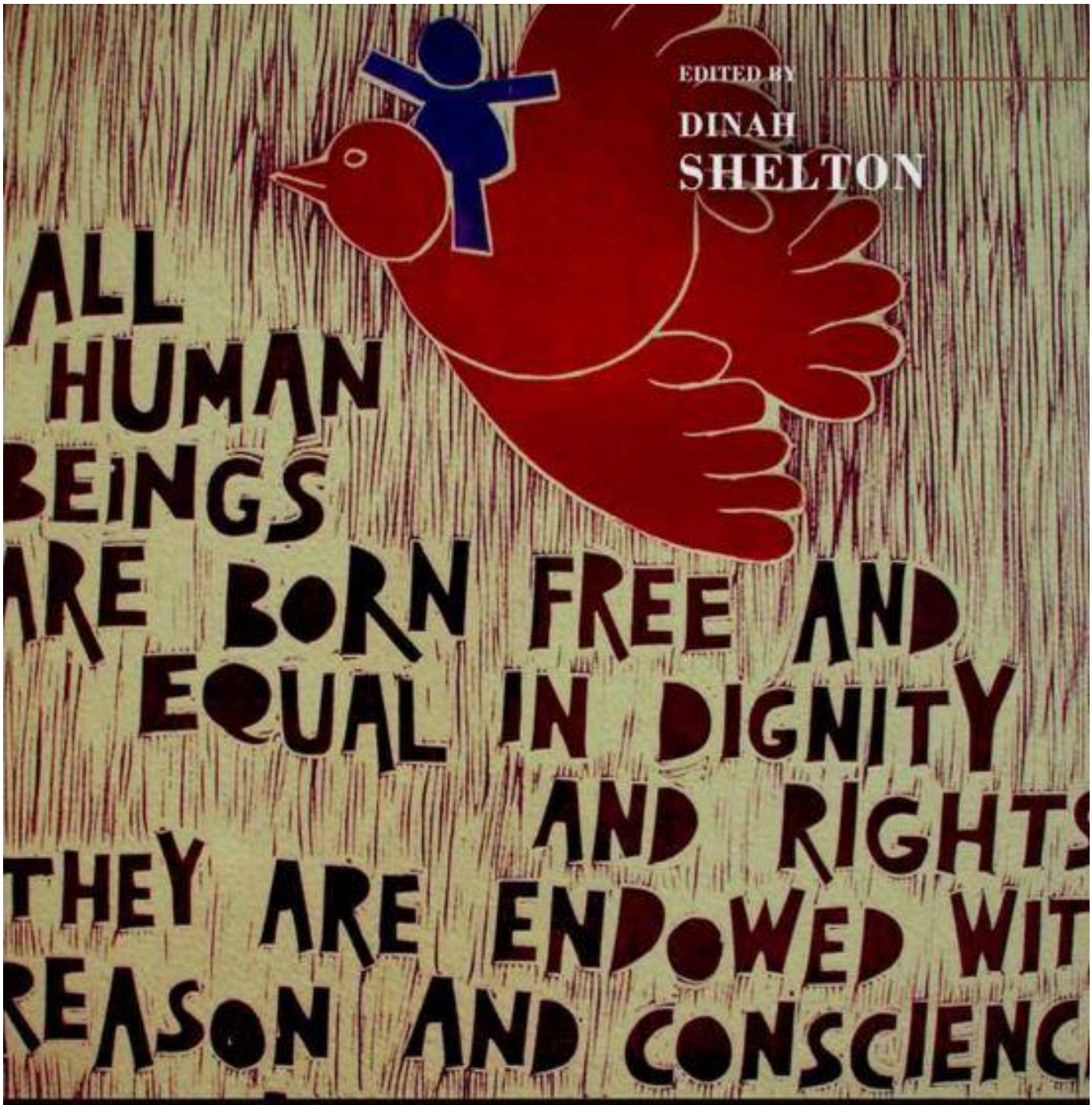

EDITED BY

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The Oxford Handbook *of* INTERNATIONAL HUMAN RIGHTS LAW

CHAPTER 38

WHAT OUTCOMES FOR VICTIMS?

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1. INTRODUCTION

IT is often asserted that seeking justice and redress following human rights violations is done for the sake of the victims,[1] recalling the great suffering of those individuals and groups. Victims, it is said, must be placed at the centre of any efforts to redress human rights violations, because they are at the core of the human rights project. It is immediately apparent that seeking redress for the victims may be caught up with other, competing goals, such as preventing future violations, achieving peace and reconciliation, promoting rule of law and social and economic development. Striking the right balance between such different demands is immensely challenging, but these considerations must not interfere with the imperative to respond to the suffering of victims of violations.

In his study of 1993, Professor Theo Van Boven, then Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, stated that more attention needed to be given to the perspective of the victim, which is often overlooked, and that reparation should respond to the needs and wishes of the victims.[2] Examination of the practice during the twenty years since Van Boven issued his call reveals a mixed picture. While important advances have been made in legal norms, and tremendous efforts made by institutions and civil society to enforce them, there remain significant challenges. Not all victims are able to access remedies, the outcomes not always to their satisfaction, and implementation may come late or not at all. Particularly problematic is the scarcity of examples of reparation being received by victims in the wake of large scale abuses in parts of the world where few avenues for redress exist.

Redress processes for victims of human rights violations cannot be seen only in terms of a sum of money they may take home at the end of the day, a state action in response to a complaint, or the opportunity to tell their story to a truth commission or court. The outcomes must be seen as encompassing the entire experience for the victim and the full impact of the process on him or her. It is not simply a question of whether *any* remedy or outcome is produced, but whether that remedy or outcome is the *right* one for the victim. It is also to be expected that even if reparation measures target the individual, they will have an impact at different levels, on the individual victim, community and state.[3] Indeed, the complex relationship between individual and group identities and rights is a complicating factor when it comes to reparation. Under international human rights law, remedies are largely framed as rights of individuals, but the development of notions of group rights, together with the fact that many violations are committed against groups, present challenges to this framework.

This chapter explores the outcomes of human rights law from the point of view of victims of human rights violations. The chapter begins by asking what makes an outcome satisfactory for victims. It then gives an overview of the remedies envisaged in human rights law and how satisfactorily these reflect the range of outcomes that may be desirable for victims, the outcomes that the institutions and mechanisms created to enforce the law are able to deliver in theory, and, most importantly, what they are actually delivering in practice. Finally, the chapter examines this body of law and practice in terms of how successfully it responds to victims' expectations, perceptions and desires or needs, with some reflections on what a truly victim-centred approach would look like and what more can be done to ensure satisfactory outcomes for victims.

