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**Promotion and protection of human rights: human rights
questions, including alternative approaches for improving the
effective enjoyment of human rights and fundamental freedoms**

Promotion of truth, justice, reparation and guarantees of non-recurrence

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, in accordance with Human Rights Council resolution [45/10](#).

* [A/78/150](#).



**Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,
Fabián Salvioli**

Financing of reparation for victims of serious violations of human rights and humanitarian law

Summary

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, presents his report on financing of reparation for victims of serious violations of human rights and humanitarian law.

In the report, the Special Rapporteur assesses the applicable legal framework, reviews diverse practices and policies by States, non-State actors and members of the international community to fund reparations programmes and provides an overview of related challenges, lessons learned, emerging opportunities and innovative approaches. He concludes with recommendations addressed to States and the international community.

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I. Introduction

1. The present report is submitted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pursuant to Human Rights Council resolution 45/10. In compliance with the mandate, the Special Rapporteur decided to devote the present report to assessing existing approaches, challenges and opportunities regarding the funding of reparation programmes in transitional justice contexts. To inform the report, the Special Rapporteur consulted with experts and relevant stakeholders and held an open consultation.¹ He thanks everyone for their contributions.

A. Legal framework

2. Victims of serious violations of human rights and humanitarian law have the right to remedy and reparation guaranteed under various international and regional law instruments.² When a serious violation of international human rights or humanitarian law is attributable to a State, that State is liable for reparations and is responsible for funding those reparations measures. In 2006, in drafting the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,³ a number of States took the view that “the duty of affording remedies for governmental misconduct was so widely acknowledged that [reparations] for violations of human rights and *a fortiori* of gross human rights violations, may be regarded as forming part of customary international law”.⁴

3. The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power reaffirmed that victims “should be treated with compassion and respect for their dignity”, have their right to access to justice and redress mechanisms fully respected, and that the “establishment, strengthening and expansion of national funds for compensation to victims should be encouraged”. The 2006 Basic Principles reiterated the Declaration’s encouragement for the “establishment ... of national funds for compensation to victims” but strengthens it in several ways. They clarified who is obligated to fund and implement reparations: the State “for violations attributable to it” as well as “a person, a legal person, or other entity” who is “found liable for reparation to a victim”.⁵ The Basic Principles go beyond the idea of simply establishing a fund for compensation by establishing as a guideline that “States should endeavor to establish national reparations programmes”,⁶ which recognizes the need for States to fund and sustain such programmes.

4. States have the duty to fulfil a victim’s right to reparation promptly, adequately and effectively and are encouraged to do so by adopting administrative reparation programmes. As the Special Rapporteur noted in a previous report, domestic

¹ See www.ohchr.org/en/calls-for-input/2023/call-inputs-financing-reparations-owed-victims-serious-violations-human-rights.

² Including the Universal Declaration of Human Rights (art. 8); the International Covenant on Civil and Political Rights (art. 2); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14); and the Convention on the Rights of the Child (art. 39).

³ General Assembly resolution 60/147, annex.

⁴ Theo van Boven (commentary), “The United Nations 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”, available at https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf.

⁵ Ibid., para. 15.

⁶ Ibid., para. 16.

reparation programmes are the most effective tool for victims of gross human rights violations and serious violations of humanitarian law to receive reparation. Without them, victims would have to prove their status ... and wait several years before their claim is, if at all, successful.⁷ Adequately implemented domestic programmes offer better options than courts to address the consequences of mass violations in a timely, efficient, victim-centred and inclusive manner. Such programmes must be underpinned by a solid legal framework that provides sustainability and by adequate resource allocation that guarantees their implementation. However, establishing these programmes in transitional contexts is often challenging because they depend on “the political will of the relevant authorities, the availability of resources, and practical and institutional concerns about how best to provide and implement reparation”.⁸

B. Victim-centred, women-empowering and sustainably funded approach

5. The updated set of principles for the protection and promotion of human rights through action to combat impunity⁹ emphasize the meaningful role that victims should play in the design, implementation and assessment of reparation programmes.¹⁰ A victim-centred, principled and pragmatic approach to funding reparations requires the recognition of the centrality of victims and their special status in the design and implementation of reparations, ensuring full respect for their dignity, views, priorities and concerns. Such an approach also requires that the causes and consequences of human rights and humanitarian law violations be addressed. This means funding specific forms of reparation that respond to the most serious harms and urgent needs caused by violence and economic loss and anticipating how those violations can be prevented in the future by making reparations programmes more transformative in their design and intention.

6. A victim-centred, principled and pragmatic approach also requires that the implementing States plan and raise long-term funding for reparations programmes designed to acknowledge and repair the social marginalization, economic inequality and gender disparity that led to the violations in the first place. At the same time, such an approach requires the commitment of donors and the international community to medium- to long-term implementation cycles that support reparations programmes aimed at transforming the lives, and not merely alleviating the pain, of survivors and victims. An approach to reparations that is meant to be transformative and not just reparative must also be designed bearing in mind the economic, social and cultural rights obligations of States.

7. Long-term and sustainable funding for reparations should also aspire to transform the pre-existing structural inequality that may have engendered the violence suffered by women and girls, who traditionally find themselves in conditions of exclusion, inequality and discrimination. Funding reparations that only aim at returning to the situation before the violation took place is insufficient to ensure the effective realization of the rights of women and girls. States and donors must ensure that reparations programmes advance gender equality and the particular needs of women and girls by funding programmes that support the agency of women and girls as beneficiaries, have the potential to transform the structure of gender exclusion, and

⁷ [A/HRC/42/45](#), para. 32.

⁸ *Ibid.*, paras. 34, 121 and 122.

⁹ [E/CN.4/2005/102/Add.1](#).

¹⁰ Principle 32.

ensure the effective participation of women and girls in decision-making regarding reparations and their funding.¹¹

C. Victims' registration

8. Registration that allows victims to record their claims and apply for reparation is essential for the adequate, prompt and effective implementation of a reparations programme. It is part of what is funded when funding reparations.¹² The Basic Principles, paragraph 11(c), refer to victims having the right to gain access to relevant information concerning violations and reparation mechanisms, and a registry would be one way of fulfilling that right.

9. Registration is a step towards implementing reparations and is necessary to determine what funding a reparations programme will need. Registries of victims make it possible to draw realistic projections of the level of victimhood in States undergoing transitions. Adequate registries help in estimating the cost of redressing the potential beneficiaries of the programme and in planning resource allocation. Registries could also facilitate reparation for victims in urgent need of attention, through urgent reparation programmes, and constitute a key measure of acknowledgment, satisfaction and memory.¹³ Prior to the design, implementation and funding of reparation programmes, States should develop national registries of victims that are flexible, open-ended, free of charge or bureaucratic hurdles (especially for persons in situations of vulnerability) and have a wide outreach, to adequately estimate the potential universe of victims and therefore the expected costs of reparations.

D. Implementing reparations effectively and promptly

10. There is enough evidence that the recommendations of truth commissions regarding reparations have mostly been ignored by the Governments to whom they were addressed; there is also data showing that only about 15 per cent of transitional societies have implemented reparations for victims.¹⁴ Other reparations-related databases point to very few implemented reparations programmes.¹⁵ The former Special Rapporteur described this in his 2014 report as an "implementation gap" and concluded that it had reached "scandalous proportions".¹⁶

11. The lack of funding for reparations has been one key obstacle in the implementation of reparation programmes. Countries in transition are often faced with devastated economies, debt burdens and competing demands on their limited budgets. Exploring and utilizing alternative sources of support and funding for reparations is therefore vital. The implementation gap is also due to the insufficient attention placed by policymakers in transitioning States to planning and funding reparation programmes.

