

Considering State Reparation for Victims of Gross Human Rights Violations in Africa: Challenges in the Effective Enforcement and Implementation of Victims' Rights

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Abstract: Claiming reparations for human rights violation by states or by any governmental agencies, have been a vital challenge at local and international levels. Although, there has been few developments in theory and in reality of reparations for human rights violations by states in some parts of the world as will be seen later in this article, many of the violations committed in Africa, in places like South Africa, Uganda, Nigeria and elsewhere, during colonial times either remained unresolved, partly repaired or reparations denied completely. As a result of what has been said, issues concerning responsibility for gross human rights abuses have never been considered favorably in Africa. In some African states for example, the way states deal with past human rights abuses is often dependent on the way in which political change has occurred and the way the state deals with the tensions between justice, truth and reconciliation. Beyond the foregoing, irrespective of the legal requirement to afford reparation which in itself makes reparation a vital component of the underlying need to respect victims' rights to justice and to underscore the role of law in society, reparation serves a number of purposes. One of such purposes include but not limited to victims' right to recover and/or receive compensation or reparation for past violations; helping to restore the disequilibrium between those whose rights have been violated and society which typically underpins human rights violations. More so, assisting in victims' rehabilitation and taking measures to prevent recurrence of violations will help victims overcome trauma, restore confidence in the legitimacy of the justice system and the affirmation of the rule of law.

Key words: States, victims, human rights, violations, reparations, compensation, restitutions, redress, enforcement, implementation, African Union.

1. Introduction

It was only few decades ago that international law began to look closely in the direction of providing global justice in some parts of the world by reference to universal measures and procedures, on behalf of victims of severe injustices perpetrated by oppressive governing regimes.¹ Before the foregoing period, reparation issues pertaining to global justice for victims of gross human rights violations was treated as not important.² Notwithstanding the foregoing however, beginning from the 1990s, the combination of the end of the cold war, the rise to prominence of international human rights, trends away from authoritarianism and towards constitutional democracy, unexpected attention was accorded many facets of global justice, which before now was mainly neglected, including steps designed to rectify the violation suffered by individual victims at the hands of dictatorial and abusive governments.³

In the committee of nations, several legal instruments have been introduced in respect of reparations for gross violations of human rights.⁴ Additionally, many years have passed, yet the goal of comprehensive reparations is still out of reach for the victims whose rights were seriously and systematically violated and deprived in some African countries.⁵

1. Richard Falk, "Reviving the 1990s Trend Towards Transnational Justice: Innovations and Institutions" *Journal of Human Development* 3, no. 2 (2002): 169-97.

2. Falk, "Reviving the 1990s Trend Towards Transnational Justice," 169-97.

3. Richard Falk, "Reviving the 1990s Trend Towards Transnational Justice: Innovations and Institutions," in *The Handbook on Reparations*, ed. Pablo de Greiff (Oxford University Press, 2006)

4. Hao Duy Phan, "Reparations to Victims of Gross Human Rights Violations: The Case of Cambodia," *East Asia Law Review* 4, no. 277 (2009): 277.

5. Warren Buford and Hugo van der Merwe, "Reparations in Southern Africa" *Cahiers d'études Africaines* 44, no. 1-2 (2004): 231-232.

International humanitarian law states emphatically that reparation is a right and as it stands presently, it is globally accepted that:

"when an unlawful act is attributable to the State, international responsibility emerges immediately from this act as a consequence of the violation of international law and, attached to it, the duty to provide reparation and to cease the consequences of such violation."⁶

Reparation as a means of righting the past abuses is encapsulated into the very heart of human protection which further recognizes the important process in acknowledging the wrong done to the victims, and also serves as a vital element in redressing the complex needs of victims in the aftermath of violations of international human rights and humanitarian law.⁷

On top of this, reparation to victims of gross human rights violations done or perpetrated through war, armed conflict, political repression, by the State or through any of the States' institutions, is one of the most controversial and complex issues within the field of transitional justice; reason being that reparation has multiple meanings which does not merely mean compensation in financial terms.⁸

Furthermore, the implementation of reparation program is dependent on the political, cultural and historic forces peculiar to a given jurisdiction.⁹ The implementation program becomes controversial due to the fact that reparation entails an exchange of give and take of money, land or services, as well as an acknowledgment of wrongdoing; as a result, it produces losers and winners. Determining who is wrong and who is wronged is wrought with emotion and difficulty, like the case of South Africa TRC hearing periods, particularly in cases of large-scale victimization that led to demands for significant budgetary commitments from government.¹⁰

Reparations serve several purposes in national reconciliation: first, it serves as a form of acknowledgement by the state that victims have experienced losses under the repressive regime; second, reparation allows the victims to recover some of the monetary costs of their losses;¹¹ and third reparation serves as a deterrent to future perpetrators by making them aware that their actions will have consequences.¹² There have been debates about who should meet the costs of reparations if negotiators decide to provide financial compensation to victims. It is now generally acceptable under international law that states have the duty and obligation to pay reparation to victims of human-rights violations and that, if the regime that perpetrated the violence does not provide compensation, and then the successor government should do so.¹³

2. Obligations by States to provide reparations to victims of gross human rights violation in Africa

The United Nations Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law describes reparations to mean the restitution, compensation, rehabilitation, satisfaction to victims and guarantees of non-repetition of such violations and abuses.¹⁴

Ordinarily, the most common means or form of reparation is restitution.¹⁵ Restitution reestablishes the victim's *status quo ante*,¹⁶ this may include, for instance, the return of property, restoration of liberty, citizenship return to place of residence, and restoration of employment.¹⁷ Other forms of reparation include compensation, which in its simple meaning is the payment of

⁶. "Reparation for Violations of Human Rights and Humanitarian Law: The Right to Remedy and Reparations under International Law," *Amnesty International*, March, 2003, (Redress).

⁷. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," United Nations Commission on Human Rights, E/CN.4/Sub.2/1993/8.

⁸. Hamber B and Rasmussen K, "Financing a Reparations Scheme for Victims of Political Violence" in *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence*. ed. Hamber B and Mofokeng T (Centre for the Study of Violence and Reconciliation, 2000).

⁹. Huysse L "Reparation as a Dimension of Transitional Justice", in *The Report on the Expert Seminar on Reparation for Victims of Gross and Systematic Human Rights Violations in the Context of Political Transitions* (Catholic University of Leuven, 2002), 54.

¹⁰. Buford and Hugo van der Merwe, "Reparations in Southern Africa" 231-232.

¹¹. Kudakwashe Chitsike, "Transitional justice options for Zimbabwe: a guide to key concepts," *The Institute for Justice and Reconciliation*, (2012): 5.

¹². United Nations 2006.

¹³. Rau, "When the going gets tough the man gets going! Zimbabwean Women's views on Politics, Governance, Political Violence, and Transitional Justice," *Harare: Research and Advocacy Unit, Idasa and the International Center for Transitional Justice*, (2010): 37.

¹⁴. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," General Assembly Resolution 60/147, UN Doc. A/RES/60/147 (2005).

¹⁵. Stef Vandeginste, "Reparation," in *The Reconciliation After Violent Conflict: A Handbook*, ed. David Bloomfield Teresa Barnes and Luc Huysse, (International Institute for Democracy and Electoral Assistance, 2003): 145.