2. WHAT OUTCOMES ARE DESIRABLE FOR VICTIMS?

A report published in 2001 warned of the dangers involved in responding to human rights violations without taking sufficient account of the victims' perspectives: 'We suggest that without a fuller understanding of survivors' perceptions and without the necessary support structures in place we are in danger of encouraging people whose lives have been traumatized to exercise rights they are unclear about, through processes that they are not actively involved in and do not understand, which then produce outcomes that do not match their expectations.'[4] Assumptions are made too often about what is good for victims without actually checking what victims themselves want or need.

Research conducted into victims' perceptions following human rights violations,[5] including country specific studies[6] reveals disagreement over whether the process of seeking reparation can have a value to victims in itself. Those who assert that it does attribute this variously to giving victims a sense of task or mission or the sense that they are regaining control over their lives, the sense of being able to bring benefits for others, that telling their story has value, as being heard or contributing to an official record, helping channel feelings of retribution and desire for revenge, or simply aiding victims to heal and move on.[7] Hamber and Wilson put it succinctly: 'genuine reparation, and the process of healing, we assert, does not occur through the delivery of the object (for example, a pension, a monument and so on) but through the process that takes place around the object.'[8] Legal scholars report that civil plaintiffs before US courts who obtained multimillion dollar judgments for damages against human rights violators for violations committed around the world have taken tremendous personal satisfaction from these lawsuits even although hardly a cent of the awards has ever been collected.[9] In contrast, others assert that it is harmful for victims to go through such processes, as it may lead to re-traumatization or make victims feel they are being treated with suspicion and skepticism, and run counter to psychological healing. There is at least a consensus any process of litigation or other claims procedure must be carefully handled and victims should be supported throughout the process by psychological support and counselling.[10]

A key finding agreed by all is that victims' perceptions vary from individual to individual according to age, gender, culture,

socio-economic or political context and many other factors. Different victims will want different things, and even the same victims may want different things over time—for instance, it may be difficult to think about reparation while violations are still going on, or while urgent material needs are unmet, but reparations may become important later on.[11] The Redress study found that groups of victims who suffered from the same or similar violations are almost always divided as to what they see as desirable.[12] Some victims (mothers of the disappeared in Argentina, Asian 'comfort' women, for example) strongly objected to accepting compensation, perceiving it as an attempt to buy their silence and avoid acknowledging the wrongs committed, whereas for others, it is a fitting recognition to which they are entitled. For some, symbolic reparations are meaningful, others perceive them as useless. One team of psychologists concluded that in order to be considered satisfactory, a reparatory act must be considered intensely related to the personal characteristics of the victim and his/her context and beliefs; whether or not it will be an effective reparation, from a psychological point of view, will depend on the victim: 'What is truly important is not the reparation itself that justice offers, but what the mind can reconstruct with it.'[13]

The traditional goal of reparation under international law is to restore the situation prevailing before the violation. Some victims seek the return of something taken away from them in the course of the human rights violation, such as property,[14] or legal rights and entitlements.[15] However the harm produced in most cases involving human rights violations is effectively irreparable. Victims have to be satisfied with something else, which is necessarily symbolic 'in the sense that what is lost is replaced by something that represents it'.[16] The goal is reparation that can legitimately aim to relieve suffering, alleviate the consequences of the wrongful acts and pursue societal goals such as deterrence, promoting reconciliation and goals specific to a particular case.[17]

The following list some of the elements put forward as desired by victims: financial compensation for different kinds of harm;[18] the opportunity to give testimony or speak the truth in settings such as truth commissions, said to contribute to psychological rehabilitation;[19] creation of an official and/or public record, acknowledgement of responsibility, recognition and apology. All are said to have the considerable capacity to reduce victims' suffering.[20] In some contexts investigation and punishment of those responsible is considered very important for victims, in others, less so.[21] Some assert that many victims are concerned to ensure that their case brings about change to benefit others and affect society at large, affirming its values. A number of studies indicate that what matters most to victims is to relieve their immediate problems of security, poverty and livelihood. Identification by victims of human rights abuses with a group having broader national or other aspirations, such as the Kurds or the Palestinians adds another element to their understanding of a satisfactory remedy.

A key finding is that victims are interested in process as well as result. Thus, it is not only the final outcome of efforts to seek remedies that matters to victims, but also *how* that outcome is achieved. Research in the field of criminal justice and victimology has shown that how Courts proceed, and how they treat victims, is important to victims' sense of justice.[22] Victims of crime want to be

treated with dignity and respect, to be notified about important developments and be informed about their rights and to receive support and protection; they are more likely to perceive proceedings as fair if they are given a voice.[23] Although such studies were conducted largely in national criminal justice systems in developed countries, other studies following the Truth and Reconciliation process in South Africa and the trials of the International Criminal Tribunal for the Former Yugoslavia suggest that concerns with procedural justice are broadly felt.[24]

In light of this complex picture of the great variety in what victims want and need, the law needs to create a framework that will enable human rights institutions and governments to do the right thing for victims. The next section looks at the law governing reparations and redress for human rights violations and the extent to which there is a convergence between what victims are entitled to expect under the law, on the one hand, and their wishes and needs, on the other.

3. Outcomes for Victims in Human Rights Law and Practice

3.1 What outcomes for victims are envisaged in human rights law?

The starting point for identifying the remedial framework for human rights violations is general international law. In the 1928 *Chorzów Factory* case, the Permanent Court of International Justice declared that a breach of international law leads to an obligation to make full reparation; such reparation must, as far as possible, wipe out all the consequences of the illegal act and restore the situation that would have existed if the wrongful act had not been committed, and where this is not possible, provide compensation.[25] This basic framework for dealing with the consequences of breaches of international law was confirmed by the International Law Commission (ILC) in its Articles on State Responsibility finalized in 2001. The ILC states that '(f)ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation or satisfaction', or a combination of those.[26] Although the ILC Articles are written in the context of interstate relations, the Commentary notes that they are without prejudice to obligations the state may owe to other actors.

With the development of international human rights norms, the language of rights is applied to this remedial framework. The major human rights instruments declare the right of victims to an effective remedy and reparation for the violation of their human rights.[27] Some human rights instruments specify that victims are entitled to compensation and/or other forms of reparation, though they tend not to define in detail what victims are entitled to receive, and there is no standard wording.[28] Most instruments impose these obligations on states. Individuals, and in some instances other entities such as corporations, may also have criminal or civil responsibility.[29] Explicit enunciation of a right to redress for groups

has come with the emergence of the concept of group rights, such as the rights of minorities and indigenous peoples and the right to self-determination.[30]

Three important instruments focus specifically on the rights of victims to remedies and reparation. One is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, developed under the auspices of the United Nations Commission on Crime Prevention and Criminal Justice. The text elaborates on the notion of who could be considered a 'victim', and affirms that a person should be considered a victim regardless of whether a perpetrator is identified or convicted.[31] The Declaration called for access to justice and fair treatment for victims, including the need for judicial and administrative processes to respond to the needs of victims by keeping them informed, allowing their views and concerns to be presented, providing them with proper assistance throughout proceedings and minimizing inconvenience to them, protecting their privacy and safety, and avoiding unnecessary delay.[32] The forms of reparation set forth are restitution, compensation and 'assistance', the last defined in paragraph 14 as 'the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means'.[33]

More broadly, the UN 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 (hereinafter the 'Principles and Guidelines on Reparation' or simply the 'Principles')[34] details the rights of victims of human rights violations to remedy and reparation. The text, finally adopted by the UN General Assembly in 2005 after a fifteen year contentious process,[35] is a wide ranging, in some respects victim-centred, compendium of the most important legal principles on the matter.