12. Support for funding and effective implementation of reparations is also required from international institutions and donors who have the resources and influence to

¹¹ A/75/174, paras. 37 and 103.

¹² R. Carranza, C. Correa and E. Naughton, "Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations", International Center for Transitional Justice (New York, 2017). Available at <https://www.ictj.org/publication/forms-justice-designing-reparations-forms-and-processes>.

¹³ A/HRC/42/45, para. 47.

¹⁴ See https://reparations.qub.ac.uk/assets/uploads/QUB-TRCs_Report_UPDATED130120.pdf.

¹⁵ See <https://reparations.qub.ac.uk/reparations-database/>.

¹⁶ A/69/518, para. 81.

initiate, shape and sustain transitional justice policies. However, these actors do not frequently prioritize reparations. The Special Rapporteur recalls that, for transition to be effective and sustainable, attention from the concerned States and relevant international actors must be placed on all pillars of transitional justice.

E. Political will to fund reparations

13. One factor often blamed for the reparations implementation gap is the lack of political will on the part of Governments to fund reparations. It has been suggested that a clear indicator of a State's political will to implement reparations is whether a Government incorporates a line for reparations in the State budget and funds that line with general public funds.

14. However, the political will to implement reparations should not only be measured by the allocation of often scarce public funds. Because transitional justice is a very context-dependent field, a diverse range of experiences in funding reparations has developed over the years and must be assessed when considering State efforts and political will to financially support reparation programmes. Some countries have funded reparations programmes, for example, by utilizing regular State budget funds, recovering ex-dictators' ill-gotten assets, negotiating debt forgiveness, prosecuting individual perpetrators, suing complicit corporations, encouraging diaspora contributions and promoting donor funding. Countries in transition have some regular and innovative financing models at their disposal that are currently underexplored and underutilized. Thus, the political will to implement reparations should also be measured by how serious a Government is in implementing those.

II. Funding with resources from implementing States

A. Regular State budget

15. Among some of the earliest States to have implemented reparations, the default assumption was that reparations should be funded from the State's regular budget rather than from a specially identified source, asset or income. This practice developed because the early examples of transitional justice processes emerged in post-authoritarian countries that had relative capacity to fund reparations through their national budgets, such as Argentina, Chile and South Africa. In those cases, reparations costs were included in the national budget.

16. In Chile, all of the reparations programmes were funded by the State's regular budget. The programmes were not designed comprehensively from the start but developed incrementally, starting with reparations for various categories of victims of human rights violations under the dictatorship of General Pinochet and including more recently victims of police violence during the 2019 protests.¹⁷ For 2023, the State allocated a total of \$276 million to reparations.¹⁸

17. Reparations benefits in Argentina were also incrementally implemented to different categories of victims over the years. Benefits in all cases were calculated on the basis of the salary level of the most highly paid officials in the Government and were funded by the State regular budget using current and future income sources. However, some categories of victims received payment in State bonds that ultimately lost value, as described later.

¹⁷ See www.justiceinfo.net/en/105681-virtuous-model-reparation-emerging-chile.html.

¹⁸ Contribution from Chile to the call for inputs.

18. Some States opt for the establishment of a reparation fund, made of one-time or successive financial allocations or contributions. In South Africa, the law that created the Truth and Reconciliation Commission also created a “President’s Fund” to provide urgent interim reparations. The law established that the fund should primarily consist of “all money appropriated by Parliament for the purposes of the Fund”.¹⁹

19. Unlike those early examples, the countries that pursued transitional justice measures thereafter had fewer resources available to fund reparations programmes, for example, Liberia, Rwanda, Sierra Leone and Timor-Leste. In countries from the former Yugoslavia, the prioritization of prosecutions and the weakening of State capacity as a result of privatization policies left fewer State resources available for reparations.²⁰ In these cases, relying on the State’s regular budget would have made the implementation of reparations programmes more unlikely.

20. Funding reparations directly through the State budget does not preclude raising funds for reparations through other public sources, such as tax revenues, the issuance of national bonds, the negotiation of forgiveness of (illegitimate) debt and the recovery of ill-gotten assets from perpetrators. Nor does it preclude complementing State funds with financial support from external sources, such as donor countries, philanthropic institutions and voluntary contributions from individuals, including the country’s diaspora. In South Africa, the presidential fund also received contributions from country donors, including Denmark and Switzerland.²¹

21. Having the capacity to fund reparations through the State budget does not automatically mean that reparations will be adequately implemented. Despite the availability of resources through the above-mentioned President’s Fund, the Government of South Africa failed to pay reparations to a large portion of victims. Meanwhile, the fund continued to grow over the years through interest and investments.²² This example shows that reparations programmes must be planned adequately and implemented comprehensively. Reparations programmes can be timed and sequenced in a way that takes into account political feasibility and financial capacity without abandoning the demands for reparations from victims.

B. Challenges in funding reparations through the State regular budget

22. For many countries in transition, in particular those in post-conflict settings, funding reparations using general public funds would be an enormous challenge to overcome, even with political will. Not only would there be pre-existing priorities competing for funding to which reparations would be added, but the massive, complex and urgent needs of victims and affected communities post-conflict would require additional State funds beyond what pre-transition budgets would have allowed. In 2019, the transitional civilian Government of the Sudan said it would set aside 7 per cent of its budget for reconstruction in Darfur, a tall order given that, by then, the Sudan needed up to \$5 billion to prevent economic collapse, had to fund reparations for the over 300,000 victims of the conflict and faced a demand for reparations from

¹⁹ See <https://www.justice.gov.za/legislation/acts/1995-034.pdf>.

²⁰ K. Bayliss, “Post-conflict Privatisation: A Review of Developments in Serbia and Bosnia Herzegovina”, ODI, June 2005, available at: <https://odi.org/en/publications/post-conflict-privatisation-a-review-of-developments-in-serbia-and-bosnia-herzegovina/>.

²¹ See www.justice.gov.za/trc/media/1997/9702/s970225a.htm.

²² See www.justice.gov.za/reportfiles/other/presfund-anr-2020-21.pdf.

the United States of America in relation to the killings of its citizens in attacks by Al-Qaida.²³

23. Combined with the difficulty of overcoming a lack of institutional capacity and in some cases corruption, many countries in transition may not be in a position to match political will with resources.²⁴ In 1998, Rwanda created the National Assistance Fund for the Neediest Victims of Genocide and Massacres and by law required the State to allocate annually 6 per cent of the State's annual income, with a line in the regular budget.²⁵ But the management of the Fund has been accused of corruption and incompetence. Rwanda has also relied on donations and voluntary contributions from the diaspora to fund reparations initiatives.²⁶ In Colombia, despite facing resource limitations and financial challenges to fund reparations, the reparations law of 2011 required the relevant government agencies to incorporate and prioritize the costs of those measures into their respective quarterly budgetary allocations.²⁷

24. The efforts of Colombia and Rwanda to find some modest funding for reparations in the context of resource limitations, even when considering the programmes' flaws, sets an example for other countries to consider. Yet many have ignored the recommendations of their transitional justice institutions or legislation urging the funding for reparations. Kenya created a "restorative justice fund" for victims in 2015, but never funded it. Tunisia, instead of operationalizing the "dignity fund" created under Organic Law No. 2013-53 Establishing and Organising Transitional Justice, which called for the use of State funds and ill-gotten assets recovered from the ex-dictator's family and business associates to fund reparations, the Government is currently embarked on a "reconciliation" plan that offers amnesty in exchange for returning some ill-gotten assets, to be used to fund the development of marginalized regions.

