate perpetrators and victims in a way that excludes the former from collective benefits; the emphasis should be on the integration of communities, with a process that provides ex-combatants the space to show remorse to the communities in which they live.

### **3.1.2. Criteria to Consider in Opting for Collective Reparations**

Is the principal criterion for collective reparations a “collective identity”? If so, what is that identity and how should it be described—is it a community, a political group, a social organization, or based on geographical ties? Or, alternately, could it be that there are certain harms that have a collective impact, or violations of a community’s collective rights that should *always* be addressed through collective reparations? The diversity of the experiences shared demonstrates that there is no single, predominant way to define a collective victim or to conceive of a collective identity. It also shows that in making these definitions, many practitioners are going beyond the collective subjects traditionally recognized by international law and some domestic laws.

For instance, in Morocco the IER recommended communal reparations for 11 provinces where inhabitants suffered economic dislocation either because of “collective punishment” made against them—such as systematic repression against the local population or the denial of public services—or because repressive state structures—such as facilities for enforced disappearance or arbitrary detention—were located there. This approach obviously goes beyond the notion of addressing human rights violations *per se* and extends the idea of a collective victim to those who suffered neglect by the state or were deliberately excluded from receiving economic and social benefits of the state.

The Peruvian reparations process considers certain groups of people as beneficiaries of the collective reparations program. One category includes peasant communities, indigenous populations, and villages affected by the conflict. A second category refers to non-returning displaced people from affected communities. The criteria for identifying the first category consist of a combination of geographical circumstances and a certain level of direct harm, whether individual or collective. In assessing the harm to the first category, policymakers consider certain elements—such as a high concentration of individual violations, the destruction, displacement, rupture, or devastation of communal institutions and identity, and the loss of family infrastructure and/or the loss of community infrastructure. But the criteria for identifying those that might fall into the second category are less clear. Is the criterion geographic (the new place of residence, for example)? Is it a social organization? Is it a collective identity? This lack of clarity may partly explain why Peru’s collective reparations program has still not addressed “organized groups of non-returning displaced people” as a group of beneficiaries.

In Colombia, the CNRR initiated a collective reparations pilot program in a limited number of communities affected by conflict, selecting the communities according to the impact of the violence, and on the basis of

cultural, ethnic, geographic, and socioeconomic diversity. The CNRR also included a gender perspective, by selecting a women's group—the mothers of the disappeared organized as the “*Madres de la Candelaria Caminos de Esperanza*”—to participate in the pilot program. Finally, in Liberia, the TRC had recommended earlier that collective reparations target “a whole community, village, town, district, county, institution or a group of individuals”—which is a very broad set of criteria for defining a collective victim.

Notwithstanding the variety of experiences and settings that dictate how collective victims are defined, there is a recurring set of dilemmas and choices involved. One speaker suggested that “there is collective harm beyond that suffered by individuals and this harm requires a collective response.” Others agreed and stressed that there are some forms of violations that have a common impact on specific groups of individuals that can be distinguished by identity, geography, or even by gender, political, or social struggles. There then seems to be logic in addressing such groups through collective forms of reparations.

On the other hand, participants found that defining a collective or community was a potentially contentious task. One might think that “collectives” and “communities” should self-define or be defined by a conflict or period of repression, but the results do not necessarily make the work easy and in fact the discussion on what is a collective is still going on in a number of contexts.

The Colombian experience illustrates the difficulty of defining a collective. The CNRR's decision to define the mother's organization as a beneficiary of collective reparations has proven problematic; while the group developed a common identity based on their fight to know the truth about the fate of their disappeared children, they are in fact a traditional victims' organization, and their reparations demands have been mostly individual (for example, economic support for paying lawyers and other procedural expenses needed to finalize legal proceedings for the declaration of the disappeared as dead, so that they can solve inheritance problems and claim humanitarian assistance). In terms of collective measures, the only demand they have formulated has been a publication with the stories of their family members.

Conference participants arrived at some degree of agreement that practitioners should not try to find a single way to define what a collective victim is; instead, we must explore the available options—enriched with academic work on identity issues—in order to determine how to respond in particular contexts, while learning from the lessons derived from other experiences.

Some participants thought it important to recognize the nature of the violation and the collective harms before looking at the resulting individual harms. These collective harms could be ones that erode trust among members of the community or undermine trust in other actors—such as the state—or they could be harms that affect the community’s capacity to maintain previously communal property, practices, or services.<sup>16</sup> Other participants were open to the possibility of ambiguity in categorizing collective and individual victims. They argued that one must consider the impact that a crime against a person may have on an entire community, and not treat that crime as solely against an individual. They also stressed the need to distinguish communities—such as indigenous people with a strong communal culture and common identity—from groups of people that suffered individually but, because of the common experience, may have developed a common identity—as in the case of the mothers of the disappeared.

Participants acknowledged the importance of victim participation and how it can contribute to the transformation of their status from being victims to being coequal citizens or from being passive recipients of development services to active bearers of human rights; but they also recognized the difficulty of organizing people and communities so that they can make collective, participatory decisions on the content of reparations. This is especially difficult for large communities or in territories not bound by a community identity or led by a representative organization.

Take for example Morocco: can we expect the people that live in communities that hosted a former secret detention center and the people who were once detained to take a common position on what to do with the facilities as a collective reparations measure? This brings up a larger question: who should participate in the definition of the reparations project? When we attempt to expand categories of victims’ groups beyond the criterion of a strong communal culture and common identity, specific challenges arise.

Participants also discussed whether there is a distinction between “communal” and “collective” victims. Some participants saw these concepts as distinct. In that sense, the term “communal” could be applied mainly to groups linked to a territory—communities in a distinct geographic region—while the term “collective” applies to groups whose individual members have experienced a situation of systematic violence.

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<sup>16</sup> In the Bogotá Meeting on Collective Reparations, held in October 2008, where Colombian, Peruvian and Guatemalan participants shared their views on the topic, the following list of harms have been identified: disintegration of the community, destruction of communal infrastructures, destruction of organizational structures, damage to productive and economic capacity, cultural damage, damage to symbolic capital, deepening poverty, changes in authority relationships between parent and child, stigma, prostitution, etc.

But others sought to blur the distinction, often because they see the distinction as having no practical value.

### **3.2. The Dual Nature of Collective Reparations**

This session addressed the question of the relationship between collective reparations and development projects and/or humanitarian assistance, and between collective reparations and the provision of social services. In addition, the session explored the factors and conditions that make it possible to differentiate these categories at both practical and conceptual levels. Participants debated some questions, such as: is it possible to draw an easy line between social services, humanitarian assistance, and collective reparations? Is it possible to draw a line between general government functions with respect to citizens (particularly in contexts of post-conflict reconstruction) and government functions with respect to victims specifically? How do these distinctions play out in reality?