¹⁶. Pablo de Greiff, "Justice and Reparations," in *The Handbook of Reparations*, ed. Pablo de Greiff (2006): 451-452.

¹⁷. UN Basic Principles, 19.

money as a form of recognition of the wrong done and to make good the losses suffered.¹⁸ Rehabilitation on the other hand comes in form of medical care, legal services and psychological care.¹⁹ Satisfaction among other forms of reparation is the acknowledgement of violations, full and public disclosure of truth, tender of official apologies and taking responsibility for the violations, and commemoration of victims;²⁰ while guarantees of non-repetition consist of measures to prevent the re-occurrence of such violation.²¹

The idea and discussions of reparations has been the focus of international human rights and humanitarian law.²² The advocacy and support for victims' rights to reparation under international law is captured in Article 3 of the 1907 Hague Convention IV respecting the Laws and Customs of War.²³ The Article provides in part that: "parties found violating the Convention "shall . . . be liable to pay compensation."²⁴

Beyond the foregoing, The Universal Declaration of Human Rights provides that:

everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.²⁵

There are several international agreements precedent on the Universal Declaration of Human Rights lending support to the right to reparations for victims of gross human rights violations. Some of these agreements include but are not limited to:

1. The International Covenant on Civil and Political Rights;²⁶
2. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;²⁷
3. The Third Geneva Convention;²⁸ and;
4. Protocol I to the Geneva Convention.²⁹

At the regional level, the African human rights system is premised on the African Charter on Human and Peoples' Rights.³⁰ Recognizing that victims can never really be restored fully to the *status quo ante*, an effective remedy for harm caused should imply any measure taken to 'wipe out', as far as possible, the injury and satisfy the victim of the violation by effectively and adequately addressing the alleged violation.³¹

A careful examination indicates that African governments are obligated legally to make reparations to victims of the violation committed by them or their law enforcement agents at different periods of African development history because almost all African countries are parties to major human rights treaties; majority of these legal instruments make it obligatory for state parties to ensure adequate reparation and/or remedies for victims of various kinds of human rights violations.³² For example, the International Covenant on Civil and Political Rights enjoins state parties to:

¹⁸. Dinah L Shelton, "Reparations for Victims of International Crimes," in *International Crimes, Peace, and Human Rights: The Role of The International Criminal Court*, ed. Dinal L Shelton (2000):137, 139-40.

¹⁹. UN Basic Principles, 21.

²⁰. UN Basic Principles, 22.

²¹. UN Basic Principles, 23.

²². Paul M Hughes, "Rectification and Reparation: What Does Citizen Responsibility Require?" *Journal of Social Philosophy* 35, (2004): 244-245.

²³. Liesbeth Zegveld, "Remedies for Victims of Violations of International Humanitarian Law," *International Review of the Red Cross* 85, no. 851 (2003): 506.

²⁴. Convention Respecting the Laws and Customs of War on Land Art. 3, Oct. 18, 1907, 36 Statute no. 2277, 1 Bevans 631.

²⁵. Universal Declaration of Human Rights, General Assembly Resolution 217A, Art. 8, UN at 71, 73, UN Doc A/810 (Dec. 10, 1948)

²⁶. International Covenant on Civil and Political Rights Arts. 2(3) & 9(5), Dec. 16, 1966, 999.

²⁷. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Art. 14, Dec. 10, 1984, 1465.

²⁸. Geneva Convention Relative to the Treatment of Prisoners of War Art. 68, Aug. 12, 1949, 75.

²⁹. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) Art. 91, June 8, 1977, 1125.

³⁰. Adopted 27 June 1981, OAU (now the AU) Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

³¹. Frans Viljoen, "Admissibility under the African Charter" in *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* eds. Evans M and Murray, (2000): 61-99.

³². African nations are parties to many major international human rights instruments, including: ICCPR; International Covenant on Economic, Social and Cultural Rights; Convention on the Prevention and Punishment of the Crime of Genocide; International Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination Against Women; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women; Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or

ensure that any person whose rights or freedoms of the kind recognized by the Covenant are violated shall have an effective remedy notwithstanding that the violations have been committed by persons acting in an official capacity . . . and to ensure that the competent authorities shall enforce such remedies when granted.³³

In addition, the Human Rights Committee of the United Nations³⁴ emphatically stated that:

without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of Article 2, paragraph 3 of the ICCPR, is not discharged.”³⁵

The Human Rights Committee of the UN further added to the preceding paragraph that a failure to comply with the obligation “could in and of itself give rise to a separate breach of the Covenant;”³⁶ which is not justifiable on political, social, cultural or economic grounds.³⁷

3. Democratic legitimacy, human rights protection and reparation in Africa

Democratic and legitimate states are empowered with the right to govern specific people and territory; but a state’s abuses or violations of citizens’ rights can inhibit its right to rule.³⁸A state’s right to govern is the power to make law and to change the standard of those ruled or governed. As a result of what has been said, the right to govern puts a legitimate state in a cordial relationship with the people it rules.³⁹

Although, a state possesses the right to govern or rule, it is noted however that some injustices can undermine a state’s legitimacy; such injustices have the potency to compromise the legitimacy of a state in connection to citizens who are victims of state abuses or violation in relation to those who have not been victimized.⁴⁰

But a responsible and responsive state can respond to wrongdoing and refuse to compromise its legitimacy by its acts of reparation or redress to those whose rights have been violated. In other words, reparation to victims of human right violation can advance the state’s legitimacy over citizens who are victims of injustice, as well as over those who are not.⁴¹It is submitted therefore that, injustice and lack of adequate reparation for victims whose rights have been violated can directly affect a state’s legitimacy.

Democratic and political legitimacy consist of rights, these rights include a state’s right to make law for its citizens and the rights to enforce compliance to those laws.⁴²Beyond this, legitimacy is a property of states; as a result, a state’s political legitimacy correlates with an obligation of those subject to authority to obey the state’s legal dictates.⁴³ It is therefore appropriate for the states to ensure reparation in circumstances where citizens’ rights are violated whether due to state repression or due to the overzealousness of state’s agencies.

Reparation eats deep into the fabric of human rights protection, reparation is a vital process in accepting responsibility for the wrong done to victims; in addition, reparation serves as a key component in redressing the complex needs of victims in the aftermath of violations of international human rights and humanitarian law.⁴⁴ Additionally, reparation issues are being debated in the African continent today on how to surmount the injustices of the past; for over a decade, the interest on reparation to victims of human rights violation have risen, particularly among human rights Non-Governmental Organizations, scholars and within the

Degrading Treatment or Punishment; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts; and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

³³. ICCPR, Art. 2(3).

³⁴. Office of the United Nations High Commissioner for Human Rights, Human Rights Committee—Members, (UNHRC) (website). <http://www2.ohchr.org/english/bodies/hrc/members.htm>. (Accessed on September 20, 2022).

³⁵. Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 16, UN Doc. CCPR/C/21/Rev.1/Add. 13 (Mar. 29, 2004).

³⁶. Human Rights Committee, General Comment No. 31.

³⁷. Human Rights Committee, General Comment No. 31.

³⁸. Stephen Galoob and Stephen Winter, “Injustice, Reparation, and Legitimacy,” *Oxford Studies in Political Philosophy* 5, (Aug. 2018): 1.