25. Even when States can argue that their dire economic situation and competing demands make funding reparations difficult, they should not abandon the commitments made and the obligations adopted to fund reparations through identifiable sources. This re-victimizes victims whose expectations were raised by those policies; it also discourages citizens, donors and reparations advocates from supporting reparations programmes.

C. Funding reparations through taxation

26. A State's taxation policy can be used in ways that can raise funds for reparations, or can itself become a form of reparative justice. Reparations programmes can be funded from revenue raised through regular taxes, fees and income of a Government. These constitute a common source of funding in many of the States that have so far implemented reparations programmes.

27. Several truth commissions have recommended the imposition of special taxes as one-time levies to fund reparations programmes, such as the proposal of the Truth and Reconciliation Commission of South Africa for a "wealth tax" on wealthy white

²³ See www.reuters.com/article/us-sudan-economy-exclusive/exclusive-sudan-needs-up-to-5-billion-in-budget-support-to-prevent-collapse-idUSKBN1X11BZ.

²⁴ See https://pureadmin.qub.ac.uk/ws/portalfiles/portal/160675820/FR7_chapter_5_Implementing_Truth_CommissionsGC_O_Recommendations_on_Reparations_1_.pdf.

²⁵ See www.refworld.org/cgi-bin/texis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=52df99854.

²⁶ See <https://survivors-fund.org.uk/uncategorized/one-dollar-opens/>.

²⁷ See www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43043#:~:text=La%20presente%20ley%20regula%20lo,y%20asuman%20su%20plena%20ciudadan%C3%ADa.

South Africans and corporations, which was rejected by the Government.²⁸ When Peru considered a tax on mining partly to fund a collective reparations programme, mining companies, apprehensive that the tax would become permanent, offered a “solidarity” fund consisting of their voluntary contributions.²⁹ In Sierra Leone, the Truth and Reconciliation Commission recommended that reparations be funded from, among other sources, “revenue generated from mineral resources” and a “reparations or peace tax”.³⁰ However, these proposals were never implemented, and the subsequent reparations programme ended up relying mainly on a grant from the Peacebuilding Fund.³¹

28. In the United States, reparations to be offered by some local governments have been or may be funded through special taxes. In Evanston, Illinois, the city’s housing-benefit reparations programme for African American residents victimized by discriminatory housing practices is funded by \$10 million raised in part through a “weed tax”, or by 3 per cent of every sale of legalized marijuana in the city.³²

29. Collecting special taxes or appropriating part of general tax revenue to fund reparations is not the only way that taxation can be a tool for funding reparations. Opting not to collect taxes – by exempting compensation payments and other material reparations benefits from income or other direct taxes – can be a form of reparation itself. By law, the United States exempts from taxation the compensation payments received from Germany by an estimated 50,000 American taxpayers who were victims of Nazi forced labour.³³ The United Kingdom of Great Britain and Northern Ireland exempts victims of Nazi policies involving property confiscation, slave and forced labour from paying inheritance, income and capital gains taxes.³⁴ Several other countries, including Australia, Canada, Finland, France, Greece, Hungary and the Netherlands (Kingdom of the), have passed legislation making varying forms of tax exemptions for beneficiaries of the post-Second World War compensation programmes of Germany.

30. Several examples of taxation policies used to fund reparations are found in wealthy economies, since taxes in these countries can become a substantial source of funding. However, less wealthy countries may not have a large enough base of individual income-earners from whom to collect taxes, or may be hesitant to impose more taxes on the extractive industries and businesses on which their economies depend. Reluctance to tax businesses, however, should not deter Governments from compelling businesses that are complicit in human rights and humanitarian law violations to contribute to funding reparations.

D. Incurring loans to fund reparations

31. States rely not only on income for their expenses and regularly resort to borrowing to fund their expenses, pursue fiscal policies, manage their economies or take advantage of available credit. The same approach has been used to fund reparation programmes.

²⁸ See www.aljazeera.com/news/2003/5/28/apartheid-victims-struggle-on-for-justice.

²⁹ See www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf.

³⁰ See www.sierraleonetr.com/index.php/view-report-text-vol-2/item/volume-two-chapter-four.

³¹ See www.justiceinfo.net/en/43710-reparations-in-sierra-leone-news-from-the-periphery-of-transitional-justice.html.

³² See www.rollingstone.com/culture/culture-news/evanston-reparations-program-housing-marijuana-tax-1145588/.

³³ See www.washingtonpost.com/archive/politics/2001/05/31/holocaust-victims-get-tax-break/91298487-2a5a-43e7-a3f2-f433c961517f/.

³⁴ See www.gov.uk/government/news/inheritance-tax-exemption-for-wwii-victims-extended.

32. Argentina is the most prominent example in recent decades, where some forms of reparation, essentially the debt owed to victims of enforced disappearances and killings, were paid with government bonds. The bonds (of \$224,000 per victim) could be exchanged at their market value at any time, or at full value on maturity (16 years later). The mechanism ran into trouble for those who had not been able to exchange their bonds when an economic crisis hit Argentina in 2001 and payments of all government bonds were ceased. Payments to victims were exempted from this freeze, but bonds were automatically converted to a highly depreciated Argentine peso. Other categories of victims received payment in cash from the State budget and were not exposed to the depreciation of the reparation amount received.³⁵

33. Nepal contemplated offering 500,000 to 1 million Nepali rupees to the families of persons killed or disappeared in the Maoist insurgency. In 2017, the Government said it would instead distribute shares of stock in a State-owned power company.³⁶ While shares are not debt instruments like bonds, they can also earn dividend income in cash or more stocks and can be sold.

34. However, offering shares in State-owned companies or State bonds as a form of reparation does not offer immediate material benefits to victims, who must wait to exchange them for cash when feasible or advisable. Moreover, they are accompanied by risks. The devaluation of reparations bonds in Argentina was one such risk. A more effective and less frustrating use of debt policy to fund reparations could be for States to seek debt forgiveness from their creditors conditioned on that State's commitment to allocating part or all of the amounts condoned to funding reparations.

E. Seeking forgiveness of (illegitimate) debt in exchange for reparation funding

35. In Ghana, one of the recommendations of the 2002–2004 National Reconciliation Commission was to use the country's status as a heavily indebted poor country to seek debt forgiveness then use the funds no longer budgeted for debt servicing partly to fund the \$1.5 million estimated cost of reparations. The Government followed this recommendation and used part of the country's condoned debt to fund compensation payments.³⁷

36. The Debt Relief Under the Heavily-Indebted Poor Countries Initiative established in 2007 by the World Bank and the International Monetary Fund (IMF) was aimed at countries that face an unsustainable debt burden that cannot be addressed through traditional debt-relief mechanisms.³⁸ However, countries emerging from dictatorship or conflict that might qualify for this programme need to ask what kind of policies imposed by their ex-dictators or war-waging rulers in the first place led to "an unsustainable debt burden" that now hampers delivery of reparations. Argentina transitioned from a military junta that left behind enormous debts that contributed to its post-junta economic crisis and later to the devaluation of reparations

³⁵ See A/HRC/42/45, and José María Gueembe, "Economic reparations for grave human rights violations: the Argentinean experience", in *The Handbook of Reparations* (March 2006), pp. 21–54.

³⁶ Prithvi Man Shrestha, "Govt's inconsistent and ad-hoc policies letting down conflict victims", *The Kathmandu Post*, 31 March 2017; available at <https://kathmandupost.com/national/2017/03/31/govts-inconsistent-and-ad-hoc-policies-letting-down-conflict-victims>.