#### **3.2.1. Understanding the Dual Nature of Collective Reparations**

The departure point of the conversation was based on two fundamental realities. First, victims face dual problems in developing countries where the poor and marginalized are not only victims of human rights abuses, but often also victims of historic economic and social injustice. Second, no matter how collective and community reparations are defined, victims articulate *needs* that include basic economic and social demands (education, healthcare, livelihoods, housing, and infrastructure) as reparations. In Morocco, for example, people from the regions where the collective reparations program is being implemented have identified their reparations expectations based on 40 years of economic and social deprivation and exclusion. As stressed by a Moroccan participant, “a development commission looking at how to fight poverty showed where poverty was effectively engineered during the years of repression.” According to a Liberian participant, 70 percent of victims in his country ask for social services. Similar trends exist in almost all the country cases discussed at the conference.

Victims might confuse collective reparations and development projects, social services, and/or humanitarian assistance, consciously or unconsciously. Their confusion may result from “sudden” state attention that gives them an advantage over the rest of the poor population in gaining access to basic services. Confusion may also result from victims’ lack of awareness of their rights, due to their socioeconomic conditions (as exhibited in cases examined here). Finally, confusion may arise because people tend to phrase their needs in whatever way they can, according to the government program that is being offered to them.

States can also contribute to the confusion using different labels according to their interests. This occurred in Sierra Leone, when NaCSA changed the title “director of reparations” to “director of humanitarian assistance.” In Colombia, the governmental body executing reparations (Acción Social) is designating prior humanitarian assistance payments as reparations, so that people who already received humanitarian assistance are not eligible for economic compensation under the 2008 presidential decree establishing an administrative reparations program for individual victims (see section 2). In Peru, there was an attempt to label every social development project and poverty alleviation program in the areas most affected by the conflict as collective reparations, regardless of the implementing ministry. The government also asked the body in charge of the reparations process, CMAN, to report its collective reparations programs as development projects. In fact, the confusion may be a politically attractive shortcut for government since there is a clear overlap of victim populations with those in need of development and poverty alleviation or humanitarian programs, and this population demands both reparations and development.

Over the course of the discussion, some participants argued that collective reparations should not substitute for the state’s obligation to provide basic services to every citizen; in theory, development programs and collective reparations programs are two different state obligations, each with its own target population and its own objectives. Reparations should not be an instrument of social policy that is piggybacked on the state’s existing obligations to address structural problems of poverty, exclusion, and discrimination. This approach undermines the recognition of human rights violations, which is a critical element of any reparations policy. Therefore, there is a need to define reparations based on an acknowledgment of the harm suffered. As pointed out by one participant, “the distinction between reparations and social policy is clear; the challenge is how to articulate it. The distinctive feature is historical memory.”

As the Colombian and Timor-Leste experiences illustrate, the provision of social services (if and when these reach victims) should help victims meet their basic needs; however, as pointed out by the Timor-Leste example, “once they no longer need to struggle for survival and their basic needs are covered, people have more time to reflect on their situation and on how violence affected the community and their need for specific forms of recognition, truth, and justice will rise in importance.”

If theoretically the distinction—and its importance—is clear, the challenges on the practical level and in implementation persist: how do we *practice* the agreed-upon theory of collective reparations? This raises additional questions.

### **3.2.2. Addressing the Dual Nature in Practice**

#### *3.2.2.1. Exploring the Forms of Collective Reparations*

Should reparations take the *form* of development, basic services, or humanitarian assistance? If they can take this form, how and how far should they do so? This does not overturn the principle that reparations should not substitute for the state's duty to pursue development and provide basic needs and social services to everyone regardless of their status as victims. Most participants agreed that it is fundamental to make this distinction in order to acknowledge the harm suffered and the condition of victim, but that does not mean it is necessary to absolutely separate them from each other. As pointed out by one speaker "the challenge is to find the nexus."

It is necessary to articulate the relationship between reparations and development because when poverty is widespread it is simply impossible to avoid the confusion in practice; collective reparations need to be put in the overall context of alleviating poverty. One participant suggested that "the community reparations program is just a bridge to the state's general responsibility." Furthermore, when one general objective of a transitional justice process is to rebuild the trust between state and citizens, it is necessary to take into account the feelings and claims of people in affected regions. In Colombia, where the regions where human rights violations took place are the poorest, the NCRR led a field diagnosis, saw the scope of this poverty, and on that dual basis inventoried the most significant needs in the region. As a result, in the implementation of the collective reparations pilot projects, the Colombian National Commission decided to start with a preliminary phase in which basic services (such as running water) are being delivered, under the framework of the right to live in dignity.

It is also necessary to articulate the relationship between reparations and development because the focus of transitional justice is usually limited to civil and political rights, while victims are also victims of violations of social, economic, and cultural rights because of secular social marginalization, historical neglect, or because the conflict destroyed social services and infrastructure. Participants from Aceh Province (Indonesia), Colombia, and Peru clearly pointed out how political violence truncated the process of development or exacerbated poverty in the regions where civil and political rights violations took place. How should reparations deal with those circumstances? Should reparations be based on the nature of the violations committed or on the impact of those violations?

The Moroccan experience shows intent to articulate the concepts and to respond to the dual realities of the regions, affected both by the repression

and by the exclusion from receiving economic and social benefits of the state. In Morocco, in the regions where former secret detention facilities were located, collective reparations programs are not limited to the direct victims formerly detained in these prisons, who in most cases do not live in these regions, but take into account the harm caused by the existence of secret detention on the local population. Indeed, the presence of detention centers and the efforts to preserve their secret character and keep them isolated led to the marginalization of the entire regions where they were located. Thus, collective reparations are focused on responding to the harm caused in whole regions affected by this marginalization. Reparations are focused on the inhabitants of these regions, and according to the Moroccan participants, include affirmative action policies.

### 3.2.2.2. *Making a Difference*

What reparative component should signify the substantial difference between collective reparations and development programs or humanitarian assistance? Participants agreed that what distinguishes collective reparations from other policies is the message that should accompany reparations measures. In one sense, giving a reparative component to a service or benefit that would otherwise be seen as simply a development or humanitarian measure may have to do with *how* that service, benefit, or measure is extended or carried out in addition to the actual measure itself. This reparative component should include:

- Clear acknowledgment that mass and systematic human rights violations were committed and an equally clear acknowledgement of the state's responsibility for them, either because it failed to prevent them or because state actors were the perpetrators;
- Recognition that the victims' circumstances as a group are different from the rest of the population targeted by development programs or entitled to public services;
- A reasonable link between the service, benefit, or measure intended to be reparative and the harm it is meant to repair;
- Efforts to effectively communicate the meaning of this reparative component to victims.