The Principles brought together for the first time the relevant standards governing the right to a remedy, including access to justice, and substantive reparation for the most serious violations. Even if states did not set out to establish new standards, and if in some respects the standards do not go as far as they might, the Principles filled a gap, created a point of reference and helped focus attention on implementation of the right to a remedy and reparation, and the need to consider the perspective and needs of victims. Since their adoption, the Principles have influenced the drafting of other instruments, including the Convention on Enforced Disappearances and the Rome Statute of the International Criminal Court.[36]

The main obligations of states are recalled: to provide 'fair, effective and prompt access to justice', and to make available 'adequate, effective, prompt and appropriate remedies, including reparation'. Such access to justice should be available 'irrespective of who may ultimately be the bearer of responsibility for the violation'.[37] Victims are defined in Principle 8 as 'persons who individually or collectively suffer harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights' as a result of violations, and may include 'immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization'.

The Principles include several provisions designed to take into

account the vulnerability of victims and ensure they are treated with respect: measures should be taken 'to ensure their safety, physical and psychological well-being and privacy'; victims who have suffered violence or trauma should benefit from 'special consideration and care to avoid his or her re-traumatization'; information about available remedies should be disseminated; measures taken to ensure that victims are not inconvenienced; and proper assistance provided to victims going through proceedings.[38] Acknowledging that human rights violations can be suffered by groups of victims and not just individually, the Principles provide that states 'should endeavor' to allow groups of victims, and not just individuals, to present claims for reparation.[39] Although the last mentioned is not a strong exhortation, the provision at least highlights this important issue.

As regards the forms of reparation, the Principles adopt the international law framework: restitution, compensation, satisfaction and guarantees of non-repetition, setting forth what constitutes full and effective reparation in respect of each heading.[40] Rehabilitation is included as an additional category in its own right, rather than as a sub-category of compensation, in recognition of its significance for victims. Principle 21 specifies that this should include 'medical and psychological care as well as legal and social services'.[41]

The Principles reflect a certain caution on the part of states as regards the extent of their obligations under international law to provide a remedy and reparations.[42] A significant weakness in terms of its usefulness as a framework for all human rights violations is the fact that, notwithstanding a reference to the right to a remedy and reparation for all violations, the scope of the instrument is limited to the most serious ('gross') violations.[43] States were also cautious about acknowledging responsibility for acts that cannot be attributed to them, and about any responsibility for historic claims. Nevertheless, the Principles provide that states should 'endeavour' to establish national programmes for reparation in the event that those liable are unable or unwilling to provide reparation.[44]

A third important legal instrument is the updated set of principles to combat impunity.[45] These principles are bolder than the Principles and Guidelines on Reparations, affirming the right to reparation for *all* violations, asserting the victims' right to know the truth about the circumstances in which violations took place, and the duty to preserve memory including preservation of archives and other evidence concerning violations. They also emphasize the need to involve victims at every stage; where states establish truth commissions, there should be broad public consultations to receive the views of victims. Remedies and reparations should be available, and 'victims and other sectors of civil society should play a meaningful role in the design and implementation of such programs'.

Along similar lines, in the *Lubanga* case, the first decision of the ICC on reparations, the Trial Chamber set out principles on reparations, including a number of principles aimed at maximizing the meaning and the impact of the reparation measures that would be implemented, not only as regards the direct victims (who in this case are former child soldiers and their immediate family members), but also vis-à-vis their communities.[46]

It can be concluded from this review that the framework for remedies and reparation established in international human rights

law is broadly compatible with the various types of process and outcomes that might be considered desirable by victims, identified in Section 2 above. That is, while further developments in the legal framework may be desirable,[47] the current framework seems capable of taking into account the various outcomes that may be relevant for victims.

Four broad categories of potential outcomes are useful to evaluate the extent to which these norms are implemented and the outcomes they are delivering for victims in practice:

(1) Individual remedies: measures targeted specifically at individual victims of human rights violations or groups of victims, and aimed at restoring the situation before the violation took place and/or providing relief and redress to the direct or indirect victim(s).[48]

(2) Justice and other measures of satisfaction: measures aimed at delivering justice regarding the specific violation and to the victim(s) affected, such as truth telling, official acknowledgement, investigation and punishment of those responsible.

(3) Measures of non-repetition: measures aimed at prevention of future violations and bringing about systemic change, such as legal reform, training of relevant officials, raising awareness, reforming institutions etc.

(4) Procedural justice: processes for achieving the above measures that treat the victim with dignity and respect, ensure equal and effective access to justice, allow special consideration for those who may have suffered trauma, and ensure that they have access to relevant information and assistance. These requirements are reflected in principles 10 to 12 and 24 of the Principles and Guidelines on Reparation.

3.2. What outcomes do the human rights institutions and mechanisms actually deliver?

Things have considerably advanced from the time when individuals were not considered to be subjects of international law and had to rely on their states to represent their interests. Now victims and sometimes groups of victims are regarded as actors rather than passive observers, entitled to directly claim remedies on their own behalf. When remedies at the national level are unavailing, there may be recourse to avenues at the international level, including trans-national remedies in another state (universal jurisdiction). The explosion in remedies for violations of international human rights norms at national, regional and international levels, the ever growing plethora of institutions set up to monitor, protect and remedy human rights violations, have been well described and assessed. These extraordinary developments in human rights law and practice carry with them the promise to deliver much to victims, but it is necessary to examine the actual results.