³⁷ N. Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment", International Center for Transitional Justice and the Center for the Study of Violence and Reconciliation (September 2006), available at <https://www.ictj.org/publication/ghanas-national-reconciliation-commission-comparative-assessment>; and https://mofep.gov.gh/sites/default/files/budget-statements/Budget2006_supp.pdf, para. 447.

³⁸ See www.imf.org/en/About/Factsheets/Sheets/2023/Debt-relief-under-the-heavily-indebted-poor-countries-initiative-HIPC.

bonds. Ghana, likewise, sustained decades of debt-dependent authoritarian rule. Both authoritarian regimes willingly implemented the World Bank and IMF economic and social policy prescriptions attached to the borrowing schemes, which included austerity measures, privatization of strategic State-owned assets and liberalization of the economy. In Ghana, this led to economic decline with adverse consequences for ordinary citizens.³⁹ Forgiveness of “illegitimate or odious” debt incurred by authoritarian or warmonger regimes that committed human rights violations and led to economic hardship for the population is a complex issue that must be carefully assessed and balanced when considering or negotiating debt relief options.⁴⁰

37. Debt forgiveness approaches that fail to examine the roots of and responsibilities for the debt incurred avoid a wider truth-seeking opportunity and may foreclose necessary institutional economic and debt policy reforms in transitional settings. Instead, a viable option would be for States to seek debt forgiveness from creditors and financial institutions as reparations for having enabled corruption, marginalization, inequality and human rights violations by former dictators or corrupt rulers. This would link debt forgiveness to accountability and to preventing the recurrence of large-scale corruption and social marginalization to which the dictatorship-enforced and creditor-prescribed economic policies had led. In Tunisia, the Truth and Dignity Commission, whose mandate included seeking truth and accountability for corruption and marginalization, sent a memorandum to the World Bank and IMF requesting an apology, reparations and debt cancellation.⁴¹ The memorandum did not receive a response.

F. Recovery of ill-gotten assets from former Heads of State and their associates

38. Funding reparations from the State’s available general funds and sources of revenue is a good measure of its commitment to victims but it does not always open more opportunities for justice and accountability. There are other ways to fund reparations that also directly advance and expand accountability and justice. Holding authoritarian and/or warmonger rulers accountable for human rights violations and corruption not only halts impunity but also allows transitional justice processes to fund reparations and offer a larger truth-telling narrative about dictators.

39. Asset recovery from State perpetrators is premised on the recovery of assets found to have been ill-gotten, including through corruption, the proceeds of crime or amassed or used in connection with human rights violations. The implementation of the Philippines reparations law was funded with \$200 million out of the \$680 million that the post-Marcos dictatorship Government recovered from the Marcos family’s Swiss bank accounts. A separate sum of \$10 million funds the work of the Memorialization Commission.⁴²

40. In the Gambia, the recovery of ex-dictator Yahya Jammeh’s assets in the country and abroad have made it possible to devote funds to the Reparations Fund established by the Truth, Reconciliation and Reparations Commission.⁴³ To complement this sum,

³⁹ See www.nytimes.com/1991/06/24/business/ghana-falters-after-years-of-growth.html.

⁴⁰ See J.P. Bohoslavsky and V. Opgenhaffen, “The Past and Present of Corporate Complicity: Financing the Argentinian Dictatorship”, *The Harvard Human Rights Journal* (2010). Available at <https://harvardhrj.com/wp-content/uploads/sites/14/2010/10/157-204.pdf>.

⁴¹ See <https://www.justiceinfo.net/en/42302-tunisia-truth-commission-vs-france-imf-world-bank.html>.

⁴² A. Casauay, “Nearly 50,000 Martial Law victims file claims”, *Rappler*, 12 November 2014.

Available at <https://www.rappler.com/nation/74811-martial-law-victims-reparation/>.

⁴³ Mustapha K. Darboe, “Jammeh’s wealth to go to his victims”, *JusticeInfo*, 21 October 2019.

Available at www.justiceinfo.net/en/42679-gambia-jammeh-wealth-victims.html.

the Government convened a donor round-table in anticipation of the need to find resources to implement different forms of reparations.⁴⁴ A separate truth commission in the Gambia investigated and calculated how Jammeh and his family, officials and business allies had amassed ill-gotten wealth.

41. Asset recovery allows a State to simultaneously pursue several transitional justice goals. It funds reparations, supports truth-telling about the corruption and human rights violations committed by perpetrators and makes individual and corporate accountability possible.

42. Former Chilean dictator Augusto Pinochet was investigated in Chile, Spain and the United States for tax fraud, corruption and money-laundering. His ill-gotten funds were found in the Washington, D.C.-based Riggs Bank. To avoid legal action, the bank turned over \$9 million to be used as reparations for victims of his regime, which would be administered by the Salvador Allende Foundation.⁴⁵ Recovering Pinochet's ill-gotten assets not only helped to finance reparations, but also broke the myth of a "clean" dictator, sustained by his supporters, and helped to provide another dimension of justice to victims.

43. Other post-dictatorship countries, such as the Philippines, Peru and Tunisia, have successfully sought the return of the ill-gotten assets of former leaders and applied those assets to fund reparations programmes.⁴⁶ The fact that some of these early experiences, in particular the Philippines, took years to implement is not necessarily a reflection of the lack of effectiveness of asset recovery as an approach to funding reparations, as much as it is a reflection of the lack of political will on the part of some foreign banks and regulators in the States where those banks are based, to end their complicity in hiding ill-gotten wealth. Considering today's interconnected financial relations, the support of international actors to domestic efforts to recover ill-gotten assets from former illegitimate rulers could become crucial in ensuring the success of such practices and therefore in making more funding potentially available for reparations.

III. Funding with resources from individual perpetrators

44. Individuals who are found liable can fund reparations they owe in various ways, depending on how their liability is established, whether in criminal or civil proceedings. Some ad hoc international criminal tribunals and the International Criminal Court have their respective procedures that may include the power to freeze an individual's assets during trial. But these procedures all assume that an individual has assets sufficient to fund reparations, which might be owed to several, sometimes hundreds or even thousands of victims.

45. This is one reason why reparations programmes are established: to prevent situations where victims have no recourse to reparations because the individual perpetrators cannot be identified or prosecuted, have no assets or are deceased (although in the latter, asset recovery procedures would still be available). In paragraph 9, the Basic Principles recognize the right to reparation of a victim

⁴⁴ United Nations Development Programme (UNDP), "The Donor Roundtable: A Step Towards Healing and Reparations for Victims of Human Rights Violations in The Gambia" (15 May 2023), available at www.undp.org/gambia/blog/donor-roundtable-step-towards-healing-and-reparations-victims-human-rights-violations-gambia.

⁴⁵ See <http://news.bbc.co.uk/1/hi/business/4300841.stm>.

⁴⁶ R. Carranza, "Transitional Justice, Corruption, and Mutually Reinforcing Accountability: What the Global South Can Learn from the Philippines", in *Economic Actors and the Limits of Transitional Justice: Truth and Justice for Business Complicity in Human Rights Violations* (January 2022).

regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted. This is also why the Basic Principles, in paragraph 15, contemplate a situation where the State, through a reparations programme, provides reparations and has the right to demand that individual perpetrators pay back to the State for the reparations it has provided to victims.