As pointed out by participants from Timor-Leste, victims should participate in defining how reparations happen. There was general agreement that victim participation at all stages of the collective reparations process is important because it can empower the recipient community and give it an understanding of what reparations are and what the corresponding obligation of the state is. This gives the community more ownership over

the project. It creates a greater chance for these measures to be accepted for their reparative and transformative value and to differentiate reparations from regular development projects. According to one participant, “what is important is the meaning. Educating and communicating about this meaning is key along with how it involves victims in the process and acknowledges them. If we can convey this message through pure development, then ok, we accomplish our goal.”

### *3.2.2.3. Sequencing and Timing*

The question of sequencing and timing also emerged. Through collective reparations, what can be done as a first step that can change the relationship between the state and victims? And what can be done—whether concurrently or as a next step—for those communities affected not just by the conflict but by prior, long-standing economic and social marginalization?

According to participants, program coordinators are facing sequencing and timing differently in each case. In Colombia, the pilot collective reparations program found that victims primarily demanded social services, such as clean drinking water; hence, the commission considered the provision of basic social services as a first step. In Aceh Province (Indonesia), while there is a perception that individual and collective reparations can be implemented together, the provincial government thought it would be more difficult to implement collective reparations without first fulfilling individual victims’ needs.

In some contexts, like Liberia, it may not even be an option to think in terms of sequencing because countries emerging from war often lack the capacity to deliver minimum social services, and recommendations for reparations are largely dictated by capacity and available resources. Hence, the Liberian TRC policy provides for “community reparations except in cases of extreme individual need.”

One participant noted that, “reparations are a short-term agenda, while development is a long-term agenda.” Others advanced the idea that transitional justice measures should occur within a time limit and should aim to build a bridge to a future of just policies; collective reparations measures have to be implemented for a short period to help the state return to a more conventional approach to development.

## **3.3. Symbolism and Collective Reparations**

In reality all reparations measures are symbolic because reparations can never really reverse the crimes committed and the harms suffered by their victims. It is impossible to assess the harm suffered by each individual and

just as impossible to fully repair the damage done. Taking this limitation into account, material measures must have some symbolic component to give them meaning beyond their material impact; conversely, reparations may be comprised of important symbolic gestures that do not necessarily have a significant material component.

One of the purposes of the discussion, then, was to explore more deeply the symbolic dimension of collective reparations. Morocco achieved this by recommending turning detention centers into memorial sites and encouraging discussions about their design. Some of the challenges in integrating the material and symbolic aspects of collective reparations emerged from the discussions and were manifested in country after country despite their different circumstances.

First, memorial sites are sometimes located in or near very poor communities in which there may be no electricity, running water, or other basic services. Memorialization projects therefore need to factor in the local context. One participant remarked on “the hollowness of symbolic reparations when poverty is everywhere.” One example is a monument built in the Iraqi Kurdistan region to remember the victims of the Anfal campaign that Saddam Hussein carried out against the Kurds in the late 1980s. The monument was vandalized by some members of the local community who complained that while the government had money to spend on the monument, the community still had no electricity or running water. This illustrates the importance of priority and balance: how many resources should be devoted to monuments and other symbolic measures in a context of widespread poverty?

Another important point in the discussion was the contested meaning of the events and memories that symbolic forms of reparation are intended to convey. Many symbols will have a political connotation and are not always harmless. No matter what is said or not said, they always convey a message. The symbolic dimension of collective reparations is closely linked to the struggle among different collective memories: which truth and whose memory should be included in symbolic collective reparations? Symbolic measures could threaten those in power, especially those who achieved power during a conflict. These measures may challenge their heroic narrative or may be subversive to such power because they could empower victims.

Tension may exist between those who want to perpetuate one version of history—that justifies past violations and impunity—and those who say “nunca más” or never again and want a symbol to represent their view. But there can also be tensions among different victims’ groups over which memories to preserve. According to some participants, these tensions exist for example in Morocco between the Saharawi detainees and the

left-wing groups as well as between direct victims of repression and the populations of the places where such direct victims were detained or tortured. The former seek to transform these locations into sites for memorialization; the latter want to transform these detention centers into facilities that would have practical use for the local population, such as cultural, sport, or health centers.

Violence may lead to the disintegration of an affected community's culture and in turn lead to a situation of coexistence for "intimate enemies." These tensions within and among communities will interact with the memory of the conflict, and will affect how symbolic collective reparations will be perceived and whether they can contribute to reconciliation. The process of deciding what symbolic reparations to set up could also force a reconciliation that is unfair for victims or even pressure them into expressing forgiveness when they otherwise would not have taken that step.

Additionally, tensions can exist between different cultural traditions or between different aesthetic sensibilities. In Peru, symbolic collective reparations are seen through different cultural perspectives within Peruvian society because of the cultural differences between and among urban and rural populations and between indigenous communities and the non-indigenous communities of Peruvians.

Another complex issue is what to do with "bad memories" or memories that victims do not necessarily want to remember. Is it possible to extract a positive meaning from such unwanted memories? In Morocco, local populations reject undesirable regional identities created by facilities that were used for repression by the government in the past. The local populations would not be keen to preserve facilities that have stigmatized their communities; thus, it is necessary to make the memorial site functional for the population and give it a positive meaning. It is also important not to distort the truth in an attempt to create a positive meaning out of bad memories. How can these tensions be overcome and how can memorial sites be more sensitive to local meanings? It is necessary to learn how to be plural and to go beyond the differences within in a community. Victims' participation has an important role in these processes.

### **3.4. Implementation of Collective Reparations**

The final discussion was the most practical as well. It focused on the implementation of collective reparations, including:

- The role and participation of collective beneficiaries;
- The gender perspective;
- Operational and decision-making structures;
- Financing.

### **3.4.1. Participation of Collective Beneficiaries**

Participants cited the importance of victim and beneficiary participation in reparations policymaking and implementation throughout the meeting. Victim participation empowers collectives and allows them to identify with or even take ownership of reparations projects. Participation permits the collective of victims to move from a passive social and political role toward an active one and provides an opportunity to work with government agencies in improving their situations. It allows communities to determine what reparations measures are the most needed and meaningful to the community. It also facilitates local sensitivity and prevents experiences like the one in Sierra Leone where a memorial established in a village that suffered a massacre exhibited the remains of some victims, and the community was shocked and disgusted; to them, those remains are sacred and should not have been publicly displayed.