In exploring what the various human rights mechanisms can offer to victims, it is useful to begin by examining what states intended when they were established. The preambles to some of the major regional and international human rights conventions do not shed much light beyond statements of general aspirations to promote, protect and implement the rights contained in the

relevant convention,[49] and in some cases to provide avenues to enable individuals to seek (rather undefined measures of) redress. Instruments establishing national mechanisms in the wake of large scale abuses, on the other hand, tend to set out more specific objectives. For instance, one of the stated purposes of the Act establishing the Truth and Reconciliation Commission in South Africa was 'affording victims an opportunity to relate the violations they suffered; the taking of 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'.[50] The draft bill to implement reparation measures for human rights violations during the regime of Augusto Pinochet in Chile stated that: 'Reparations should be a process aiming towards the recognition of the facts in accordance with the truth, the moral dignifying of the victims, and the achievement of a better quality of life for the families most directly affected.[51] Notably in recent years the language of victims' right to reparation and the need for transitional justice mechanisms has entered the lexicon of international diplomacy.[52]

Very often, then, the mechanisms set up to allow victims to seek justice or reparations are vague about what victims may receive at the end of the day. Mechanisms at national level tend to be more specific than international mechanisms as regards powers to award different remedies. The Constitution of India, for instance, having set out a list of fundamental freedoms to be protected, provides for the right to petition the Supreme Court in order to enforce these rights, and gives the Supreme Court the power to 'issue directions or orders or writs... whatever may be appropriate, for the enforcement of any of the rights conferred'.[53] International instruments, by contrast, give little direction as to how to repair human rights violations and what those responsible, whether states or individuals, should be directed to do in specific cases. Each mechanism is left considerable discretion both to orient the objectives to be achieved by the measures it decides upon, and to define the content of those measures. The result, not surprisingly, is a rather inconsistent picture.

The types of decision or order that human rights institutions are able or willing to issue, based on the powers they actually have, naturally heavily influence the outcomes for victims. Some bodies are limited to issuing non-binding findings or recommendations,[54] others have the power to deliver compensation, whether through administrative procedures (such as national reparations schemes) or judicial decisions or judgments directed at states, non-state actors or individuals, including awards of reparation delivered in a context of criminal or civil proceedings.

A summary of the main types of remedies delivered to victims under various mechanisms is given below.[55]

3.2.1 *Individual remedies (compensation, restitution, and rehabilitation)*

Compensation is easily the most common form of reparation recommended or ordered, and the most commonly delivered to victims in practice. In national justice systems, compensation is a universal remedy awarded by courts in criminal and/or civil actions.[56] Many countries establish specific avenues for petitioning for remedies for human rights violations, particularly where rights

are entrenched in constitutions or bills of rights.[57] However there are often significant obstacles, whether procedural or substantive, to actions for human rights violations, including immunities, limitation periods and costs. National courts also commonly have the power to order restitution (for instance, for breach of contract) or acts of rehabilitation. Some national judiciaries have been particularly proactive and inventive in ordering remedies in public interest cases brought to enforce fundamental constitutional rights; for instance, Commonwealth courts have consistently awarded damages even though their remedial powers are typically framed only very generally.[58]

Reparations programmes established in the Aftermath of large scale abuses of human rights benefit large numbers of victims, typically administering compensation for individuals who have suffered from identified categories of violation. The most ambitious schemes have been those instituted by Germany for victims of Nazi crimes, and others were instituted in response to the brutality of the dictatorships during the last decades of the twentieth century (Chile, Argentina, Peru) and more recently, Colombia. Others have been either less ambitious or less successful (Haiti, El Salvador, South Africa). Several mass claims programmes have also been set up with international involvement, including several to deal with property claims as a fall-out of the conflicts in the Balkans, and the United Nations Compensation Commission to compensate victims of the 1990-1991 Gulf War.[59] These programmes were empowered to provide monetary compensation or restitution to claimants able to demonstrate their entitlement.[60] While not strictly human rights bodies, they often deal with suffering and loss in situations where violations of international human rights or humanitarian law have occurred. These bodies are a useful model for human rights violation and have efficiently paid many millions of dollars in compensation.

The regional and international human rights bodies also commonly recommend or order individual reparations. A team of researchers surveyed and analysed a total of 462 remedies (recommendations, orders, agreements through friendly settlements) adopted in 92 final decisions of the Inter-American Commission and Court of Human Rights between 2001 and 2006 (the SUR study).[61] They found that by far the most common remedies ordered—61 per cent of the total remedies—were compensation, symbolic reparation and restitution of rights. Indeed, the Inter-American system has been the most advanced of all the institutions adjudicating individual cases in its jurisprudence on restitution, compensation and rehabilitation. The Court has interpreted its power under Article 63 to award compensation for material losses resulting from the violation (loss of earnings and consequential damages such as costs incurred in searching for victims who have disappeared) as well as moral harm (subjective elements such as emotional distress, pain and suffering) determined on the basis of equity, and legal costs and expenses.[62] The Court issues detailed reparations judgments and has introduced several innovations in its decisions on compensation. In one case in dealing with lost earnings and future income, it tentatively introduced the notion that a violation of human rights had disrupted the 'life plan' of the victim.[63] On moral damages, the Court has been willing to make presumptions that suffering will occur, even in the absence of evidence being presented, based on factors such as a close family relationship and the seriousness of the

violation. The Court has also been willing to award compensation collectively to indigenous communities, recognizing that violations can be directed at a community as a whole and not just to individuals.[64] In addition to compensation, the Inter-American Court has also awarded measures of restitution and rehabilitation, emphasizing in its decisions the importance of medical and psychological care for victims to assist them in overcoming their trauma.[65] The ICC, in its first decision on reparations, cited extensively the case law of the Inter-American Court on compensation and rehabilitation.

The other regional human rights bodies have been disappointing when it comes to compensation, and there is little to say about their contribution. Dinah Shelton, in her seminal work on remedies for human rights violations, observes that none of the human rights bodies have taken the opportunity to develop coherent and consistent theory and practice regarding damages.[66] The European Court of Human Rights has shown little interest in responding to the specific needs of victims. Whether or not detailed claims are argued on the basis of specific losses or harm (frequently they are), the Court disposes of 'just satisfaction' in a couple of lines, simply ordering a lump sum by way of pecuniary and/or non-pecuniary damages, typically declaring that it has decided 'on an equitable basis', and rarely giving reasons for the amounts determined.[67] Nevertheless, the Court does regularly order damages to be paid and there is a relatively high degree of compliance with its reparations decisions. The African Commission on Human and Peoples' Rights has not developed a consistent approach to remedies either. Open Society Justice Initiative (OSI) compiled a study of the European, Inter-American and African human rights courts and the United Nations Human Rights Committee, published in 2010.[68] According to the OSI study, the African Commission has recommended compensation in around 15 per cent of its cases, rarely specifying the amount. It remains to be seen whether the African Court will take a different approach.

The UN treaty bodies tend not to be very specific in the remedies they recommend, but where they find that a violation has taken place, consistently state that the state party must provide an effective remedy to the victim, and sometimes call for compensation.[69] As part of the reporting mechanism, several of the UN treaty bodies, including the UN Committee against Torture and the Committee on the Elimination of all Forms of Discrimination Against Women, regularly encourage states to set up specialized rehabilitation services and other programmes of support and assistance for victims.