³⁹. Galoob and Winter 1.

⁴⁰. Galoob and Winter 1.

⁴¹. Galoob and Winter 1.

⁴². David Copp, “The Idea of a Legitimate State,” *Philosophy and Public Affairs* 28, (1999): 3–45.

⁴³. John Simmons, “Justification and Legitimacy: Essays on Rights and Obligations” *Cambridge University Press*, (2001), 137.

⁴⁴. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Commission on Human Rights, E/CN.4/Sub.2/1993/8.

international legal community in the conceptualization and development of reparation schemes in the context of a political transition.⁴⁵

Affected victims in their demands include reparation for justice in times of political transition, for this reason, Theo van Boven noted that reparation: “has the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts ... reparation should respond to the needs and the wishes of the victim.”⁴⁶

Democratic legitimacy is not static but a dynamic property, to this end, a state’s legitimacy depends largely on how it treats its citizens and on what it does; in as much as a state can lose its legitimacy, it can as well build confidence in its people in order to acquire or bolster legitimacy.⁴⁷ One of the ways a state can bolster legitimacy from the people is by redressing injustices or providing reparation; reparation in this context means an act or policy that responds to a wrong or injustice and ameliorates the significance of that wrong or injustice.⁴⁸

With that being said, justice is premised on the understanding that domestic stability, security and democratic legitimacy or governance in the aftermath of atrocities perpetrated by a repressive regime is strengthened by a commitment to accountability.⁴⁹ Commitment to accountability involves acknowledgment of and the acceptance of responsibility for one’s actions and decisions, and suffering punishment if the actions and decisions were illegal.⁵⁰ Accountability in this sense means liability, responsibility, answerability and blameworthiness.⁵¹ In this connection therefore, perpetrators of violence and human-rights abuses must be held accountable for their actions in order to help prevent future violations.

As a corollary to the preceding assertion, transformational and accountable democratic leadership, which is responsive to the needs and aspirations of its citizens, is one of the most critical determinants of good governance.⁵² Responsive and responsible leadership can foster good governance by guaranteeing human rights protection, build capable institutions, enhance accountability and transparency and deliver peace, stability and development.⁵³ The strategic vision of a country’s leadership, translated into national plans and development strategies, can help mobilize resources and partnerships among all actors, other political leaders, public administration, non-governmental actors and private sectors forming part of the collective responsibility.⁵⁴ Successful leadership can broaden the people’s voice, people’s participation⁵⁵ and accountability, diffuse discontent and promote social cohesion. In addition, democratic, legitimate and successful leadership can facilitate policy coherence⁵⁶ and coordinate with a view to ensuring that actions at all levels of government are fully aligned to pursue broader development objectives for the good of the citizens and human rights protection; a successful implementation of this development hinges, amongst other things, on the resources, institutions and finances, as part of good leadership.⁵⁷

4. Danger of inadequate reparation for human rights violations

The rise and use of reparations by states or governments to redress past injustices with a view to ending the misdeeds of the past, has been in focus in the latter half of the twentieth century.⁵⁸ As a result, in several transitional situations, reparations to victims of

⁴⁵. Notable recent developments include: Expert Seminars on Reparation for Victims of Gross and Systematic Human Rights Violations in the Context of Political Transitions a Chapter on Reparation in Democracy and Reconciliation in Post-Conflict States: A Handbook (International IDEA, 2003), and much work in the United Nations. In addition, REDRESS has just published its Audit Study: Detailed Analysis of the Law and Practice on Reparation for Torture in 30 Countries, arguably the most detailed empirical study to date of reparation to survivors of torture.

⁴⁶. Lovell Fernandez, “Reparations policy in South Africa for the victims of apartheid,” *University of the Western Cape*, (1999): 209.

⁴⁷. David Copp, “The Idea of a Legitimate State,” *Philosophy & Public Affairs* 28, no. (1)3 (2005):31.

⁴⁸. Galoob and Winter 10.

⁴⁹. Kudakwashe Chitsike, 6.

⁵⁰. Kudakwashe Chitsike, 6.

⁵¹. Kudakwashe Chitsike, 6.

⁵². The United Nations, “Governance and Institutions” https://www.un.org/development/desa/dpad/wp-content/.../2015wess_ch6_en.pdf. (Accessed on September 20, 2022).

⁵³. United Nations, “Good Governance Practices for The Protection of Human Rights,” *New-York and Geneva*, (2007): 1.

⁵⁴. National Planning Commission Department: The Presidency, Republic of South Africa, “National Development Plan 2030 Our Future-make it work,” (2015): 1.

⁵⁵. Ntuthuko Albert Mchunu, “The Link Between Poor Public Participation And Protest: The Case Of Khayelitsha, Unpublished Master Thesis presented in partial fulfilment of the requirements for the degree Master Public Administration in the Faculty of Economic and Management Sciences (School of Public Leadership) at Stellenbosch University, (2012) 17.

⁵⁶. Organization for Economic Co-operation and Development, (OECD) “Policy Coherence for Sustainable Development 2017: Eradicating Poverty and Promoting Prosperity,” OECD Publishing, Paris (2017): 154.

⁵⁷. Alessandra Casazza and OstenChulu, “Aligning the Sustainable Development Goals (SDGs) to the National Development Plan (NDP): Towards domestication of the SDGs in South Africa,” United Nations Development Programme, (2016): 10.

⁵⁸. Eric A Posner and Adrian Vermeule, “Reparations for Slavery and other Historical Injustices,” 103, *Columbia Law Review* (2003): 694-698.

human rights violations serve as the most visible manifestation of the state redressing or addressing abuses and violations suffered by victims of state oppression.⁵⁹In the Chorzow Factory case, it was emphatically stated that:

reparations should, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed...It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form.⁶⁰

A state's failure to carry out effective reparations has the likelihood of threatening the legitimacy of the state. In addition, reparation plays a very important socio-political function since it impacts on the wider society by drawing of a line under past violations and the reinforcing of a commitment to the rule of law.⁶¹Reparations are the one program which should be designed by the state to be victim-centered; and if victims' needs are not considered, such program will fail to be reparative because very often, reparation schemes fail to consider victims' wishes in their design and implementation.⁶²Beyond the foregoing, it can be observed that the reparative demands of victims most of the time has influenced the changing of state behavior, this is why the United Nations Basic Principles directed that "reparation should be proportional to the gravity of the violations and the harm suffered."⁶³

Although, reparation provides material compensation to victims, it is essentially about acknowledging a wrong and accepting the responsibility for it; in this connection, reparation is linked to concepts of truth which in the final analysis makes victims to seek that the state or perpetrators themselves provide such recognition, and monetary compensation is a way of demonstrating this, although, not an end in itself.⁶⁴ Financial compensation provides a sort of relief to victims of human rights violations; it has been shown that only a minority of victims are satisfied with financial reparation, but that money increased access to rehabilitation and symbolized social acknowledgement and justice.⁶⁵

It has been submitted that"