46. Individuals can pay reparations directly if they are alive or even after their deaths. Their family or descendants can fund reparations through the wealth (that resulted from injustices) they inherited from the perpetrator. In February 2023, after the Trevelyan family discovered that their wealth in the United Kingdom had come from ancestors who had enslaved more than 1,000 Africans in Grenada, family members agreed to collectively make an apology and turn over a fund, starting with a \$130,000 given by one family member, as compensation, to be administered by the Grenada reparations commission.⁴⁷

47. Some individuals liable for reparations with no financial resources have offered in kind the equivalent of non-monetary material reparations. Maoist rebels in Nepal, for example, have returned land or its produce seized from small landowners.⁴⁸ This shows that at the level of ordinary combatants or even neighbours, resources, labour, goods and services with economic value can become reparations that an individual who otherwise has no other resources can offer. In Timor-Leste, under the Community Reconciliation Programme, supervised by the truth commission, perpetrators of “less serious crimes” – such as crimes against property – could offer their labour as a form of reparation for the rebuilding of houses they had damaged.⁴⁹

IV. Funding with resources from non-State actors involved in human rights violations (including armed groups and corporations)

48. The Basic Principles make clear that the State is not the only entity that may be liable to provide and fund reparations. Non-State actors, notably insofar as movements or groups that exercise effective control over a certain territory and people in that territory, can also be held liable for reparations, including armed groups. As noted by the Special Rapporteur, a useful approach to determining the legal obligations of non-State armed groups to provide reparations would include a case-specific evaluation of the level of the organization’s capacity and resources. If such a group has the capacity to deliver material reparations, it should. If it cannot, the group should be required to contribute to, or at least facilitate, the provision of reparation by States or other actors. Where such groups lack capacity, the responsibility to pay reparation should fall on the State, which can subsequently demand reimbursement from the armed group.⁵⁰

49. As part of the 2016 peace agreement, rebels of the Revolutionary Armed Forces of Colombia (FARC) estimated the value of their assets at \$324 million and offered this as compensation to the group’s victims. A peace agreement between the

⁴⁷ See P. Lasmar and J. Smith, “‘My forefathers did something horribly wrong’: British slave owners’ family to apologise and pay reparations”, *The Guardian*, 4 February 2023. Available at www.theguardian.com/world/2023/feb/04/british-slave-owners-family-apologise-reparations-trevelyan.

⁴⁸ K. Budhatohoki, “Maoists return produce of seized plot”, *The Himalayan*, 10 January 2009. Available at: <https://thehimalayantimes.com/nepal/maoists-return-produce-of-seized-plot>.

⁴⁹ See <https://sites.tufts.edu/praxis/files/2020/05/4.-Senier.pdf>. See also: P. Pigou, “The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation” (UNDP, 2004), p. 28.

⁵⁰ A/HRC/51/34, para. 82.

Government of the Central African Republic and non-State armed groups mandates the latter to return assets and contribute to a trust fund for victims.

50. Under the Basic Principles, courts can establish the liability of non-State actors to pay reparations. However, truth-seeking entities can often also establish liability for reparations. For example, the Liberian Truth and Reconciliation Commission established a list of individuals and corporations it found to have committed economic crimes during the country's civil war.

51. The Basic Principles consider corporations as “business enterprises exercising economic power”. Several truth commissions have recommended that corporations contribute to reparations programmes. The Liberian Truth and Reconciliation Commission recommended the creation of a reparation trust fund to compensate victims of economic crimes funded through tax arrears from businesses, legal proceedings and asset freezing and recovery.⁵¹ In South Africa, the Truth and Reconciliation Commission held three public hearings on the role of business in enabling apartheid and recommended a one-time wealth tax on corporations to fund reparations, while victims sued them (but eventually lost) in United States courts.

52. One of the most impactful examples of corporate funding for reparations is that of Germany's 2001–2007 compensation payments for victims of the slave and forced labour programme organized by the Nazi government during the Second World War and exploited by German corporations. The programme received \$5.5 billion in funding, provided equally by the German State and the companies.

53. These examples offer several important lessons for reparations policymakers. They make clear that corporations are also perpetrators when they are complicit in and knowingly profit from human rights and humanitarian law violations committed by a State. It then follows that they are liable for providing reparations to victims.

54. In some contexts, demanding reparations from a State that enables corporate complicity in human rights abuse is difficult. During and even after the Suharto dictatorship in Indonesia, civilians in the conflict-affected province of Aceh living near the gas extraction factories of ExxonMobil were targets of human rights abuses by Indonesian soldiers funded and hired by the oil company. The Aceh Truth and Reconciliation Commission recently started to investigate these cases. In 2008, the victims sued ExxonMobil for reparations in United States courts, and in 2023 the company was forced to settle and pay reparations. This context offers another lesson on how different approaches may have to be pursued to achieve effective reparation.

55. Corporate perpetrators are likely to have more resources than victims and to try to outlast them in litigation, hence the importance of activists and donors providing medium- to long-term support to victims' efforts to seek reparation from corporations.

V. Funding with resources from the international community

A. Multilateral organizations and international financial institutions

56. Other entities that can play an important role in providing reparations may include multilateral organizations, such as the United Nations and international financial institutions like the World Bank or IMF.

57. Multilateral organizations have funded reparations programmes and benefits. In Sierra Leone, the Peacebuilding Fund provided a \$4.5 million grant to the reparations programme, which covered the costs of registering potential beneficiaries as well as

⁵¹ Ibid., para. 37.

initial payments of compensation, averaging \$80 to about 20,000 beneficiaries.⁵² In Colombia, the World Bank provided \$4.7 million for the collective reparations programme, part of which was used for beneficiaries.⁵³ In Nepal, the Bank provided \$23 million, a large part of which was used as “interim relief” payments and to fund education benefits to families of those killed or disappeared.⁵⁴ Although not originally intended, the Bank also funded the urgent reparations programme implemented by the Commission for Reception, Truth and Reconciliation in Timor-Leste.⁵⁵

58. Multilateral organizations and international financial institutions may also be found liable for providing reparations. The World Bank has had dual and conflicting roles in the context of reparations. On the one hand, it has directly funded reparation programmes for victims. On the other hand, it has also been charged with enabling corruption, human rights violations, marginalization and displacement in countries under dictatorship or in conflict, largely as an outcome of its economic and social policy prescriptions that accompanied IMF loans. In Guatemala, the World Bank has been linked to funding dam constructions that forced the displacement of Indigenous communities and has been asked to pay reparations, separate from what the State owes the displaced persons.⁵⁶

59. In Tunisia, the Truth and Dignity Commission concluded that not only the Tunisian State was responsible for serious violations but also the World Bank and IMF, which through loan conditions and structural adjustment plans imposed inappropriate policies that were at the root of the serious violations that followed the popular uprisings. The Commission asked them to apologize and contribute to reparations.⁵⁷

60. The United Nations has been asked to provide reparations for harm caused in the implementation of its activities. Several special procedure mandate holders, including the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, requested the United Nations to provide compensation and other direct forms of reparation to victims of the cholera epidemic in Haiti caused by United Nations peacekeepers.⁵⁸ They also urged the United Nations to provide reparation to victims of lead poisoning at internally displaced persons camps run by the United Nations Interim Administration Mission in Kosovo, including through the adoption of a fully funded reparation programme, and urged States and other donors to financially support the related United Nations trust fund.⁵⁹ The Special Rapporteur considers that international agencies that fund and/or manage transitional justice projects should play a more active role in prioritizing reparations programmes, without renunciation to support measures related to the other transitional justice pillars.

⁵² See www.iom.int/news/sierra-leone-victims-receive-compensation; for an analysis of the reparations program itself, see <https://www.ictj.org/publication/report-and-proposals-implementation-reparations-sierra-leone>.