Of the international criminal tribunals, only the International Criminal Court and the Extraordinary Criminal Chamber for Cambodia (ECCC) may award reparations to victims if they convict an accused of crimes.[70] In its first decision on reparations, in the *Lubanga* case, the ICC cited international human rights law in defining principles relating to restitution, compensation and rehabilitation. The victims in the case are largely former child soldiers, and the Trial Chamber included, in its definition of what might be covered by rehabilitative measures, steps to facilitate their reintegration into society, address the shame that child victims might feel, avoid stigmatization, and take symbolic measures that might contribute to the process of rehabilitation such as commemorations and tributes.[71]

Few judgments to date include remedies for groups as such,

although the Inter-American Court of Human Rights makes such awards consistently in respect of indigenous land claims, following its seminal decision in respect of an indigenous community in Nicaragua.[72] The ICC is empowered to award reparation on a collective basis, but it is not yet clear whether that will involve awards to collective victims as such.[73]

In general, in the absence of any international standards on levels of damages awards, unless there are applicable scales determining damages in a particular case (such as where relevant national law might apply), human rights litigation will almost always be a lottery from the point of view of level of awards.[74] Even the Inter-American Court of Human Rights, in so many ways the pioneer on reparations, lacks consistency in its own awards. The levels of awards made by courts in many human rights cases are so high that it would simply not be feasible for states to pay them to every victim. These vagaries of litigation are understandably bewildering for victims. It is clearly possible to develop more objective ways of determining damages awards and making them predicable and objective, as is shown in constitutional litigation or criminal and civil proceedings at national level, including for emotional suffering and other difficult to measure heads of damage.

3.2.2 *Justice and other measures of satisfaction*

In national attempts to deal with the past in the wake of large scale violations, the question of impunity has been highly contentious. In Latin America following the dictatorships of the 1970s and 1980s, victims insistently called for those responsible to be brought to justice, for amnesties to be set aside and for formal acknowledgement of state responsibility for the violations. The Inter-American Court of Human Rights' landmark and highly influential decision in 1988 in the case of *Velasquez-Rodriguez* established the duty to prevent, investigate and punish human rights violations in addition to compensating the victims.[75] While regional and international human rights bodies recommend or order such measures on a regular basis, usually upon request of the victims, it has often proved difficult for states emerging from repression or conflict to bring to justice those responsible for past crimes.[76] The SUR study on the Inter-American system found that of the total remedies ordered during the period of the study, only 15 per cent related to investigation and punishment and those orders had by far the lowest level of compliance (only 10 per cent total compliance, and 13 per cent partial compliance).[77] The African Commission on Human and Peoples' Rights almost never, in its recommendations, includes the investigation and punishment of those responsible.[78]

The European Court of Human Rights regularly affirms the duty to investigate and punish, but generally holds it will not indicate which measures are required to execute a judgment. Even in right to life cases, the Court generally declines to indicate that a government should hold a new investigation, based on the general principle that the state is free to choose the means by which it will discharge its obligation to abide by the judgment of the Court. Only more recently, since it adopted a new procedure for dealing with repetitive cases, and taking great pains to stress the exceptional circumstances that led it to do so, has the Court in rare cases indicated that the state should open a new investigation.[79] The

United Nations treaty bodies such as the Human Rights Committee often highlight the need for such measures, particularly investigations to establish the facts and bring to justice those responsible,[80] however, with the important limitation that they do not have the power to issue binding orders.

The Inter-American Court has also recognized a wide range of other measures aimed at providing satisfaction to victims, including public disclosure of the truth, official statements acknowledging responsibility of the state, identification of the remains of the disappeared and symbolic measures such as monuments. Quite a number of truth commissions (or commissions of inquiry) have been established following periods of transition from conflict or political oppression. They are sometimes viewed as an alternative to or even as a means of avoiding bringing to justice those responsible for violations.[81] In some instances they have triggered prosecutions, acknowledgements and apologies, as well as establishing a record of events.[82] In Sierra Leone, prosecutions took place in parallel with the truth commission. They are considered further below.

3.2.3 *Measures of non-repetition*

Fewer institutions have powers to recommend or order such remedies, and overall they are the least often enforced of all the types of remedies in practice. At national level, specific bodies such as national human rights commissions may have powers to make recommendations for changes to legislation and other measures targeted at avoiding repetition of human rights violations. Using public law remedies, the courts in some countries have been able to order the relevant authorities to amend practices. The Indian Supreme Court has been particularly assertive. For instance, when dealing with a constitutional rights case involving a death in custody, it attempted to tackle the problem in a wider way by setting out eleven 'requirements' and ordering that they be issued to every police station and followed in all cases of arrest and detention.[83]

Among the regional and international human rights bodies, the UN Human Rights Committee regularly recommends law reform, and frequently calls upon states to take steps to ensure similar violations do not occur in the future.[84] The European Court of Human Rights did not have a strong record on ordering measures of non-repetition until recently. As noted, the Court from its early cases chose to interpret its powers to order reparation narrowly, declining to deal with systemic underlying causes of violations. More recently, however, faced with the reality of thousands of identical petitions deriving from the same underlying problem ('repetitive cases') that have clogged the system, the Court introduced a new Pilot Judgment Procedure in 2004. This procedure enables the Court to select one or more cases for priority treatment, and in doing so, 'will seek to achieve a solution that extends beyond the particular case or cases so as to cover all similar cases raising the same issue', including identifying the 'dysfunction' that is the root of the violation, giving clear indications to the Government as to how it can deal with it, and 'bring about the creation of a domestic remedy capable of dealing with similar cases... or... the settlement of all such cases pending before the Court'. According to the OSI study, the African Commission on Human and Peoples' Rights has recommended some type of legal reform in around 20 per cent of its cases.

Notwithstanding, while states usually implement just satisfaction awards (damages), they are often less willing to implement measures to prevent repetition of the violation, such as amending legislation or practices. States pay up, but don't change the underlying practice; it has to be recognized that doing so may require legislation or even constitutional amendment that can be a prolonged process and politically difficult to achieve. According to the SUR study, of the total remedies ordered by the Inter-American human rights system during the study period, 22 per cent could be described as preventive measures (training public officials, raising social awareness, introducing legal reforms, creating or reforming institutions).[85] Interestingly, levels of compliance with these types of remedies were relatively high in the Inter-American system: remedies requiring the training of public officials had a 42 per cent compliance rate. On the other hand, remedies agreed upon in the framework of processes of friendly settlements almost never included measures of legal reform.[86] The Inter-American Court has also made some important pronouncements including in the Barrios Altos case, that applying amnesty laws to gross human rights violations contravened international human rights norms.