Although a participation component is not the only success indicator of the reparations process, there is a general agreement among the conference participants on the participatory dimension a collective reparations process should include. However, communities are not homogenous; rather, there is subordination and exclusion inside communities. Hence, how do policymakers ensure there is participation from a community's weakest voices? As pointed out by one participant, this reality should also make us ask what the end result of collective reparations is; should the result be the *restitutio in integrum* (restoration to the original condition), when actually subordination and marginalization existed before the massive human rights violations took place? Participants agreed that in a transitional justice context, reparations should have a transformative sense and not strictly seek a return to the previous state: they should seek to overcome such exclusions from a democratic perspective. Nevertheless, conflict may emerge within communities, since the interests of those with power will likely be affected. Also, there is internal resistance that makes it difficult to include a transformative component along with participation, rather than imposing the transformation from outside.

Participation processes are obviously not free of challenges. It is likely that the participation process will not lead to a consensus. It could create

disagreement within the community about what form reparations should take; some will want a new school, others may want cattle, some may want an irrigation channel built, others a microfinance scheme. It could also create disagreement within the community about what to remember and the symbolic dimension of the reparations project. Which community reparations project should be chosen? Should it be the one that will benefit the largest number of community members or the one that will benefit the most vulnerable? To avoid some of these challenges, experience shows that, at the time of designing the participation process, it is important to be aware of power dynamics within the community and of the local dynamics around participation of the community's most vulnerable and subordinated groups, and especially to be aware of gender inequalities' impact on victim participation.

### **3.4.2. Gender Perspective**

The experiences in Aceh Province (Indonesia) and Timor-Leste show the importance of recognizing the specific human rights violations suffered by women. Even in situations where there is such recognition, it is important that this is transposed effectively in terms of women's presence and participation in the collective reparations processes.

In Mauxiga, a village in Timor-Leste, the CAVR successfully encouraged hundreds of women to come forward and testify about systematic sexual abuse. The villagers then chose to organize the commemoration of events in 1983 that saw hundreds of politically motivated killings, thousands of men imprisoned on the island of Atauro, and hundreds of women systematically raped in a school house where they were detained. But during the commemoration itself, the women who actually brought the whole story of Mauxiga to the CAVR stayed in the background cooking for the event. Later, when names of the "heroes of Mauxiga" were read out, they were all men. This shows that in introducing a gender perspective in collective reparations, it is important to go beyond recognizing women as victims, but to also address the relationship between masculinity and violence. It is also important for collective reparations to create other images of heroism.

In Aceh Province (Indonesia), a village opted for a project to improve their water system even though the women had specified their need for child and maternal healthcare. In another case, before a consultation meeting for collective reparations started, community leaders instructed women not to talk about rape as a violation, regarding it as a source of shame to the community. These examples demonstrate that communities' decisions often do not reflect the interests of women and often neglect women's needs. When reparations are implemented collectively, policymakers have to ensure that they do not subordinate the rights of victims who are

already marginalized because of their gender or because of the stigma that accompanies sexual violence.

The implementation of collective reparations in Aceh Province (Indonesia) and in Morocco provides us with some strategies to ensure women's participation:

- Design a separate process of consultation for women, using “women's spaces” (field, river, kitchen, market, etc.) before the communal consultation. Decisions made by the community are often decisions made by men because public space is not seen as the space for women and public speaking is done by men. Therefore, a special empowerment process and an optimization of women's spaces are needed to help increase women's participation. In a collective reparations process, including these specific strategies and creating “safe spaces” to listen to the views of women is as important as the reparation measure itself.
- Organize debates among different sectors in society and prepare women's organizations for discussions about how the gender dimension can best be incorporated in the process of deciding collective reparations measures.
- Use specific and appropriate media tools for communicating with women to allow them to better understand the message. This is particularly important because women are often less educated and literate than men and have less access to information than men.
- Work in parallel on the dissemination of information—and comprehension by the society as a whole—of the realities of the women before, during, and after the human rights violations, and the importance of an inclusive strategy during the collective reparations process.

### **3.4.3. Operational and Decision-making Structures**

Within the general issue of implementation, another topic to consider is the institutional aspect—the operational and decision-making structures for implementing collective reparations. Participants listed exclusion from the earlier truth-seeking process or during the reparations registration process among the problems victims commonly face. But they also discussed: how should the state design the reparations bureaucracy? How should NGOs and victims organizations deal with state reparations institutions?

Implementing collective reparations could be done in different forms. In Peru, the government created a high-level follow-up commission, CMAN (see section 2), which is tasked with overseeing the implementation of the

reparations law, including the collective reparations program. While civil society obtained four seats out of the 14 members (the other 10 are representative of various ministries and government agencies), none of the four directly represents victims' organizations and only two of the four—the representatives of human rights organizations and a civil society development network—see themselves as representing victim interests.

In the approach, CMAN selects peasant communities, native communities, or other populated rural centers affected by the violence to receive investment projects of approximately US\$33,000 for each community. The methodology proposed is that each community—through a communal assembly with all the inhabitants—identifies the form of reparations from which it would benefit and presents one project to CMAN. The commission provides technical assistance to prepare the project. In theory, no projects are rejected. This decision-making structure is based on the preexistence of a communal identity and communal structures. This kind of methodology could work for a collective reparations policy focused on small self-identified communities, but will be more difficult to implement where whole regions or different categories of population are the recipients of these policies. Another difficulty of this methodology is that it assumes that the community will be able to opt for one single project; it does not respond to the existence of different ideas inside the community. Thus, it could reinforce the traditional decision-making process inside each community, probably dominated by those that have more power or influence, or may have even played a role as perpetrators, in addition to the possibility of not including women's ideas and interests.

One other form of implementation is to ask all the social organizations that belong to the affected area to select a recipient to present projects and select the best ones. This model might favor stronger and more experienced organizations in designing projects, and neglect those weaker or more marginal organizations. Even if technical assistance is provided to guarantee some degree of equality among the organizations, a competition of projects could still benefit those organizations and areas that have better knowledge and capacity, and might reinforce marginalization. Also, and more disturbing, competition between projects could undermine the notion that reparations is a right of the victims, since it might imply that only the selected project's beneficiaries have rights.

In Morocco, the operational and decision-making structures include various bodies at the local and national levels: the National Steering Committee, the Central Management Unit, the Council of Coordination Bodies, and local coordination bodies.