In any society, holding citizens responsible for their actions, in public service and the private sector, is significant to ensure some level of accountability. With regard to public officials, mechanisms must be devised to hold leaders responsible when they use public resources in ways that society considers unacceptable. To that end, any public accountability system should include periodic competition and a clear set of rules and expectations. Furthermore, the principle of accountability, essential to democratic legitimacy, requires exposing the truth, with stated and enforced consequences for violating the rules, without exception, even for those in power. The lack of accountability in Africa has led to the gross misuse of power and human rights abuses. The effect has been rampant corruption and the deterioration of socio-economic conditions, an indication that people in Africa were governed without being able to control their governors.⁶⁶

5. State reparations for human rights abuses and violations in selected African countries

5.1 South Africa

The fight and walk to a nascent and free 'South Africa' by black South Africans was full of violence, pain, suffering, and to say the least, human rights abuses in the hands of the apartheid regime.⁶⁷ In addition, there was political violence during the discussions for freedom between 1990–1994, in which about 13,000 people lost their lives, in comparison with the figure of

⁵⁹. Pablo de Grief, "Repairing the past: Compensation for victims of human rights violations," in *the Handbook of Reparations*, ed. Pablo de Greif(Oxford: Oxford University Press, 2008),

⁶⁰. Germany v Poland, "The Factory at Chorzów" (Claim for Indemnity) (The Merits), Permanent Court of International Justice, File E. c. XIII. Docket XIV: I Judgment No. 13, (Sept. 1928): 125.

⁶¹. Simon Robins, "Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations," *University of York* (2017): 48.

⁶². Carlton Waterhouse, "The good, the bad and the ugly: Moral Agency and the Role of Victims in Reparations Programs," *University of Pennsylvania Journal of International Economic Law*, 31, no. 1 (2007):257– 294.

⁶³. United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985. New York: UN General Assembly. (1985) (7: IX, 15).

⁶⁴. Robins, 49.

⁶⁵. Roman David and Sussane Choi Yuk-ping, "Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic," *Human Rights Quarterly*, 27, (2005): 392–435.

⁶⁶. Sahr John Kpundeh, *Democratization in Africa: African New, African Voices*, (The National Academy Press, 1992), 36.

⁶⁷. Warren Buford and Hugo van der Merwe, "Reparations in Southern Africa," *Cahiers d'études africaines*, 44, no.1-2, (2004): 4.

approximately 5,390 in the years before.⁶⁸The call for justice for human rights violation in post-apartheid South Africa requires structural reparations to seek redress for the exclusion of Blacks from land and economic ownership and political participation.⁶⁹

The Truth and Reconciliation Commission (TRC) under the South Africa's Promotion of National Unity and Reconciliation Act mandated the Reparations and Rehabilitation Committee of the TRC to look into matters referred to it by the Committee on Human Rights Violations and the Committee on Amnesty with a view to recommending immediate interim measures for qualifying victims.⁷⁰On top this, the Act directed the Committee to further look into individual applications for reparations for victims of gross violations of human rights.⁷¹

As a result of what has been said the TRC issued the following statement in its final report that:

The road to reconciliation, therefore, means both material reconstruction and the restoration of dignity. It involves the redress of gross inequalities and the nurturing of respect for our common humanity. It entails sustainable growth and development in the spirit of Ubuntu . . . It implies wide ranging structural and institutional transformation and the healing of broken human relationships. It demands guarantees that the past will not be repeated. It requires restitution and therestoration of our humanity—as individuals, as communities and as a nation.⁷²

Following the TRC recommendation, former President Mbeki awarded a once-off payment to the sum of R30,000 to each victim of gross human rights violations during the time period 1960–1994.⁷³ In one's view, Mbeki's reparation to victims of human rights violation by the apartheid regime formed a comprehensive array of government's ideas because according to Mbeki:

"An integrated and comprehensive response to the TRC Report should be about the continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social program, improving citizens' safety and security and contributing to the building of a humane and just world order."⁷⁴

Consequent upon the foregoing, the TRC admitted that: "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation."⁷⁵To many South Africans, the reparation exercises highlights the legal and moral dilemma of meeting needs of victims for the sake of justice, while at the same time pacifying the perpetrators of the abuses for the sake of a peaceful transition; failure to bring the violators to book have been seen by people like Sookaas using victims to be magnanimous to those who have wronged them.⁷⁶

Furthermore, Colvin writes:

Victims have frequently raised the objection that both the TRC and the government have been much more interested in placating perpetrators than meeting the needs of victims. In this context, reparations have come to mean much more than a means of support or a kind of recognition of suffering. They have become the unfulfilled answer to the question of whether or not justice has been done in the transition process.⁷⁷

Many South Africans were disillusioned and frustrated at the manner the South African government treated individual reparation grants as a result of which lawsuits were initiated in United States courts against businesses that aided and abetted the apartheid regime.⁷⁸ The South African government objected the lawsuits, claiming that the South African government finds it "completely unacceptable that matters that are central to the future of South Africa is being adjudicated in foreign courts which bear no responsibility for the well-being of our country."⁷⁹

⁶⁸. Buford and Hugo, 4.

⁶⁹. Heather Deegan, *The Politics of the New South Africa* (Pearson 2001), 67.

⁷⁰. Promotion of National Unity and Reconciliation Act 34 of 1995 ss 25(1)(a)(i)(aa)–25(1)(a)(i)(bb), 25(1)(b)(i).

⁷¹. Promotion of National Unity Act 34 of 1995 s 25(1)(a)(i)–(1)(b)(i).

⁷². Truth and Reconciliation Commission of South Africa Report 138, (1998), TRC Report Vol 6.

⁷³. "Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation, on the occasion of the tabling of the Report of the Truth and Reconciliation Commission, Cape Town," <http://www.gov.za/speeches/index.html>. (Accessed on September 20, 2022).

⁷⁴. Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation.

⁷⁵. TRC Report, Vol 5, Chapter 5, Section 2.

⁷⁶. Sooka Y, Keynote Address (Report on the Khulumani Reparations Indaba, Cape Town, (April 25 – 26, 2001).

⁷⁷. Christopher J Colvin, "Overview of the Reparations Programme in South Africa," *Center for Study Violence and Reconciliation Report*, (2003): 4.

⁷⁸. Khulumani et al. v. Barclays et al. (Cohen, Milstein, Hansfield and Toll, P.L.L.C.), (2008).

⁷⁹. Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation.

Reparation, due to its different meanings has been and still being contested till date in South Africa. First, reparation is closely tied to individual financial payments and second, it is contextualized in the all-encompassing crime of the apartheid regime. According to Dullah Omar:

TRC victims are individuals, a legal category, but there are also victim communities, all black South Africans were victims, and there were victim communities, we are a nation of victims. So we see reconciliation as broader than just the TRC process, we see reconciliation as involving a way of repaying to victims what they fought for. And what they fought for is freedom, what they fought for is transformation, ending poverty, making sure that the sufferings that they endured at the hands of farmers, mine owners, police generally and so on, that those things are reversed ...All those things form part of our vision for reconciliation, because we are saying that there can be no reconciliation without transformation. If transformation doesnot take place, there will be no reconciliation and the step that we have taken to create reconciliation will fail, and in that context the TRC process would have failed.⁸⁰

Reparations should be viewed as a means of providing more than financial and other material needs. Essentially, reparations are about restoring the dignity of the survivors and the victims' families from the abuses of the state. To reflect the character and nature of reparations as all-encompassing, the Reparations and Reconciliation Committee noted that reparation should consist of: redress, restitution, rehabilitation, restoration of dignity and reassurance of non-recurrence and that there should be individual, community, and institutional reparations.⁸¹ Notwithstanding the foregoing, South African government has failed to consult with survivors of human rights violations as a result of which crucial information relevant to the needs of survivors is lost, it is submitted therefore that such information can inform an improved reparation policy in South Africa if pursued with the urgency and political will it deserves.