3.2.4 *Procedural justice*

Given the importance to victims of procedural justice, including being treated with dignity and respect, being kept informed, receiving support and protection and having their voices heard, it is important to consider the record of human rights institutions in this respect. The more victims are informed and participate in the process, the more they are likely to find the outcome satisfying, even if it is unfavourable. In Europe, significant political will has been generated to improve the treatment of victims in criminal justice systems. Extensive standard-setting exercises have been carried out, even if implementation in European states remains patchy.[87]

International human rights mechanisms have improved significantly over time in their general friendliness and openness to victims. Most of the regional and international human rights mechanisms have prepared user-friendly information to assist applicants.[88] Some truth commissions and international mass claims processes instituted public information campaigns to make potential claimants aware of their programmes and how to access them. Legal aid is available for indigent applicants in the Inter-American and European Courts of Human Rights and for victims wishing to participate in international criminal proceedings, where they are permitted to do so.[89]

The UN human rights bodies present particular challenges for victims, because of the confusing proliferation and fragmentation of bodies. Non-governmental organizations have published and distributed various manuals on how to navigate the international human rights mechanisms. Nonetheless, serious criticisms are warranted of system that establishes so many different specialized treaty bodies, each dealing with a specific right or affected group and following differing procedures set out under the respective human rights convention, forcing applicants to choose between them. It is also notable that most UN treaty bodies afford no hearing to victims presenting cases but instead decide the matter solely on the written record. Some assert that this situation undermines the overall understanding of human rights as well as

the individual's ability to claim them.[90] States also may undermine the system by focusing the different mechanisms on reporting and verifying individual facts, making them lose sight of the overall picture and allowing violations to take place making the apparent increase in accountability deceptive. Others argue that the proliferation of avenues is healthy and necessary.[91]

The reality is that it remains very difficult for many victims to access legal mechanisms for enforcing human rights without assistance. Even in developed countries, ignorance of legal rights, lack of available funding or legal assistance and lack of confidence can make access to remedies rather random, and particularly challenging for groups such as women, the disabled, migrants, and immigrants. For this reason, programmes have been established by non-governmental organizations to assist applicants to access the various human rights mechanisms, both the international and the national ones. The SUR study of remedies awarded by the Inter-American system showed that 80 per cent of petitions were brought by national and/or international non-governmental organizations and ombudsman offices, whereas only 20 per cent were brought by individual petitioners.[92] Unfortunately, such programmes are not available everywhere.

Assistance is required not only to enable victims with the technical legal aspects of accessing remedies. General support and accompaniment through the process can make the difference between a victim feeling empowered and transformed by the process, or feeling disappointed and frustrated.[93] Innovative projects have been initiated in the Inter-American human rights system and some truth commissions to engage psychologists alongside lawyers to support victims through the legal process. A team of health professionals engaged in such a project in the Inter-American system concluded that there is a need to help lawyers to understand the importance of providing psychological support to victims, to accompany the victim regarding their emotions and experiences, establish comforting human contact, assistance in mourning, control fears, build bridges with lawyers and generally provide a framework of safety and trust.[94]

Victims' attitudes towards human rights processes are greatly influenced by their relations with the persons with whom they have the most contact in that context, including lawyers, officials and NGOs. These relationships are crucial and persons dealing with victims should have appropriate training. Lawyers have to be able to find a way to engage with victims in order to be able to explain the relevant proceedings, take their instructions and represent their interests properly. Lawyers may not come across such challenges in their normal caseload. A set of best practice guidelines for lawyers dealing with victims of domestic violence and sexual assault issued by the American Bar Association warns: 'Each victim experiences and processes the trauma of abuse differently; some victims display outward signs of distress while others display no signs of trauma at all. Some victims may present as excessively hostile or difficult or, in contrast, be surprisingly flat in their affect. Aggressive or emotional over-reactions and emotional numbness (sometimes with accompanying high-risk behaviours) are normal responses to both isolated and ongoing assaults and should not be taken as indicators of instability or lack of credibility of the victim.'[95] Lawyers representing victims of human rights violations need to know how to deal with such behaviours and to call on professional counselling and support when necessary, and seek at the very least, assistance

from individuals who are trained to respond appropriately.

NGOs are equally important, often being the ones with the most constant contact with victims. International standards require state action to enable victims to receive support and assistance, but in practice, it is often left to the non-governmental organizations to provide support to victims through whatever process they follow. In North America and Europe, victim support programmes can be highly professionalized. Elsewhere, NGOs may not always be best equipped to attend to the needs of victims effectively. Given the central importance of such groups around the world in ensuring remedies for victims, more needs to be done to support human rights organizations on the front line to ensure they are equipped with the tools to manage their interactions with victims appropriately. While some organizations develop guidelines for their interactions with victims,[96] this is by no means common, and this is an area where more best practice guidelines and training could be beneficial.

3.3 Vehicles for delivering reparation to victims

Results do not necessarily come from one measure in isolation. It is common for simultaneous action to be taken by different actors on many fronts when human rights violations occur, including seeking local remedies, reporting to UN treaty mechanisms and bringing individual complaints to international bodies. Timing can be important: while violations are still going on, it may be difficult to obtain anything other than individual remedies (while publicizing the fact that violations are going on), whereas after a transition, other options for broader benefits may emerge, such as reparations programmes and truth commissions.

The relative merits of individualized over other processes for responding to human rights violations are much debated. There are many reasons why it is not in victims' interests to rely on individual remedies through judicialized proceedings unless they have to. Legal obstacles such as immunities, general lack of political will and delay, or simple lack of resources or capacity to implement, all may impede the process, with the result that the promised results do not materialize, or arrive extremely late. The UN treaty bodies are overwhelmed by the volume of work accompanying the growth of the treaty body system and have significant backlogs.[97] Enforcement and length of proceedings are huge problems. State compliance with decisions is disappointing. The SUR study on the Inter-American human rights system found non-compliance with respect to 50 per cent of the remedies.[98] The highest level of compliance was with remedies demanding some type of individual reparation (47 per cent total compliance, 13 per cent partial compliance), and remedies agreed upon through a process of friendly settlement were the most likely of all to secure compliance (54 per cent total compliance). The study showed that the *average* duration of proceedings, from receipt of the petition to resolution, was seven years and four months.[99] The OSI report also found serious problems of compliance with the UN Human Rights Committee's decisions.[100] Both the European Court of Human Rights and the African Commission on Human and Peoples' Rights have in recent years improved their follow up and enforcement of

judgments, which can be expected to improve compliance.[101]

The adversarial nature of many legal proceedings can be painful for victims. Another frustration for victims can be the selectiveness of many legal processes. In human rights courts, victims may have to argue for widening the scope of those who benefit from reparations awards. In international criminal courts, there has been considerable frustration about the determination of which victims are included or excluded as participants in proceedings. In the ECCC's first case, a number of victims were first accepted civil parties at the pre-trial stage, then rejected at the trial stage. At the International Criminal Court, the Prosecutor's policy to limit charges brought to a few representational incidents means it is likely that only victims of selected incidents are entitled to participate in the proceedings or receive reparation.[102]

Despite this catalogue of drawbacks, individual complaints mechanisms of various kinds have proved to be very effective. Remedies such as habeas corpus and writ of *amparo*, and interim measures have provided important relief. Cases have prevented application of the death penalty or corporal punishment. Individual litigants, as some of the examples in this chapter show, can create important legal precedents, raise awareness and galvanize action to address violations.[103] It should not be forgotten that taking proactive steps in their own names to enforce rights can be important to victims' sense of regaining control, and the opportunity to drive a process can be important to some.