1. The purpose of the Steering Committee, which comprises the CCDH, the FCDG, the Ministry of Finance, the Ministry of the Interior, donors, representatives of local coordination bodies, and the Central Management Unit, is to ensure that the collective reparations program is implemented according to the recommendations of the IER, define the strategic vision, ensure financial transparency and technical viability, and make the program known internationally in order to attract foreign support.
2. The Central Management Unit, hosted by the Fondation Caisse de Dépôt et de Gestion, is responsible for the human, technical, financial, and logistical management of the project. The FCDG is providing technical know-how in project management.
3. Each beneficiary region of the collective reparation program has a coordination body that represents a number of interested parties, from local authorities to local NGOs. These bodies are in charge of establishing and coordinating relations between the central government and local authorities and civil society actors involved in the program, technical and financial tracking of projects, coordinating between different projects to avoid duplication. One representative from each of the 11 local coordination bodies forms the Council of Coordination Bodies, which facilitates the exchange of information between coordination bodies and the communication between them and the National Steering Committee.

The structure is complex. Its establishment required a huge effort from the CCDH and the FCDG because of the distance between one beneficiary region to another, and the lack of appropriate transportation infrastructure (the regions covered by the collective reparations program are also marginalized in terms of access). The wide range of institutions involved, from local to national levels, also represents a challenge because of the diversity and unequal conditions—in terms of technical capacities—of the different partners. The number of different partners—each one integrated the process at different times, and with different prior knowledge and involvement in the reparations process—also increases the need and the difficulty in coordinating the relationship between the local and the national levels.

Nevertheless, the benefit of this structure is that it allows both an enlargement of the program's base at the local level and the involvement of major stakeholders in the active management of the program. In this process it creates space for reflection, advocacy, and training. Therefore it facilitates a new relationship between the national and local levels.

### **3.4.4. Financing**

Finally, conference participants examined financing for collective reparations programs, including the role that the international donor community could play. Some participants thought that reparations programs should be domestically driven and domestically funded because repairing human rights violations and their consequences should be the state's responsibility.

However, the Moroccan experience—which was the session's focus—seems to demonstrate that the international community can be a catalyst in the implementation of reparations. The European Commission is financing part of Morocco's community reparations program. The EC presenter explained the circumstances leading to the European involvement. Morocco enjoys a special relationship with the European Union (EU), not only because EU countries together make up its principal foreign investor, trading partner, and provider of development cooperation assistance, but as a result of the EU European Neighborhood Policy as well. Since 2004, this policy has included support for human rights initiatives among the EU's neighboring states. The policy led the EC to initially support Moroccan human rights NGOs with grants; eventually, it led the commission to provide the Moroccan government with a €3 million grant to finance the establishment of the Moroccan community reparations program and to fund projects carried out by the NGOs as part of this program. But the EC presenter also cautioned participants, saying there is no standard for how bilateral donors decide to support reparations programs and that the EC intervention in Morocco should not be taken as representative.

One dilemma raised by participants involved how members of the international community can mobilize resources for reparations without being seen as taking ownership over the process, or substituting for the state. In the Moroccan case, the EC decided from the outset not to interfere with the conceptual and political aspects of the community reparations program. Instead, the commission offered its experience in setting up decentralized, bottom-up programs. According to the EU speaker, the EC's role as a catalyst contributed to an increased participation from Moroccan institutions in implementing reparations. According to the presenter, "initially there were reservations; but we now see that the EU is only contributing 10 percent and this pushed state institutions to respond."

There remained questions about the benefits and difficulties of domestic funding as opposed to international financing for reparations. Some of the participants also brought up the question of the role of foreign states in past abuses—whether through participation or acquiescence—and those states' accountability for human rights violations, and thus, for reparations.

#### **4. A CONTINUING CONVERSATION ABOUT COLLECTIVE REPARATIONS**

None of the experiences shared at the International Meeting on Collective Reparations is perfect or complete. But in sharing their experiences, participants arrived at a better understanding of the complexity of collective reparations, and the dynamics and challenges of designing and implementing programs based on a unified concept. It was not coincidental that the experiences that were shared were those of post-conflict or post-dictatorship developing countries from the global South, coming from Asia, Africa, and South America. This south-south conversation is also going to be a continuing one, since most of the developing countries represented at the conference that are exploring the idea of collective reparations have only begun to design or implement them.

It is useful to view the exchanges at the conference not as answers to questions but as part of an ongoing conversation on the theory and concept of collective reparations. The conference produced some level of consensus—or at least respect for different perspectives—about collective reparations. Without presuming to be an exhaustive list of the insights and issues relating to collective reparations raised at the conference, the list below shows the range of conceptual and practical challenges that should be part of continuing conversations on the subject:

**4.1. Why opt for collective reparations?** It is tempting to opt for collective reparations as a transitional justice mechanism for three reasons:

1. Individual victims share collective needs for economic opportunities and social services and will often include these in demands for reparations.
2. In developing countries reparations have to compete with demands for development and other state obligations within budgetary limitations.
3. Sometimes human rights violations have a common impact on specific groups of individuals that can be distinguished by identity, geography, or perhaps gender. Thus, there seems to be logic in addressing them through collective forms of reparations.

**4.2. But what is a “collective”?** The group also found it difficult to define what a collective or community is, as groups that emerge from conflict or repression are multidimensional. Victims and survivors disagree on what they want, within and among different categories. Communities disagree on what they need, within and among different communities. The parallel

but constant marginalization of women presents a distinct challenge to reparations work and the exclusion of women on many levels—including in transitional justice mechanisms—affects the way we define collectives. It is important to ask whether collective reparations are capable of addressing gender-based violations.

**4.3. “Community” and “collective.”** Is there a distinction? There was a range of views on this question, yet each concept and the relationship between the two raises specific practical questions. How do you design reparations to benefit only victims rather than both perpetrators and victims in a community? This is relevant in countries where disarmament, demobilization, and reintegration (DDR) programs have already addressed perpetrators. Is there a reconciliatory component to community reparations that is absent in collective reparations? Some suggested that certain forms of reparations are inherently “collective” and exclusive (specialized health services for specific categories of victims, for example), while some are community-oriented and not exclusive (schools, for example). How does this dichotomy relate to larger sets of communities and collectives that do not fall into specific categories but have suffered long-term or historical violations such as legacies of colonization, occupation, invasion, or sexual slavery?

**4.4. Symbolic reparations.** One important observation was made about “the hollowness of symbolic reparations when poverty is everywhere.” Another participant suggested that “all forms of reparations are symbolic because no amount is ever enough to repair.” In some societies, the symbolic character of collective reparations may be interpreted differently by different cultural perspectives within that society.

**4.5. The dual nature of collective reparations.** While we implicitly agreed that context determines approach, we should recognize that there are fundamental considerations to take into account as we develop and implement collective reparations. First, poor and marginalized victims suffer the most during periods of repression and conflict. These victims face dual problems: they are victims of human rights abuses but they have also been victims of economic and social injustice. Second, victims will always articulate *needs* that include economic and social demands. We recognize that reparations—especially collective reparations—cannot substitute for the state’s obligation to provide for the needs of every citizen. Can collective reparations take forms that we associate with development and humanitarian assistance? If so, should we try to distinguish between collective reparations programs and development projects and humanitarian relief measures? What practical steps should accompany the distinctions we make? In that context, how should collective reparations relate with individual reparations, in terms of sequencing, timing, priority, and funding?