5.2 Zimbabwe

Zimbabwe, like South Africa, has a protracted chronology of state-sponsored political violence characterized by myriad of impunity and amnesty.⁸²For over thirty years or more and even at present in Zimbabwe, hundreds of thousands of Zimbabwean citizens have become survivors of human rights abuses.⁸³ Furthermore, present-day Zimbabwe is wrought with well-publicized state abuses, most often followed by amnesty for the perpetrators.⁸⁴But victims of these years of crimes have not been recognized and have had no opportunities to receive reparation. As a result of the abuses and human rights violations in Zimbabwe, transitional justice now becomes the major concern for Zimbabwean citizens. Transitional-justice options for Zimbabwe were discussed in a symposium held in Johannesburg in 2003 organized by civil-society organizations from Zimbabwe and South Africa respectively. The symposium addressed issues of redress, amnesty and impunity, and made strong recommendations for the establishment of a truth, justice and reconciliation commission.⁸⁵ At the end of the proceedings, the symposium issued the following declarations in strong terms to the effect that:

Victims of all past human-rights abuses have the right to redress and to be consulted about the nature of the mechanisms that will be established to address their needs. The mechanisms that are established must be victim centered, and must be capable of addressing the needs of the victims in a meaningful way. Prior to the establishment of these mechanisms, there must be an extensive process of consultation with the victims' broader community about the mechanisms and the broader community about the sorts of persons who should be made responsible for operating them.⁸⁶

In Zimbabwe as it stands today, individual reparation for victims from any past abuses and violations is an impossible project;⁸⁷because the Zimbabwean government cannot afford to compensate all primary and secondary victims individually. As a result, "Zimrights" an organization for the promotion of human rights in Zimbabwe, advocated the need for collective reparation in the following words:

⁸⁰⁸⁰. Buford and Hugo, 12.

⁸¹. OupaMakhalemele, "Still not talking: Government's exclusive reparations policy and the impact of the 30 000 financial reparations on survivors," *Centre for the Study of Violence and Reconciliation*, (2004): 9.

⁸². Reeler AP, "Can you have a reparations policy without justice", VIIIth International Symposium on Torture (New Delhi Sept. 1999): 1.

⁸³. Buford and Hugo, 18.

⁸⁴. Buford and Hugo, 18.

⁸⁵. Themba Lesizwe, "Civil Society and Justice in Zimbabwe," Proceedings of a symposium held in Johannesburg, 11–13 August 2003, Pretoria.

⁸⁶. Themba Lesizwe.

⁸⁷. The Legal Resource Foundation, "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands, 1980 – 1988" (1999): 29.

In terms of reparations, Zimrights had thought that reparation can never be individual, because the statistics are not up to date now, it's almost twenty years but you would find that where the 5th brigade did more harm and then it would be compensated as community development, dip tanks, schools, universities, technology, agriculture and so forth. You find that certain areas are underdeveloped because that six-year period meant a lot to the people, there was no proper development, up to now there are no good roads from here to Nkayi.⁸⁸

Scholars like Reeler has argued that “not opting for reparation has had ‘pernicious consequences’ in Zimbabwe and that the legacy of choosing ‘reconciliation’ over ‘reparation’ after the War of Liberation created a contemporary Zimbabwean society where justice has been avoided, corruption has been institutionalized and apathy based on fear exists among the population.”⁸⁹ It is submitted therefore that a failed reconciliation over reparation for victims of human rights violations has procrastinated the actualization of a stable democracy in Zimbabwe; it is feared further that a stable democracy in Zimbabwe will remain an illusion in so far as the sad legacy of violence and state abuses are not dealt with in a genuine and thorough process of reparation for victims.⁹⁰

5.3 Malawi

Malawi was formerly known as Nyasaland under the British hegemony, and after seventy-three years of British dominance, Malawi gained independence in the 1960s, marking the beginning of transition to multi-party democracy.⁹¹ After the attainment of independence, there were state abuses and totalitarian governance under Hastings Kamuzu Banda and his Malawi Congress Party (MCP) for over thirty years during which time hundreds of thousands of innocent civilians were victims of human rights violations.⁹² In order to bring to an end years of human rights violation and abusive governance, Malawi embarked on political and social transformation aimed at ensuring a human rights culture and healing the wounds of victims. In this regard, Malawi began to clean its institutions with a view to ensuring future human rights abuses and poor governance does not return.⁹³

In response to Malawi's institutional clean-up, the offices of the Ombudsman, a Human Rights Commission and an Anti-Corruption Bureau were created to care for the many victims of human rights abuses; but due to lack of organizational capacity, lack of funds and government's unwillingness to completely accept and address the plight of the victims, progress in this respect was not made as those institutions were stifled at birth.⁹⁴

Malawi, following the South Africa model on victims' reparation, where victims formed part of peace-building process, attempted providing reparation to victims of human rights violations by establishing a state-sponsored compensation tribunal for victims of past abuses which were basically influenced by:

1. Compensation to victims of Operation Bwenzani;⁹⁵
2. Demand by the political elite for compensation to returnees and ex-detainees, heavily influenced by political affiliation;⁹⁶
3. Civil cases resulting in huge payouts by government;
4. Demands from NGOs on behalf of ordinary victims wanting compensation;
5. Expectation that compensation would foster a sense of reconciliation and moving forward;
6. Events unfolding in South Africa; and;
7. The passage of the General Amnesty Act,⁹⁷ which saw many exiled Malawians return home and thus made it imperative to create a constitutional body to deal with reparation for those who fell victim under the past government.⁹⁸

⁸⁸. Buford and Hugo, 22.

⁸⁹. Reeler AP, 1.

⁹⁰. “Reconciliation: When, in What Order and How Fast? Case Study: Zimbabwe: Why Reconciliation Failed,” in *The Reconciliation After Violent Conflict, A Handbook*, eds. Bloomfield D, Barnes T, and Huysse L (Stockholm: International IDEA, 2003), 39.

⁹¹. Buford and Hugo, 12.

⁹². Zeleza Paul Tiyambe, “Totalitarian power and censorship in Malawi,” *Southern Africa Political & Economic Monthly* 8.11, (1995): 33-37.

⁹³. Buford and Hugo, 12.

⁹⁴. Lilongwe “Case Study: Centre for Human Rights and Rehabilitation – Torture Victim Project,” *Penal Reform International*, (2013): 2–4.

⁹⁵. Operation Bwezani represented a good-faith effort by the new government to rid Malawi of the Malawi Youth League (MYP). The three-day, victorious assault on the MYP immobilized the country and resulted in numerous injuries and 31 dead.

⁹⁶. Cammack D and Mwale C, “Reparations in Malawi,” (unpublished International Center for Transitional Justice report).

⁹⁷. General Amnesty Amendment Act No. 26 of 1993, Section 9).

⁹⁸. SARP, “Country Report on Malawi,” (unpublished, Center for Human Right and Rehabilitation, February 2003): 12.