In cases of large scale abuses, alternatives such as administrative compensation schemes, friendly settlement procedures and other non-contentious mechanisms can be effective in providing remedies to many more victims, and are also less stressful for victims. Mass claims programmes have introduced methodologies and techniques designed to facilitate the processing of large numbers of claims expeditiously, while responding to the difficulties that victims often face in producing proof and allowing for alternative means of verification.[104] For instance, they have introduced lower evidentiary standards, reliance on presumptions, statistical sampling and standardized verification and valuation. In some instances techniques put in place allow individual claimants to avoid having to present evidence.[105] However establishing such mechanisms requires political will and action, often at the international as well as the national level.

Large scale violations also highlight possible tension between individual and group rights, and raises the question of whether it would be more appropriate to apply a different remedial framework and allow claims to be made by groups in certain cases. In cases of violations against persons who identify themselves as members of a minority (whether cultural, ethnic, national or other) or indigenous group, for instance, where the violation is clearly targeted against a group as such and symptomatic of wider abuses, it may not make sense to address the problem through cases brought by individuals. Some courts, such as the Indian courts responding to fundamental constitutional rights petitions, have issued orders that aim to have a wider reach even when the original petitioner is an individual. The European Court of Human Rights has moved in a similar direction with its pilot judgment process. In general, however, courts or other remedial processes only rarely accept group claims,[106] often in favour of collectives such as institutions. The International Criminal Court now can recognize as victims institutions such as schools, hospitals or religious or cultural organizations that have suffered

harm as a result of crimes.

Transitional justice mechanisms are often criticized for not satisfying everybody. Criminal courts are not a forum for victims to tell their stories, but truth commissions have the opposite problem. While they allow victims to tell their stories and sometimes to receive formal acknowledgement, they may provide no, or at best only minimal, measures to investigate and punish. Moreover, their record at delivering reparation is poor. While advocates for appropriate transitional justice mechanisms call for the full range of responses, there is rarely the political will or resources to make it happen.

It is not possible to conclude, based on the above picture, that particular types of responses to human rights violations are always more effective or successful than others from the victims' point of view. A lot depends on what sort of process is put in place around the particular response, and how the victim is treated in that process.

4. ARE VICTIMS GETTING THE RIGHT OUTCOMES: WHAT IS A VICTIM-CENTRED APPROACH?

There are increasing calls to put victims at the centre of all steps taken in the aftermath of human rights violations, whether individual complaints, truth commissions, reparations programmes, criminal proceedings, or other. There is a sense that if this is not done, any measure taken will have failed in a fundamental aspect. On the individual level, victims will be left unsatisfied by what is done to repair violations, even if decisions are taken with the best of intentions. At the societal level, reparation measures will be less likely to achieve important goals such as reconciliation. A comprehensive and generally accepted view on what a victim centred approach actually means, however, and how things should be done differently appears to be lacking. Policy makers need clear instructions.

There would appear to be four different junctures at which a victim centred approach could be considered:

(a) Choice of measures to be taken: in the wake of large scale violations of human rights, in practice those most affected are rarely consulted meaningfully on decisions on which measures should be taken. Standard transitional justice models are helpful as guidelines, but the UN Commission on Human Rights has recalled the necessity for 'a comprehensive process of national consultation, particularly with those affected by human rights violations, in contributing to a holistic transitional justice strategy that takes into account the particular circumstances of every situation and in conformity with international human rights standards'.[107] Indeed, drawing particularly on human rights approaches to development, the Office of the High Commissioner for Human Rights (OHCHR) asserts that national consultations are required under international human rights law.[108] The same principle of consultation holds good for those advising individual victims on seeking remedies, when determining which avenue of redress would be most appropriate for the particular victim. The rationale is that if measures chosen do not

accord with what the victims consider important, they will be less effective.

(b) Design of measures: for measures to achieve their objective, victims must have input into the design of specific measures. Consultations were held in Peru and Chile, for example, on the form of reparations that should be implemented in the respective national programmes. The Inter-American Court of Human Rights has experimented with involving psychologists and other experts, and seeking victims' views in designing reparations awards, on the basis this is more likely to bring about results which will provide satisfaction to the victims. One commentator has called for a more participatory model involving negotiation with victims and mediation between stakeholders.[109]

(c) Implementation: during the process, whether judicial proceedings, national programme, or other process, a victim-centred approach would involve provision of regular information to victims, and their continuing participation.

(d) Evaluation: quantitative and qualitative surveys and other evaluations conducted after measures have been taken to redress human rights violations are important to enable adjustments to be made or simply to serve as lessons for the future.[110] Studies of truth commissions and victim participation in criminal proceedings in Timor-Leste, South Africa, Nepal, and Cambodia revealed where processes failed to match victims' expectations.[111]

In determining how victims should be given a central role at each of these junctures, nothing should be presumed, as victims' views will vary from case to case and will need to be identified. There will often be many people claiming to speak on behalf of victims. The Office of the High Commissioner for Human Rights has published a handbook on national consultation that provides guidance on different methods of holding consultations with examples of good practices.[112] Expertise in quantitative and qualitative population based surveys exists and has been applied in a number of places including Kosovo, the DRC and Northern Uganda.[113] The ICC Trial Chamber in the *Lubanga* case set out a five-step process including appointment of experts, consultation with local communities, public debates to explain the reparations principles and address victims' expectations, and collection of proposals, before any decisions on reparation could be made.[114]

Consultations will often reveal divergent views among victims. This is to be expected as a normal part of the process, and, whether it arises in the course of collective applications to judicial bodies, national consultations in the wake of mass violations or otherwise, will need to be discussed and addressed.