**4.6. Implementation.** The discussions focused on the importance of including victims voices in reparations policy development and identifying the social structures that are relevant both in categorizing victims and facilitating their participation in reparations policymaking. For instance, gender inequalities may have an impact on victim participation, even where victims have been provided with space to participate. Collectives do not guarantee that *within* the collective individuals have equal levels of influence. Also, preexisting marginalization may favor some collectives and communities over others, whether in deciding on and locating symbolic collective reparations or allocating resources for collective material reparations. We also addressed administrative structures of engagement: how should the state design the reparations bureaucracy? How should NGOs and victim organizations deal with state reparations institutions? Exclusions from the earlier truth-seeking process or the registration process for reparations were listed as common challenges. The discussion on financing reparations focused on the role of the EU in Moroccan collective reparations. It offered valuable lessons for other countries with regard to the role of the international community in mobilizing resources for reparations. Some participants raised the question of the role of the international community and its accountability for human rights violations.

But this is a conversation that must extend to the organizations and communities of victims entitled to reparations. Given that most victims are historically marginalized and impoverished yet disproportionately harmed by human rights abuses, state institutions and civil society organizations must ensure that victims are not further victimized and made inarticulate when reparations are designed and implemented. They must ensure that whatever is offered as collective reparations reflects not only what state representatives see as feasible and what civil society considers acceptable, but what victims see as meaningful and responsive to their needs.

## **5. APPENDICES**

### **5.1. Organizers**

#### **5.1.1. Advisory Council on Human Rights of Morocco**

The Advisory Council on Human Rights (CCDH) of the Kingdom of Morocco, a national institution for the promotion and protection of human rights established in 1990 by King Hassan II, is vested with an advisory mission to propose and push issues relating to the promotion of culture of human rights in that country.

After more than a decade of activities at the national, regional and international level, CCDH has undergone a profound reorganization, enacted by a new dahir in April 2001. The functions of CCDH have experienced a significant expansion to cover issues including the development of an annual report on the state of human rights, recommendations on the harmonization of national legislation with international conventions that Morocco has ratified, the encouragement of the ratification or accession of the Kingdom to other conventions or treaties on human rights, the consideration of cases of violation of human rights and the formulation of recommendations binding on the competent authority, the contribution to the dissemination and entrenchment of the culture of human rights.

In this context, the Council is also responsible for following up on the recommendations of the Equity and Reconciliation Commission.

#### **5.1.2. International Center for Transitional Justice**

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

To fulfill that mission, ICTJ links experience from its many field programs with its research in transitional justice. This allows ICTJ to develop, test and refine field practices and remain a research leader. ICTJ uses this knowledge to inform and advise governments, civil society and other stakeholders working on behalf of victims. It seeks to persuade those stakeholders, the media and the general public of the need for justice and accountability. ICTJ places a high priority on building capacity, and to do so the organization works to connect individuals, groups and disciplines. ICTJ believes successful capacity building creates a multiplier effect; effective justice policies require the strong partners, strong leaders and the strong technical skills that ICTJ promotes.

ICTJ works in societies emerging from repressive rule or armed conflict, as well in other societies where legacies of abuse remain unresolved.

ICTJ has worked closely with the Equity and Reconciliation Commission (IER) in Morocco since its establishment in 2004, and with Moroccan civil society NGOs involved in the transitional justice process. ICTJ is currently working with its Moroccan partners on the evaluation of the implementation of the recommendations of the IER.

## 5.2. The Agenda

Days/Schedule	Sessions/Speakers	Moderators (M) Reporters (R)
<b>Day 1</b>		
<b>8:30 – 9:30</b>	<p><b>Opening</b></p> <ul style="list-style-type: none"> <li>• Reception of participants;</li> <li>• Opening remarks and welcome <b>President, CCDH, Ahmed Herzenni Director, ICTJ Reparations Unit, Lisa Magarrell;</b></li> <li>• General introduction to the meeting and presentation of the agenda <b>Julie Guillerot and Zainabi Ahmed Taoufik;</b></li> <li>• Presentation of participants.</li> </ul>	<p><b>(M)</b> <b>El Haiba Mahjoub</b></p>
<b>9:30 – 10:30</b>	<p><b>Session 1. Introduction</b></p> <p>The objective of this first session is to give an overview of the main topics of the meeting, with an emphasis on both conceptual and practical aspects.</p> <ol style="list-style-type: none"> <li>1. <b>Catalina Díaz:</b> A conceptual overview: presentation on the conclusions of a regional meeting on this topic in Bogotá;</li> <li>2. <b>Driss El Yazami:</b> A practical overview: presentation on the Moroccan experience in the area of community reparations;</li> <li>3. Discussion.</li> </ol>	<p><b>(M)</b> <b>Julie Guillerot</b></p> <p><b>(R)</b> <b>Soual Mohamed</b></p>
<b>10:30-11:00</b>	<b>Break – Refreshments</b>	

<b>11:00-12:30</b>	<p><b>Session 2 – Part 1. The Idea of Collective Reparations</b></p> <p>The objective of this second session is to begin discussion of the idea of collective reparations, based on concrete experiences, in this case, of: <b>Morocco (Mahjoub El Haiba)</b> and <b>Peru (Jesús Aliaga)</b> with comments on <b>Colombia (Ana Teresa Bernal)</b> and <b>Liberia (John H.T. Stewart)</b>.</p> <p>The speakers’ presentations and the discussion will focus on the following issues:</p> <ol style="list-style-type: none"> <li>1. The basis of collective reparations and definition criteria for the notion of “collective victim”: What is the collective identity and how can it be described (autonomous community, political group, social organization, geographical ties, etc.)? Are there certain harms that have resulted in a collective impact and/or violations of collective rights of a community?</li> <li>2. The types of measures that can be considered “collective” or “community-based”.</li> </ol>	<p><b>(M)</b> <b>Kamal Lahbib</b></p> <p><b>(R)</b> <b>Catalina Díaz</b></p>
<b>12:30-14:30</b>	<b>Lunch</b>	
<b>14:30-16:00</b>	<p><b>Session 2 – Part 2. The Idea of Collective Reparations</b></p> <p>Continuation of discussion on the topics dealt with in the first part of Session 2, with participation of all, with reference to the context of each and how this question of collective reparations has been discussed in each country.</p>	<p><b>(M)</b> <b>Kamal Lahbib</b></p> <p><b>(R)</b> <b>Catalina Díaz</b></p>
<b>16:00-16:30</b>	<b>Break – Refreshments</b>	
<b>16:30-18:00</b>	<p><b>Session 3 – Part 1. The Dual Nature of Collective Reparations</b></p> <p>On the basis of the concrete examples of <b>Indonesia-Aceh (AzwarAbubakar)</b> and <b>Colombia (Rodrigo Uprimny)</b>, this session will look at the question of the relation between collective reparations and development projects and/or humanitarian assistance. Taking into consideration the perspective of victims, the session will focus on:</p>	<p><b>(M)</b> <b>Ruben Carranza</b></p> <p><b>(R)</b> <b>Elkam Hamid</b></p>