Notwithstanding the above however, the inability of the Malawian government to meet the victims' demands led to bitterness, and as noted by Kanyanya: "the bitterness that comes from the lack of reparations is what is preventing Malawi from being reconciled itself with the past, once people are paid then maybe things will be different."⁹⁹ It is however believed that, in Malawi, the problem is more than financial issues because the inadequacy of funding is likely to be surmounted if the political will is available, and in addition, the process of providing reparation, however minimal, could have been more victim-friendly.¹⁰⁰

I.4 Uganda

Uganda has got a reputation of chequered history of the biggest human rights disasters in the African region in terms of widespread use of arbitrary detention and torture resulting into deaths of tens of thousands by security forces as instruments of political repression.¹⁰¹ The Ugandan people went through untold sufferings under the repressive regimes of Milton Obote, beginning from 1963-71 and ending in 1980-85, and the military dictator Idi Amin 1971-79.¹⁰²

President Yoweri Museveni came into power in 1986, he was initially commended for his improvement of the human rights situation in Uganda, but his regime has become characterized by severe human rights violations,¹⁰³ and is still becoming worse by the day with devastating consequences. For over twenty years of conflict in the northern Uganda involving the Lord's Resistance Army (LRA) and the government forces, human rights abuses have been perpetrated against individuals, families, and communities.¹⁰⁴ Notwithstanding the harms inflicted on the people of Uganda in a monumental proportion in the eyes of local and international communities, there is very limited coordinated response that directly addresses victims' reparative needs to date in Uganda.¹⁰⁵

In June 2012, the International Center for Transitional Justice (ICTJ), in its address on victims' reparative needs said that: "people are even still dying up to today just because they are still suffering from different forms of deformities, those who still contain foreign bodies like splinters and bullets. They die almost weekly if you get down into the communities."¹⁰⁶

The Ugandan Constitution contains a bill of rights, however, there has been derogation from those rights as contained in the Constitution, this has resulted into gross human rights violations and as it stands today in Uganda, the "no-party politics" has turned into a mockery of democracy. It has stultified opposition and has thus encouraged more abuses and violations.¹⁰⁷

I.5 Nigeria

The belief that human rights violations in Nigeria came at the heels of the military into politics in Nigeria is erroneous and superfluous because human rights violations and abuses in Nigeria has its historical origin traceable to pre-colonial and colonial periods.¹⁰⁸ For instance, the British Crown Consul to Nigeria, John Beecroft, in 1849 introduced the gun-boat diplomacy in Nigeria by which he forced the local rulers to consent to questionable agreements and treaties and some of the kings that refused to comply with the agreement or sign the treaties were hounded, nuzzled, removed from their domain, and some were either dethroned or exiled.¹⁰⁹ This was the genesis of human rights violations and inhumane treatment in Nigeria.

Beyond the foregoing, human right abuses in Nigeria were also prevalent during the Brassmen crisis with the Royal Niger Company at Akassa in 1895¹¹⁰ where it was alleged that the expansion of British rule over the coastal and land tribes was partly due to human right abuses by some of the pre-colonial chiefs in 1817.¹¹¹ In addition, the Consul removed king William

⁹⁹. Buford and Hugo, 17.

¹⁰⁰. Buford and Hugo, 18.

¹⁰¹. Abdulmumini A Oba, "Human Rights Concerns in Museveni's Uganda," *Journal of The Indian Law Institute*, 47 No. 3, (2005). 351.

¹⁰². Peter Bouckaert, "Hostile to Democracy - The Movement System and Political Repression in Uganda," *Human Rights Watch, New York*, (1999) 27.

¹⁰³. Amnesty International, Uganda: Failure to Safeguard Human Rights (Amnesty International, London, 1992) and "State of Pain: Torture in Uganda" in Human Rights Watch, March 2004, Vol. 16 No. 4 (A).

¹⁰⁴. Briefing of International Center for Transitional Justice, September (2012): 1.

¹⁰⁵. Briefing of International Center for Transitional Justice, September (2012): 1.

¹⁰⁶. Reparations for Northern Uganda. <https://www.ictj.org/sites/.../ICTJ-Briefing-Paper-Reparations-Uganda-2012-English.p.> (Accessed on September 20, 2022).

¹⁰⁷. Abdulmumini A Oba, 360.

¹⁰⁸ Nwachukwu SN, Austin A & Nwaneri S, 'An Account of Human Right Violations in Nigeria (Pre-British, British and Post-Independence)' (2014) 2 *European Scientific Journal* 231

¹⁰⁹ TR Batten *Tropical Africa in World history. Africa in modern History after 1800* (1939) 11.

¹¹⁰ SR Pearson, 'Economic Imperialism of The Royal Niger Company' <https://ageconsearch.umn.edu/bitstream/135014/2/fris-1971-10-01-278.pdf> (accessed on September 20, 2022)

¹¹¹ Nwachukwu (n 6 above) 232.

DappaPepple of Bonny for staging war on other chiefs,¹¹² in 1887, Jaja of Opobo was turned out for checking the trade of British merchants with the inland tribe;¹¹³ in 1892, Chief Nana, Itsekiri ruler demanded for some trade concessions and even preferences for the risk, his people taken as middlemen traversing the dangerous River Niger;¹¹⁴ in 1897, Benin kingdom was consumed and Oba Ovoramwen was exiled to Calabar¹¹⁵ because of slave-raiding. The condition in Benin kingdom was deplorable due to its capture and abuses of human rights.

The post-colonial human rights abuse in Nigeria came under the military regimes of Generals Ibrahim Badamosi Babangida¹¹⁶ and Sani Abacha¹¹⁷ between 1985 and 1998,¹¹⁸ these periods witnessed high levels of human rights abuses and violations in Nigeria.¹¹⁹ All rights available to Nigerians were abridged under military regime because there was brutality against the civil populace, extra-judicial killings¹²⁰ rose astronomically, access to justice was denied the ordinary Nigerians, and international passports of individuals were confiscated with impunity to prevent opposition.¹²¹

As it stands today, Nigeria does not have provision for reparation for victims of human rights abuses and violations either from the abuses of the past government or the present one.

6. Challenges in effective enforcement and implementation of victims' rights in the African region

There have been a lot of debates on how to put in context the human rights system within the African Union with a view to strengthening it.¹²² In this regard, some have reasoned that the failure to contextualize the human rights system within the defunct Organization of Africa Unity (OAU) is what is responsible for the weaknesses that have been encountered in the implementation and enforcement of the regional human rights instruments in the various parts of Africa.¹²³ In the same vein, the inability to anchor the human rights system in the African Union is more likely to reproduce the marginalization experienced under the OAU. For example, the African Commission¹²⁴ was the only enforcement mechanism in respect of human rights issues, but with the establishment of the African Court to complement the efforts of AC, the African Court of Justice (ACJ)¹²⁵ is being instrumental in human rights protection in the African region. With that being said the African Union in an effort to promote human rights protection in Africa established additional bodies like the New Partnership for Africa's Development (NEPAD) and African Peer Review Mechanism (APRM), as a result of these myriads of bodies and institutions, the African human rights system has suffered and continues to suffer from normative and institutional overlaps, tending towards duplication and proliferation of functions.¹²⁶

A number of instances can be used to corroborate the above argument. One of these instances is the duplication of certain functions between the African Commission and the Committee of Experts on the Rights and Welfare of the Child.¹²⁷ The Committee of Experts under Article thirty-two of the African Charter on the Rights and Welfare of the Child has both

¹¹² Letters from William DappaPepple, King of Bonny 857, from Middlesex 5 Nov 1861' <https://archiveshub.jisc.ac.uk/data/gb102-ms380691> (accessed on September 20, 2022).