⁵³ See <https://documents1.worldbank.org/curated/en/197881583768368753/Implementation-Completion-and-Results-Report-ICR-Document-Colombia-Collective-Reparation-for-Victims-through-Social-Reconstruction-Project-P148552.docx>; and <https://projects.worldbank.org/en/projects-operations/project-detail/P148552>.

⁵⁴ R. Carranza, “Relief, Reparations and the Root Causes of Conflict in Nepal”, International Center for Transitional Justice (2012), available at www.ictj.org/sites/default/files/ICTJ-Nepal-Reparations-2012-English.pdf.

⁵⁵ See www.files.ethz.ch/isn/114231/api093.pdf.

⁵⁶ See www.brettonwoodsproject.org/2014/11/guatemala-pay-reparations-world-bank-funded-chixoy-dam/.

⁵⁷ See www.justiceinfo.net/en/42302-tunisia-truth-commission-vs-france-imf-world-bank.html.

⁵⁸ See www.ohchr.org/en/press-releases/2020/04/un-inaction-denies-justice-haiti-cholera-victims-say-un-experts.

⁵⁹ See www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/lead-contamination-kosovo.

B. Country donors and philanthropic institutions

61. Funding from country donors and philanthropic entities has become indispensable in transitional justice processes. However, such funding has insufficiently supported reparations. One explanation offered is that some donors do not want to take over what is essentially the responsibility of the implementing State. However, the funding of prosecutions, disarmament, demobilization and reintegration programmes and truth commissions, which country donors do tend to fund, also involve aspects of State responsibility. Some country donors may also be understandably careful not to raise expectations among victims about the extent of their financial support or to set a precedent for future claims where that State may be liable for reparations.

62. When funding reparations, country donor support has focused primarily on the costs of implementing reparations rather than on the benefits themselves. Swiss and Danish support allowed the Truth and Reconciliation Commission of South Africa to distribute urgent interim reparations. In Morocco, the European Union funded part of the operation of the State agency that designed and implemented community reparations.⁶⁰ In the Philippines, Switzerland offered capacity-building resource persons to the reparations agency and the specialized asset recovery commission.⁶¹ In Peru, part of the operating budget of the reparations programme was funded by the Kingdom of the Netherlands.⁶²

63. Some donors have indeed funded reparations benefits. In those cases, the concern about taking over responsibilities from the implementing State was not pronounced because the donors were multilateral international organizations or philanthropic institutions, not foreign Governments. As mentioned earlier, some multilateral organizations have directly funded reparations benefits, such as the Peacebuilding Fund and the World Bank. The Open Society Institute in West Africa funded victim-led reparations projects in Liberia, including memorials and infrastructure, with the help of the International Center for Transitional Justice.⁶³ Philanthropy by nature is not grounded on State responsibility and cannot be expected to substitute the role of the State or to raise more funding than it is capable of or willing to give.

64. Most donors, however, do not make long-term capital investments on reparations, despite the fact that some forms of reparation such as rehabilitation are long-term programmes by nature. Nor do donors cover maintenance and operating costs of certain long-term reparations projects, such as education or livelihood programmes that are likely to have a transformative effect on the lives of victims. Donors who financially support reparations programmes should bear in mind that there are reparations benefits needed by victims that entail longer-term engagement, and which are important to support as they can have a strategic and transformative impact on the lives of victims, in society as a whole, and in preventing recurrence.

65. Donors must be wary of the underlying diplomatic and political agendas sometimes implicated in the provision of funding, as they can damage a receiving Government's relationship with victims or with other Governments, or undermine the acknowledgement of the injustice that reparations are meant to convey. In 2018, the

⁶⁰ R. Carranza and J. Guillerot, "The Concept and Challenges of Collective Reparations", International Center for Transitional Justice (2009), p. 27. Available at: <https://www.ictj.org/sites/default/files/ICTJ-Morocco-Reparations-Report-2009-English.pdf>.

⁶¹ See https://aseminforboard.org/asem_events/asem-international-experts-workshop-on-stolen-assets-and-hidden-wealth-theft-recovery-and-restitution/.

⁶² See <https://reparations.qub.ac.uk/assets/uploads/Peru-Report-ENG-LR-2.pdf>.

⁶³ See <https://thenewdawnliberia.com/bongs-massacre-sites-visited/>.

Supreme Court of the Republic of Korea ruled that Japanese companies must pay compensation to Korean victims that they had forced into labour. However, in 2023, the Government of the Republic of Korea announced its decision to pay reparations to those victims through a public foundation funded by donations from Korean private sector companies and to which Japanese companies could contribute only if they wished. Victims and the Chair of the national human rights commission repudiated the initiative as it afforded immunity from legal liability to Japanese firms and did not require contributions or an apology from them or Japan.⁶⁴

C. International courts and trust-funds

66. One way in which the international community has sought to fix the imbalance in funding for reparations has been to grant a mandate to the International Criminal Court to order reparations and the creation of its Trust Fund for Victims. The Special Rapporteur acknowledges this much-needed and welcomed initiative from the international community and the role that the Trust Fund is playing in the reparations field. However, the process is not exempt from limitations, including insufficient funding from States and other donors. First, it is worth noting that the Court can order reparations if a perpetrator is convicted and can only realistically enforce that order if a convicted perpetrator or the Trust Fund has sufficient assets to pay those reparations. Indeed, many of those convicted at the Court are declared indigent and therefore cannot pay reparations themselves. In such cases, the role of the Trust Fund is essential. Second, while donors have indeed funded the Trust Fund, the donations have been inconsistent, and some contributions are earmarked, thus limiting how reparations can be funded.⁶⁵

67. Newer international or hybrid criminal courts, such as the Extraordinary African Chambers in Senegal and the Special Criminal Court in the Central African Republic, can award reparations after conviction. But here again, the non-prioritization of reparations by donors has led to insufficient funding to implement reparations orders awarded by the courts.

68. A reparations trust fund was created at the Extraordinary African Chambers in relation to the trial of the former Chadian President Hissène Habré but, since no significant assets were recovered from him, the \$154 million in reparations awarded to 7,396 victims could not be executed. The country donors and human rights organizations that had supported the prosecution of Habré did not equally advocate the recovery of his ill-gotten wealth to support the payment of reparations.⁶⁶

69. At the Special Criminal Court, the first convictions ordered the payment of \$36,000 in reparations and costs to build a memorial and two wells, against indigent defendants. The only source of funding for this appears to be a United States donation of about \$37,000.⁶⁷

⁶⁴ T. Shorrocks, "Yoon's US-backed forced labor agreement with Japan is a sham", *Responsible Statecraft*, 10 March 2023. Available at: <https://responsiblestatecraft.org/2023/03/10/yoons-us-backed-forced-labor-agreement-with-japan-is-a-sham/>.

⁶⁵ Press release, "Japan's contribution to the trust fund for victims of the International Criminal Court" (7 December 2018). Available at https://www.mofa.go.jp/press/release/press4e_002260.html.

⁶⁶ R. Carranza, "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes", *International Journal of Transitional Justice*, vol. 2 (2008); See also www.justiceinfo.net/en/81192-habre-death-final-blow-or-wake-up-call-reparations.html.

⁶⁷ See www.justiceinfo.net/en/118225-central-african-republic-special-court-first-reparations-decision.html.

70. These examples demonstrate that mandating a court to award reparations or to create a trust fund for reparations are positive steps but do not in themselves solve the problem of lack of funding and insufficient donor support.