	<p>1. The factors and conditions that make it possible to differentiate collective reparations and development projects or humanitarian assistance;</p>	
<b>Day 2</b>		
<b>9:00-10:30</b>	<p><b>Session 3 – Part 2. The Dual Nature of Collective Reparations</b></p> <p>Discussion continues on the problem of collective reparations and their dual nature, with the introduction of case examples from <b>Sierra Leona (John Caulker)</b> and <b>Timor-Leste (Galuh Wandita)</b>:</p> <p>2. The question of the relationship between general government functions with respect to citizens in general, particularly in contexts of post-conflict reconstruction, and with respect to government’s specific role as to victims and provision of social services, especially healthcare and education.</p>	<p>(M) <b>Ruben Carranza</b></p> <p>(R) <b>Elkam Hamid</b></p>
<b>10:30-11:00</b>	<b>Break – Refreshments</b>	
<b>11:00-12:30</b>	<p><b>Session 4. Symbolism and Collective Reparations</b></p> <p>In theory, reparations seek to provide concrete recognition by the state of the existence of human rights violations and the recognition of individual or collective victims. Thus the symbolic dimension of reparations is fundamental and will be explored in this session on the basis of examples from <b>Morocco (Abdelhay Moudden)</b> and <b>Peru (EnverQuinteros)</b>. Taking into consideration the perspective of victims, the session will focus on:</p> <p>1. Measures of collective, symbolic reparations;</p> <p>2. The symbolic dimension of material, collective reparations.</p>	<p>(M) <b>Mahjoub El Haiba</b></p> <p>(R) <b>Habib Nassar</b></p>
<b>12:30-14:00</b>	<b>Lunch</b>	
<b>14:00-16:15</b>	<p><b>Session 5 – Part 1. Implementation of Collective Reparations</b></p> <p>The discussion will be guided by three brief presentations that will allow us to focus the debate on the following topics, based on concrete examples:</p>	<p>(M) <b>Catalina Diaz</b></p> <p>(R) <b>Amer Ben Amer</b></p>

	<p><b>1. Morocco (FakhEddineDriss) &amp; Timor-Leste (Horacio del Almeida):</b> Role and participation of collective beneficiaries in choosing measures of collective reparations;</p> <p><b>2. Morocco (Khadija Rougani) &amp; Indonesia-Aceh (Azriana Rambe Manalu):</b> Gender and cultural diversity in collective reparations;</p> <p><b>Sierra Leone (Obi Buya Kamara):</b> Identification of beneficiaries of collective reparations and development of registries of collective victims.</p>	
<b>16:15-16:30</b>	<b>Break – Refreshments</b>	
<b>18:30-19:00</b>	<p><b>Closing</b></p> <ul style="list-style-type: none"> <li>• Presentation of conclusions: <b>Ruben Carranza;</b></li> <li>• Closing comments: <b>President, CCDH, Ahmed Herzenni; ICTJ, Lisa Magarrell.</b></li> </ul>	
<b>Day 3</b>		
<b>9:00</b>	<b>Rabat:</b> Visit to the office of the <i>Fondation Caisse de Dépôt et de Gestion/</i> Management Unit of the Community Reparations Program and detailed presentation of the technical activities of the program	
<b>11:30</b>	<b>Casablanca: Meeting with the local coordination body of Hay Mohammadi,</b> in charge of promoting local participation and guaranteeing the visibility and technical activity of the local program in Hay Mohammadi, Casablanca.	