¹¹³ JM Davey 'Replanting the Seeds of Home: Slavery, King Jaja, And Igbo Connections In The Niger Delta, 1821-1891' unpublished PhD thesis, Michigan State University 2015 53.

¹¹⁴ OJ Eborieme & DO Egbefo, 'The 1897 British Conquest of Benin Kingdom and its Impact on Benin-Esan Intergroup Relations' (2014) 7(1) *Journal of Arts and Education* 3.

¹¹⁵ Story of Ovonramwen Nogbaisi, the Oba of Benin Who was Conquered and Exiled to Calabar by the British <https://www.tori.ng/news/.../story-of-ovonramwen-nogbaisi-the-oba-of-benin-who.ht..> (accessed on September 20, 2022).

¹¹⁶ 'Ibrahim Badamosi Babangida' https://en.wikipedia.org/wiki/Ibrahim_Babangida. (accessed on September 20, 2022).

¹¹⁷ S Onyegbula 'The Human Rights Situation in Nigeria since the Democratic Dispensation' (2001) 13(3) *Development Policy Management Network Bulletin* 14.

¹¹⁸ S Alimi 'Under The Jackboot: The Nigerian Tribune and Human Rights Agitation, 1984-1998' (2011) 32(2) *African Study Monographs* 58-62.

¹¹⁹ Dd Adeyemo 'Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?' unpublished Master Thesis University of the Western Cape 2013 26.

¹²⁰ Open Society Justice Initiative 'Criminal Force Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force' (2010) 53.

¹²¹ Nwachukwu (n 6 above) 234.

¹²² Morris Kiwinda Mbondenyi, "Investigating The Challenges in Enforcing International Human Rights Law in Africa: Towards an Effective Regional System," *Unpublished Thesis Submitted to The Public, Constitutional and International Law at The University of South Africa*, (2008): 460.

¹²³ Shadrack Gutto, "The reform and renewal of the African regional human and peoples' rights system," *African Human Rights Law Journal*, 2 (2001): 176.

¹²⁴ The African Charter established the African Commission on Human and Peoples' Rights. The Commission was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia.

¹²⁵ The African Court of Justice and Human Rights is an international and regional court in Africa. It was founded in 2004 by a merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union.

¹²⁶ Kithure K, "Overlaps in the African human rights system" in *The African Human Rights System: Towards the Co-existence of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights*, ed. Frans Viljoen, (2006): 125.

¹²⁷ Shadrack Gutto, 178.

promotional and protective mandates similar to those of the African Commission, mandates which include but not limited to examining periodic reports by states;¹²⁸ receiving and determining complaints by individuals/group, and interstate complaints.¹²⁹

Furthermore, the jurisdiction of the regional human rights court extends “to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the states concerned,”¹³⁰ this means that the enforcement of human rights is the sole responsibility of the African Human Rights Court. But the African Court of Justice has a wider jurisdiction covering all African Union treaties and conventions, issues concerning international law, and bilateral matters between member states of the African Union.¹³¹

Precedent upon the foregoing therefore, it is submitted that there is a parallel relationship in both the African Human Rights Court and the African Court of Justice in respect to their composition and jurisdiction, this symmetrical functions can pose a huge challenge in reparation enforcement and implementation.¹³² Additionally, the African Court and the African Court of Justice have the competence to construe and apply the Constitutive Act of the African Union (CAAU).¹³³ The overlap of jurisdictions of both courts is also displayed in the fact the ACJ adjudicates on human rights issues falling within the authority of the human rights court; in addition, the African Human Rights Court may render advise and hear or entertain cases on the human rights provisions of the CAAU; this ultimately can result into conflicting judgments on human rights issues if both courts are given the freedom to operate independently from each other.¹³⁴

Scholars have expressed their views on the overlap of functions within the various institutions of the AU. For instance, Magliveras and Naldi have argued that:

the number of organs of the Union appears to be very large and in the long run it could not only result in the cumbersome operation of the Union but also present a financial burden both to the region and applicants.¹³⁵

In addition, Kithure noted that: “the proliferation of institutions and norms at the regional level is likely to present problems to African states regarding how to allocate resources and personnel to deal with the attendant obligations.”¹³⁶

It is submitted that, the proliferation of institutions with the attendant duplication of functions within the AU is uncalled for. It is submitted that all the bodies be consolidated into one institution and with increased funding, there will be effective contribution in achieving demonstrable results in the promotion and protection of human rights. In addition, sufficient funding will further assist in the eradication of human rights abuses and violations, it will enhance justice and the rule of law on the African region which are fundamental to ensuring sustainable change and development; this should be viewed not as an end in themselves, but as tools in the promotion of other rights.¹³⁷

The preceding arguments and reasoning emphasize the importance of main streaming the existing African human rights organs in a way that they can complement each other and not replicate each other’s duties. Within the context of this chapter, mainstreaming means the process that would involve the consolidation of the existing human rights mechanisms within the legal framework of the African Union with a view to enhancing the relationship between the various institutions.¹³⁸ With that being said, the African Union, standing in the position of the umbrella body of the African human rights system would be the centre of reference in ensuring the co-ordination and synergy of the existing human rights mechanisms in the African region.¹³⁹

¹²⁸. African Charter on the Rights and Welfare of the Child (ACRWC), Art 43.

¹²⁹. African Charter on the Rights and Welfare of the Child (ACRWC), Art 44.

¹³⁰. Art 3 of the Protocol Establishing the African Court on Human and Peoples’ Rights.

¹³¹. See the Protocol Establishing the Court of Justice.

¹³². The AHRC and the ACJ consist of eleven Judges, not more than one from each of the state parties and with the President serving full-time. See Baimu E and Viljoen F, “Courts for Africa: Considering the co-existence of the African Court on Human and Peoples’ Rights and the African Court of Justice,” *Netherlands Quarterly of Human Rights*, 22/2, (2004): 250.

¹³³. Art 19(1)(a) & (d) of the ACJ Protocol.

¹³⁴. Baimu E, and Frans Viljoen, 250.

¹³⁵. Konstantinos D Magliveras, and Gino J Naldi, “The African Union: A new dawn for Africa?” *International and Comparative Law Quarterly*, 51, (2002): 419.

¹³⁶. Kithure K, 144.

¹³⁷. United Nations Development Programme, ‘Rule of Law and Access to Justice in Eastern and Southern Africa: Showcasing Innovations and Good Practices,’ Centre for Justice Studies and Innovations, UNICEF and JLOS Uganda, (2013): 12.

¹³⁸. Shadrack Gutto, 181-184.

¹³⁹. Morris KiwindaMbondenyi, 464.