VI. Funding with resources from States involved in human rights violations in other States

A. Repurposing of sanctioned assets from States involved in human rights violations in other States (and/or individuals who financially or politically support those actions)

71. Proposals have been made to confiscate and repurpose the assets of a State and/or individuals who are subject of sanctions owing to their involvement in serious human rights violations, in order to fund reparations for the victims of those violations. Proposals have also been made and implemented to redistribute financial penalties imposed for breaches of such sanctions in order to fund reparations. Recently, some proposals have been made in particular in connection to the invasion of Ukraine by the Russian Federation in 2022.⁶⁸

72. Canada, the United Kingdom and the United States have taken steps to repurpose sanctioned frozen assets for reconstruction and victims' reparations. In Europe, article 29 of the Treaty on European Union allows the Council of the European Union to adopt sanctions against non-European Union countries, non-State entities and individuals to bring about a change in their policy or activity.⁶⁹ However, the European Union has taken the position that frozen assets from sanctions and asset freezes in general cannot be used to compensate victims for human rights abuses, including Ukrainian victims of Russian aggression. Notwithstanding, European Union member States can impose criminal penalties on individuals evading sanctions, and the funds collected, which are often hefty, may then be used for future compensation for victims.⁷⁰ The redistribution for reparation of fines imposed on persons or entities that violate sanctions faces fewer legal obstacles than the repurposing of frozen sanctioned assets and may provide an easier avenue for funding reparations.

73. Proposals made by civil society for the repurposing of sanctioned assets of persons or entities involved in human rights violations note the growing recognition that conflict and abuses are perpetuated through international trade and finance relationships, and aim at targeting this nexus. The repurposing of assets and fines collected in relation to sanctions could be seen to have not only reparative and restitutive functions, but also preventative and corrective ones.⁷¹

74. The interest in repurposing seized assets to fund reparations is evident in cases where sanctioned States or individuals have been directly implicated in serious human rights violations, or where assets have been accrued through profiting from corruption, war or such abuses. Nonetheless, the repurposing of those assets can raise questions regarding legality and due process, when there are difficulties in tracing the origin or property of the assets, proving that assets are ill-gotten or meeting the required standard of proof.⁷² As suggested by civil society proponents, besides the

⁶⁸ See <https://redress.org/wp-content/uploads/2022/09/Briefing-on-Comparative-Laws.pdf>.

Contribution from Hogan Lovells, the Global Survivors Fund and REDRESS, on repurposing of confiscated and sanctioned assets and other innovative financing models to fund reparations.

⁶⁹ See <https://eur-lex.europa.eu/EN/legal-content/summary/general-framework-for-eu-sanctions.html>.

⁷⁰ Contribution from the European Union to the call for inputs.

⁷¹ Contribution from Hogan Lovells, the Global Survivors Fund and REDRESS.

⁷² Ibid.

proof that assets are the proceeds of crime – which is often difficult to prove in cases of widespread corruption – evidence of involvement of the sanctioned persons in human rights violations could provide a legitimate basis for confiscation if the process by which the confiscation is established guarantees due process, respect of human rights, in particular due process, legality and property rights, and opportunities for the sanctioned persons or entities to challenge the sanction and confiscation decision.⁷³

75. Switzerland has pioneered the practice of freezing and repurposing assets deposited by “politically exposed persons” in Swiss banks and has returned almost \$2 billion since the mid-1980s. In 2015, it enacted the Foreign Illicit Assets Act, which makes it possible to freeze, confiscate and reconstitute assets deposited in Switzerland by foreign corrupt officials or their associates.

76. Reparations advocates have raised concerns about the lack of transparency regarding the use of funds accrued through asset confiscation and the lack of consultation and victim participation in the processes to define who is listed for sanctions and how to repurpose frozen assets and proceeds from sanctions. It is crucial that there is a role for victims in this process.

77. It is worth clarifying that, even when the repurposing of a State’s sanctioned assets to fund reparations is done on the basis of a broad claim of that State’s responsibility for international wrongful acts, questions about the legitimacy and fairness of the procedure could arise if the confiscation of sanctioned State-owned assets leads directly to violations of the economic and social rights of the population of the sanctioned State. In its resolutions [1970 \(2011\)](#) and [1973 \(2011\)](#), the Security Council stated that any assets, funds or economic resources frozen by Member States pursuant to the sanctions regime against Libya would be used for the benefit of the Libyan people.

B. Funding with resources from former colonizing States

78. As noted by the Special Rapporteur, States that were colonizing powers and States where the colonization of Indigenous peoples and the oppression of people of African descent persists in various forms should consider providing reparation to victims. In most cases where former or persisting colonizing powers have been asked to provide reparations to victims in their own country or abroad, the challenge has not only been the lack of funding but also the denial of responsibility, which has led to denial of reparations to victims. In the recent joint declaration by Germany and Namibia, Germany offered €1.1 billion, to be disbursed over the next 30 years in the framework of a programme to support development and reconstruction. Germany makes no mention, however, of reparations and acknowledges only moral responsibility.⁷⁴

79. In the United States, symbolic gestures such as declaring the day slaves were emancipated a federal holiday have not been accompanied by reparations at the federal level. At the state and municipal levels, however, political leaders and activists have been debating ways to fund their ongoing or proposed reparations programmes: some ideas that have been used or proposed include using revenue from the operations

⁷³ Ibid.

⁷⁴ [A/76/180](#), para. 107.

of legalized cannabis businesses,⁷⁵ giving tax credits to African-Americans or imposing special estate taxes on white wealth.⁷⁶

80. The Special Rapporteur warned that reparations should not and cannot be dressed up as humanitarian aid, assistance or development cooperation, evading the assumption of due responsibilities. Development aid is not genuine reparation, because it perpetuates and reinforces an economic and political system that is based on colonial hierarchies of submission.⁷⁷ It was precisely development aid that the United Kingdom first offered to Kenyan Mau-Mau veterans who had survived torture and sued for reparations in United Kingdom courts. In the final settlement, the United Kingdom agreed to pay compensation and build a memorial for the veterans, but only issued a statement of regret and noted that this step was not a precedent.⁷⁸ Subsequent court decisions, however, have applied the statute of limitations set out in the Limitation Act 1980, preventing other Kenyan victims from pursuing their claims.⁷⁹

81. Some of the reticence to fund reparations for the legacy of colonialism can and have been overcome, even if not always with State involvement. To fund the \$1.6 billion in compensation payments to Japanese-American citizens who were survivors of American concentration camps, the Civil Liberties Act of 1998 appropriated funding from the regular State budget, without relying on any special source of revenue.⁸⁰

82. Similarly, in entering into a settlement with Indigenous Canadians who had been taken from their families and placed into so-called “residential schools”, Canada paid reparations – called “common experience payments” applicable to all survivors as well as those added after a process of assessing a claimant survivor’s specific harms – from its regular budget.

83. In Australia, in the absence of a State-wide reparations programme for the harm done to Indigenous communities, activists and allies of those communities have launched a fundraising initiative called “Pay the Rent”.

84. In addition to the direct funding of reparations measures, serious consideration may be given to the possibility of cancelling the debt illegitimately incurred during colonization as a form of reparation and to the payment of compensation for the restitution or the replacement of land expropriated from colonized populations.⁸¹

VII. Funding for reparations and funding for development aid

85. Funding for reparations must be differentiated from funding development aid. Development programmes are not strictly speaking reparatory, as they neither target victims specifically, nor entail an acknowledgement of the harm suffered by victims or of the responsibilities involved in committing that harm. Therefore, funding for

⁷⁵ See www.cityofevanston.org/government/city-council/reparations; and www.marketwatch.com/story/how-to-pay-for-reparations-in-california-swollen-wealth-could-replace-stolen-wealth-through-taxes-11675024632.