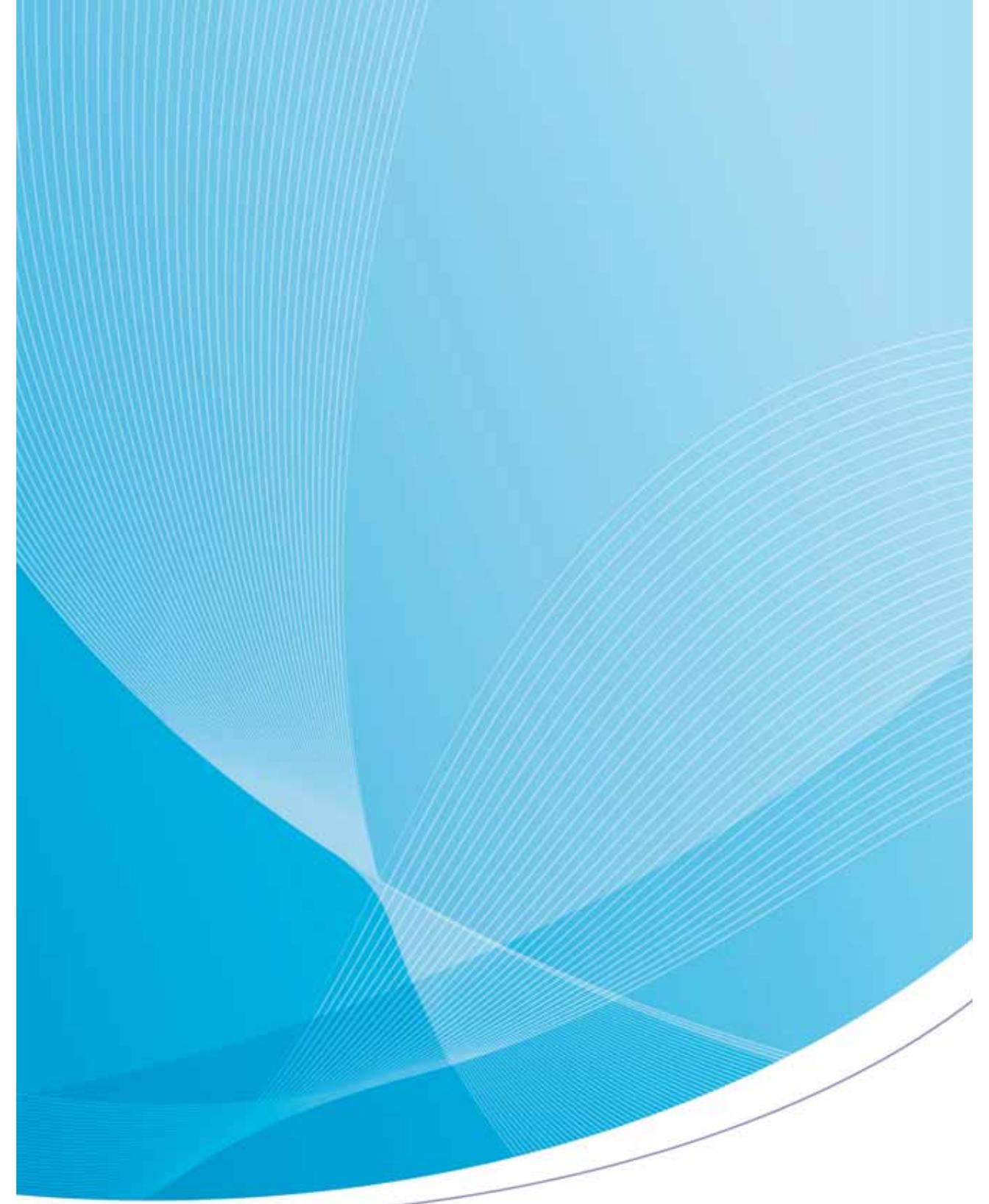
### 5.3. Participants

- **Azwar Abubakar** (Aceh Province, Indonesia): Advisor, Joint Forum for Aceh (Forbes-Damai Aceh), an oversight body made up of representatives of the now disbanded rebel force and the Indonesian government, mandated to implement the peace agreement, which includes provisions for compensation for victims under Aceh’s reintegration scheme;

- **Jesús Aliaga Baldeón** (Peru): Executive Secretary, High Level Multi-Sectorial Commission (CMAN), in charge of monitoring the actions and policies of the State in the fields of peace, collective reparation, and national reconciliation;
- **Ali Amahane** (Morocco): Coordinator, Central Management Unit of the Community Reparations Program attached to the FCDG;
- **Mohamed Bary** (Morocco): Administrative Officer, Advisory Council on Human Rights, Agadir;
- **Amer Benamar** (Morocco): Member, community reparations working group at the Advisory Council on Human Rights and the national Steering Committee of the community reparations program;
- **Naima Benwakrim** (conference co-organizer): Consultant, ICTJ Middle East and North Africa Program;
- **Ana Teresa Bernal Montañés** (Colombia): Commissioner, Reparation and Reconciliation National Commission;
- **Saadoun Boujemaa** (Morocco): Member, Executive Commission of the Moroccan Association of Human Rights (AMDH);
- **Abdessalam Bouteyeb** (Morocco): Vice-chairman, Moroccan Forum for Truth and Justice and President, Moroccan Center for Common Memory and the Future;
- **Ruben Carranza**: Senior Associate, ICTJ Reparations Program;
- **John Caulker** (Sierra Leone): Civil Society Representative, Reparations Steering Committee and Executive Director, Forum of Conscience;
- **Abderrahim Chahid** (Morocco): Manager, Community Reparations Unit in the Department of Collective Rights and Regional Affairs at the Advisory Council on Human Rights;
- **Cristián Correa**: Senior Associate, ICTJ Reparations Program;
- **Horacio De Almeida** (Timor-Leste): National Human Rights Officer, United Nations Mission in Timor-Leste and Member, CAVR writing team (2004), drafting the chapter on political trials;
- **Louis Dey**: Program Manager, Cooperation Unit of the European Commission Delegation in Morocco;

- **Catalina Díaz** (Colombia): Coordinator, Reparations Team, ICTJ Bogotá;
- **Hamid Elkam** (Morocco): Head, Center for Documentation, Information and Training of the Advisory Council on Human Rights;
- **Driss Fakheddine** (Morocco): Member, Local Coordination Body of Ouarzazate, which is responsible for overseeing the community reparation program at the local level;
- **M'hamed Grine** (Morocco): President, *Fondation Caisse de Dépôt et de Gestion* ;
- **Julie Guillerot** (conference co-organizer): Consultant, ICTJ Reparations and MENA Programs;
- **Ahmed Herzenni** (Morocco): President, Advisory Council on Human Rights;
- **Mahjoub El Haiba** (Morocco): Secretary General, Advisory Council on Human Rights;
- **Obi Buya Kamara** (Sierra Leone): Director, Humanitarian Assistance, which oversees the reparations unit, and former Director of Reparations, National Commission for Social Action;
- **Kamal Lahbib** (Morocco): Member, Steering Committee of the community reparations program;
- **Lisa Magarrell** (conference co-organizer): Director, ICTJ Reparations Unit;
- **Azriana Manalu** (Aceh Province, Indonesia): Member, National Women's Commission for the Elimination of Violence against Women in Indonesia;
- **Julissa Mantilla**: Consultant, UNIFEM;
- **Khadija Marouazi** (Morocco): Member, National Council of the Moroccan Organization of Human Rights and Secretary General, Mediator Association for Democracy and Human Rights;
- **Abdelhay Moudden** (Morocco): Member, Advisory Council on Human Rights and former Member, Equity and Reconciliation Commission;
- **Habib Nassar** (conference co-organizer): Senior Associate, ICTJ Middle East and North Africa Program;

- **Enver Quinteros Peralta** (Peru): Regional Representative, Association for Human Rights (APRODEH), Apurimac;
- **Leila Rhiwi** (Morocco): Program Specialist, Development Fund of the United Nations for Women, Office of North Africa;
- **Khadija Rouggani** (Morocco): Lawyer in Casablanca and a women's rights activist;
- **Mohamed Soual** (Morocco): Member, working group on community reparations at the Advisory Council on Human Rights;
- **John H.T. Stewart** (Liberia): Commissioner, Liberian Truth and Reconciliation Commission;
- **Rodrigo Uprimny** (Colombia): Lawyer and Director, Center for Judicial Rights and Society Studies, “DeJuSticia”;
- **Galuh Wandita** (Timor-Leste): Senior Associate, ICTJ Jakarta and former Deputy Director/Program Manager, East Timor’s Truth and Reconciliation Commission;
- **Aaron Weah**: Program Assistant, ICTJ Liberia Program;
- **Driss El Yazami** (Morocco): President, Council of the Moroccan Community Abroad, Member, Advisory Council on Human Rights and former member of the Equity and Reconciliation Commission;
- **Ahmed Zainabi** (Morocco) (conference co-organizer): Head, Collective Rights Department and Regional Affairs within the Advisory Council on Human Rights.



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