7. Regional and international jurisdictions with State reparation/compensation program¹⁴⁰

In 1998, the South Africa Reparation and Rehabilitation Committee (RRC) made recommendation to the South African President on the importance of providing reparation for the moral and legal obligation to meet the needs of victims of gross human rights violations.¹⁴¹The objectives of the RRC were to provide for: “measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of victims of violations of human rights.”¹⁴² In addition, it was also intended that measures should be taken to grant urgent interim reparation to victims.¹⁴³ But it is disheartening to note from the table below that the South African government has not done anything for victims who suffered abuses and violations from the hands of the state.

On top of this; there is no country in the African region with such reparative efforts and plans.

Table showing jurisdictions with state reparation program:

Countries	Reparation	No reparation
Albania		}
Angola		}
Argentina		}
Australia	}	
Austria	}	
Azerbaijan		}
Bahamas		}
Bangladesh		}
Belarus		}
Belgium	}	
Bermuda	}	
Bolivia		}
Bulgaria		}
Burma		}
Burkina Faso		}
Cambodia		}
Canada	}	
Cape Verde		
Chad		
Chile		
China		
Colombia	}	

¹⁴⁰. Prince Pius Imiera, 'Developing a legal framework for state compensation of crime victims in Nigeria' unpublished thesis submitted to the University of Pretoria 2017 280-284.

¹⁴¹. 'Report of the Reparation and Rehabilitation Committee' www.justice.gov.za/trc/report/finalreport/vol6_s2.pdf. (Accessed on September 20, 2022).

¹⁴². Preamble to the Promotion of National Unity and Reconciliation Act No. 34 of 1995.

¹⁴³. Promotion of National Unity and Reconciliation Act No. 34 of 1995 section 4(f).

Comoros		∫
Costa Rica		∫
Cote D'Ivoire		∫
Croatia		∫
Cuba		∫
Cyprus	∫	
Czech Republic	∫	
Denmark	∫	
Djibouti		∫
Ecuador		∫
Eritrea		∫
Estonia		∫
Ethiopia		∫
Finland	∫	
France	∫	
Gabon		
Gambia, The		
Germany	∫	
Ghana		∫
Greece		∫
Guatemala		∫
Guinea-Bissau		∫
Guyana		∫
Haiti		∫
Honduras		∫
Hong Kong-SAR	∫	
Hungary		
India	∫	
Ireland, Republic of	∫	
Israel	∫	
Italy	∫	
Japan	∫	
Kazakhstan		∫
Korea		∫

Kuwait]
Kyrgyzstan]
Laos]
Latvia]
Lesotho]
Liberia]
Lithuania]
Luxembourg]	
Malaysia]
Malawi]
Mali]
Malta]
Marshall Islands]
Mauritius]
Mexico]
Micronesia]
Moldavian Republic]
Mongolia]
Mozambique]
Namibia]
Nauru]
Netherlands, The]	
New Zealand]	
Niger]
Nigeria]
Norway]	
Oman]
Pakistan]
Panama]
Philippines]	
Poland]	
Portugal]	
Romania]
Russia]

Rwanda		∫
San Marino		∫
Sao Tome and Principe		∫
Senegal		∫
Seychelles		∫
Singapore		∫
South Africa		∫
Spain	∫	
Swaziland		∫
Sweden	∫	
Switzerland	∫	
Tanzania		∫
Thailand		∫
Togo		∫
Trinidad and Tobago		∫
Turkey		∫
Ukraine		∫
United Arab Emirates	∫	
United Kingdom	∫	
Uruguay		
United States	∫	
Uzbekistan		∫
Venezuela		∫
Yemen		∫
Zimbabwe		∫

8. Conclusion

The support for reparation to victims of gross human rights violations in the African continent has been shaped and defined on both regional statutes and practices¹⁴⁴and under principal international instruments on human rights.¹⁴⁵ As submitted in this chapter, obligations have been placed on the African States like South Africa, Zimbabwe, Namibia, Mozambique, Nigeria, South Sudan, and Malawi to mention but a few, to seriously consider the possibility of making reparations to the victims of human rights abuses and violations, notwithstanding the fact that the abuses and violations were occasioned or committed by past leaders or regimes. The African leaders who are and/or were directly involved in the abuses must be held accountable to make reparations for the crimes they committed because victims of grave abuses in the various parts of the African continent are entitled legitimately to reparation claims.

It was also argued that enforcement and implementation of reparation rights in African region presents an enormous challenge on the backdrop of the fact that the atrocities were committed so far in the past coupled with the duplication of functions within the

¹⁴⁴. See the African Charter on Human and Peoples' Rights.

¹⁴⁵. See the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

AU institutions. To this end, it is humbly submitted that the African States as a matter of urgency, must confront victims' reparation issues. In addition, to surmount the various challenges with a view to resolving the issue of reparation to the victims of gross human rights violations and abuses and to ensure human rights protection in Africa, appropriate steps must be taken as soon as possible in order to realize truth, justice and prevention. Along this line of thought, the chapter puts forward some practicable suggestions on how to overcome some of the challenges toward the objectives of making equitable reparations to the victims.

It is noted that the United Nations Compensation Commission¹⁴⁶ has set a precedent that encourages international assistance to victims for reparations claims. Without the involvement of the international community, countries like Iraq¹⁴⁷ would not have been able to make reparations to victims. This is likely to be the case in African countries where abuses have been rampant because it is most uncertain that the African States will pay reparations in the event that there is no international influence, cooperation, or assistance. In this connection, additional pressure must be put on the leaders in the continent of Africa.

Beyond the foregoing, the international community can further make available human resources; provide assessment and management skills in the implementation of reparation program. To actualize this suggestion, the international and regional NGOs have a pivotal role to play. The Non-Governmental Organizations can provide assistance to the various communities where abuses have been prevalent in Africa; help support the development of civil society, sponsor education, and create awareness at the grassroots levels.

The international bodies can also work as facilitators alongside African States in assisting the victims to mobilize financial resources.¹⁴⁸ For example, in South Africa, it was representatives from peace and conflict resolution NGOs that made various inputs concerning the need for reparations in the final policy of South Africa,¹⁴⁹ although the South African government has not implemented most of the policies, but with the participation of the NGOs in the process of reparation claims, one can be rest assured that there are reasons to hope for appropriate reparation to be finally made for the victims of human rights abuses in Africa.

¹⁴⁶. The United Nations Compensation Commission was created in 1991 as a subsidiary organ of the United Nations Security Council. Its mandate is to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's 1990–1991 invasion and occupation of Kuwait which started the Gulf War.

¹⁴⁷. Clara Sandoval and Miriam Puttick, "Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice," *Ceasefire Centre for Civilian Rights and Minority Rights Group International* November (2017): 17.

¹⁴⁸. Ariel Colonomos and Andrea Armstrong, "German Reparations to the Jews After World War II: A Turning Point in the History of Reparations (estimating that the German government has paid a total of US \$61.5 billion in reparations to victims of the Nazis between 1965 and 2001)," in *The Handbook Of Reparations*, ed. Pablo de Greiff, (2006): 393-394.

¹⁴⁹. Christopher J Colvin, "Overview of the Reparations Program in South Africa," (stating that individuals of NGOs were consulted for the initial conceptualizations of the overall policy issues for establishing the South African Truth and Reconciliation Commission), in *The Handbook Of Reparations*, ed. Pablo de Greiff, (2006): 176-180.