⁷⁶ See <https://frontpageafricaonline.com/iberia-war-crimes-trial/iberia-no-decoration-for-forgotten-death-hole-victims/>.

⁷⁷ A/76/180, paras. 60–61 and 98.

⁷⁸ See www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf#page=2.

⁷⁹ A/76/180, para. 27.

⁸⁰ M. Or, “Emerging scheme urges homeowners to ‘Pay the Rent’ directly to First Nations”, *MPAMag*, 28 January 2023. Available at www.mpamag.com/au/news/general/emerging-scheme-urges-homeowners-to-pay-the-rent-directly-to-first-nations/434307.

⁸¹ A/76/180, para. 74.

humanitarian or development aid should not be conflated with funding for reparations.⁸²

86. However, for many countries emerging from conflict, dealing with the aftermath of dictatorship or burdened by legacies of inequality and poverty from colonialism or foreign occupation, funding for reparations can complement as well as intersect with funding for development programmes. In many such contexts, having to choose between funding reparations programmes for victims and funding government programmes to fulfil the basic needs of citizens must not be required. Both can be done concurrently, but must not be subsumed into one another, and must be timed and sequenced in ways that complement each other, for example, through collective or community reparation schemes or through development programmes that can make use of information about victims and their needs stemming from the reports of truth commission reports and from reparations registries.⁸³

87. Collective reparations programmes for victims, marginalized groups, Indigenous people and conflict-affected communities may be designed so that their funding is taken into account by development planners and donors, thus complementing instead of substituting reparations owed to victims.⁸⁴ For example, some reparations programmes, such as health care and housing, can be prioritized and funded alongside development programmes in the same areas.

VIII. Conclusions and recommendations

88. The availability of financial resources to fund reparations programmes and benefits is essential for the fulfilment of victims' right to reparation. For many survivors, victims' families and affected communities, reparation could be the most urgent, transformational and life-preserving form of redress.

89. The Special Rapporteur urges States to make the necessary budgetary allocations for reparations, on the basis of the universe of victims and realistic cost expectations, through the creation of special funds, taxation, inclusion in the national budget and other financing by sustainable means.

90. States' political will to implement reparations is demonstrated not only by their willingness to use available public funds and public sources of revenues towards reparations, but also by their seriousness in taking other approaches to funding reparations programmes. States should consider complementary and alternative measures to raise funds for reparations, such as recovery of ill-gotten assets of former dictators, holding non-State actors involved in violations (including non-State armed groups and complicit corporations) liable for funding reparations, and negotiating forgiveness of illegitimate debt to free resources to pay reparations. These approaches are not mutually exclusive and can complement other fundraising means, such as special taxation. These approaches are also compatible with the State seeking donations from government and non-government donors, as well as voluntary contributions from citizens and the diaspora.

91. Funding for reparations must be victim-centred and effectively consider the views and needs of victims. Implementing States and donors should ensure

⁸² Ibid., para. 60.

⁸³ In Peru, a conditional cash transfer programme relied partly on the mapping by the Truth Commission of the regions most affected by human rights violations, and was seen by some victims as acknowledgment of the harm suffered. See www.ictj.org/sites/default/files/ICTJ-Global-Right-Reparation-2009-English.pdf.

⁸⁴ See www.ictj.org/sites/default/files/ICTJ-Development-Reparations-ResearchBrief-2009-English.pdf.

victims' voices are heard and considered in decision-making related to reparations, including in the allocation of community reparations funds and benefits.

92. To effectively respond to the needs of victims, funding for reparations should include but not be limited to financing compensation schemes and material benefits and aim to encompass collective and transformative reparation measures. For reparations programmes to be strategic, transformative and more impactful in preventing the recurrence of large-scale human rights violations, reparations planning and funding should aim to address the causes and consequences of those violations.

93. Funding for reparations should encompass long-term planning and financial support across the design, budgeting and implementation cycle of reparations programmes to ensure that reparation programmes address the needs of victims and transform the conditions of marginalization, inequality and gender disparity that led to the violations in the first place.

94. The role and needs of women as beneficiaries of reparations and as decision-makers in communities receiving reparations must be reflected in the funding of reparations programmes. States must ensure that reparations funding reinforces and advances gender equality and the particular needs of women by funding programmes that support the agency of women and girls as beneficiaries – including their own access to compensation, priority in education benefits and specialized health-care services – as well as measures with a potential transformative effect on the structure of gender exclusion. Implementing States and donors should ensure women's and girls' voices are heard in decision-making related to reparations, including in the allocation of community reparations benefits.

95. When States are not able to cover the costs of reparations programmes by themselves, identifying suitable sources of funding without diluting the responsibility of the State becomes crucial. The Special Rapporteur urges the relevant international organizations and donors to financially support and complement State efforts to finance reparations for victims and to prioritize this in their funding portfolios.

96. Donors and the international community must also support reparations through their political leverage. Concerned States and relevant actors in the international community must themselves demonstrate political will by actively supporting different approaches to funding reparations that require or can benefit from their corresponding influence and actions, including by supporting asset recovery efforts intended to fund reparations programmes and endorsing debt forgiveness aimed at freeing funding for reparations. Political will should come not only from States obligated to fund reparations but also from States and institutions that are in a position to support, influence and cooperate with efforts to obtain funding for reparations.

97. States affected by transitions and States in the international community with access to the assets of persons involved in human rights violations may wish to consider mechanisms to recover ill-gotten assets from corrupt, authoritarian and human rights abusing rulers and repurpose them for the funding of reparations of the victims of those violations. They may also wish to consider repurposing frozen assets and fines collected through sanctions against persons involved in human rights violations to repurpose them for reparations for victims. When deciding on the confiscation and repurposing of such assets, States must establish strong due process and transparency mechanisms and adopt strong legality and right-to-property protections, in line with international

human rights standards, as well as ensure that any such mechanisms operate using a survivor-centred approach.

98. If considering the confiscation and repurposing of assets of a sanctioned State involved in human rights violations to fund reparations for the victims of those violations residing in another State, States should ensure that the seizure of such assets does not lead to violations of human rights (in particular, economic, social and cultural rights) of the population of the sanctioned State.

99. The international community, including multilateral organizations and donor countries, should consider financially supporting not only the operative aspects of reparation programmes but also the reparation benefits themselves. They should also consider providing long-term financial support to ensure that reparation programmes are sustainable, address the needs of victims and transform the social conditions that led to the violations.

100. International agencies and other entities that fund and manage projects should not validate transitional justice processes that do not prioritize the granting of reparations to victims, without implying that in such a situation the other pillars of transitional justice (truth, justice, guarantees of non-recurrence and memory) should not be duly fulfilled.

101. Non-State actors (businesses and non-State armed groups) involved in human rights abuses should contribute through their assets or tax payments to reparations, including through compensation and the financing of reparations programmes. If they do not have the capacity to provide complete reparations to victims of their abuses, their efforts should be supplemented by the State, which can subsequently demand the reimbursement from those actors.

102. Former colonizing powers and States where the colonization of Indigenous peoples and the oppression of people of African descent persist in various forms should consider individual or collective mechanisms to fund reparation to victims, including financial compensation that is considered adequate and commensurate with the harm suffered by the victims and to which they have agreed; the cancelation of illegitimately incurred debt during colonization; and compensation for or the restitution of land, natural resources and cultural heritage.

103. Funding for reparations must be differentiated from funding development programmes. Development aid projects that do not acknowledge accountability and do not aim to improve the specific conditions in which victims find themselves are not adequate substitutes for reparations programmes. However, both can be funded concurrently if they are not subsumed into one another, inform each other and are timed and sequenced in ways that complement each other.