A victim-centred approach would also be one that gives priority to the needs and concerns of victims over other concerns, wherever possible. It is clear that the law cannot be guided solely by the expressed wishes of the victims. There may be other policy imperatives or wider interests that trump them. For instance, individual victims' desires for revenge may conflict with wider society's views of what is desirable. Debates around what constitutes appropriate punishment (death penalty, corporal punishment) is one area where such conflicts might arise. Another is competition for scarce resources: in the aftermath of conflict or

large scale violations of human rights, post-war Germany and the oil reserves of Iraq following its invasion of Kuwait proved capable of meeting massive compensation awards without being considered to unduly hamper their countries' development. Governments in South Africa and Chile, in contrast, felt constrained to limit compensation schemes to ensure their countries' development. Studies that have been done of victims' views show that social grievances, economic support, basic needs and security are consistently a high priority for victims, whereas transitional justice arrangements commonly do not address these.[115] For instance, a survey of a representative sample of 160 families of people disappeared in Nepal found that those victims emphasized the need for truth about the disappeared and economic support to meet basic needs, while criminal justice was not a priority.[116] A practical problem may be that what victims want may simply be impossible. Some rights, social and economic rights, for instance are inherently more difficult to implement than others and can present huge challenges.

One lesson that should have been learnt is the vital importance of careful and responsible management of communications with victims, taking into account their vulnerability and intense emotional engagement. This is as important when dealing with an individual in a specific case as when dealing with large numbers of victims about a national reparations programme or justice exercise. There are too many examples where victims have felt hugely let down, at least partially due to poor communication or inadequate decision making. In Cambodia's ECCC, for instance, victims in the *Duch* case were led to believe that they might receive reparations, which ultimately could not be delivered.[117] There is no avoiding the need to deliver news that victims do not wish to hear on occasions. In societies where there are not sufficient resources for reparations, difficult decisions have to be taken about whether to use precious resources for general development or for reparations. Courts will take decisions that victims do not like, but this is a good example of why it is essential to have participation and consultation from the earliest stages, including awareness raising about the full range of options, the relevant constraints and the goals to be pursued.

A related crucial matter in many impoverished societies is to make sure that any measures taken to recognize and redress victims of past violations are actually understood and perceived by victims as being intended as reparation. How a particular measure is presented has a lot to do with providing meaning, in reparatory terms.[118] The ICC's Trust Fund for Victims, for instance, has to take care in how it explains its assistance projects for victims of ICC crimes, or it risks being viewed as just another humanitarian agency operating in Africa. Given that so many victims' studies show that economic and social issues figure prominently in the demands and expectations of victims following large scale human rights abuses, and those violations are often linked to access to resources issues, it becomes increasingly difficult to ignore economic and social justice questions when thinking about reparations.

Debate has emerged fairly recently on whether or not policy makers should be prepared to consider local forms of justice if they are the most meaningful for the victims. While this is a controversial topic, recent attention has been paid to the value of local practices of memorialization and commemoration and customary or traditional forms of justice and reconciliation. Some argue that these can be more meaningful for victims or are at least a pragmatic

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solution.[119]

Societies may also have to engage with complex societal issues. What if the interests of individual victims differ from those of their broader community? What if some victims want to seek remedies that are counter to the broader political goals of their (national, political, ethnic) group? What if there is a clash between some victims who do not want to return to the situation before the violation took place but want reparation to bring about transformation to a better future? These questions have been raised particularly in the context of women.[120] In its first decision on reparation, the ICC judges endorsed the need to take such issues into consideration, stating that 'reparations need to address any underlying injustice and in their implementation the Court should avoid replicating discriminatory practices or structures that predated the commission of the crimes'.[121] This decision reflects the increasing attention being given to such issues and provides a welcome indication that they are not being shirked.

Taking a victim-centred approach need not always mean that victims are the main drivers in every process. In criminal proceedings, the main focus must be on determining guilt or innocence. This does not mean that victims' voices cannot be heard, as indeed is the case in some national and international criminal proceedings, but their views and concerns are held within prescribed limits. Even so, permitting victims to be active participants in some of the international criminal tribunals has opened up a debate about the extent to which this represents a shift in international criminal law away from a purely punitive goal towards a goal that is more reparative and victim-centred.[122] The role of civil party or 'participant' afforded to victims in some international criminal tribunals, following civil law models more or less closely, gives victims the opportunity to convey their views and concerns during the pre-trial and trial proceedings through a legal representative and, if a conviction results from the trial, claim reparations. While there is fairly limited experience to date, tribunal watchers are asking how meaningful can this be when the main business of the Court is determining guilt or innocence, when the role of each victim is diluted by sharing a lawyer with hundreds or in some cases thousands of other victims, and when (in the case of the ICC and the Special Tribunal for Lebanon) the Court's proceedings take place far away in another continent.[123] Nevertheless, those courts that have adopted such an approach have embarked on a path that has an impact on its work in general. This significance was remarked on by one Chamber of the ICC which stated that: 'The reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. In the Chamber's opinion, the success of the Court is, to some extent, linked to the success of its reparation system.'[124]

There is an ever increasing volume of literature on transitional justice, much of it scrutinizing how satisfactory different measures are, or are not, for victims. Because reparative justice can only aim to reduce the consequences of victimization and not to undo the human rights violation itself, this is in some ways an impossible task. No reparation will entirely remove the harm done, so the goal in most instances can only be symbolic, to alleviate the suffering and not to erase it entirely. This is one reason why it is vital to engage an inter-disciplinary mixture of specialists to evaluate the impact of different measures and recommend best practices and courses of action.[125]

Another important policy debate that arises in designing remedies for human rights violations is how to strike the right balance between providing relief for victims of past violations, and preventing similar violations in the future. Some processes are clearly more geared towards relieving the effects of violations on victims. Others, such as judgments of the European Court of Human Rights, aim to bring about change but do not pay much attention to individual victims, while others simply do not have the power to do so (UN human rights bodies). A few, like the Inter-American human rights system and some transitional justice mechanisms try to do both. When considering the outcomes for victims of attempts to redress human rights violations, many questions arise about what goals should be pursued—individual or collective relief for victims, reconciliation in society, retribution, longer term improvement in human rights. It is easy to forget the individual victim in focusing on bringing about wider change. One important reason for paying attention to this is the fact that, as many studies have shown, the way all efforts to address human rights violations are perceived by victims will have an impact on the effectiveness of those efforts. Experiences to date show that there are many ways to ensure satisfactory outcomes for victims, even with a focus on other goals.

5. CONCLUSIONS

Putting right a wrong that has been done has always been one of the basic tenets of international law and the desire to do something to alleviate the suffering of victims has been a huge impetus in the development of human rights law. The massive violations that took place during the Second World War, particularly the Holocaust, are often cited as the major trigger for the development of human rights law and institutions. Since then, there have been extraordinary achievements in developing legal norms and institutions designed to promote and protect human rights, including the procedural and substantive remedies that victims of those violations are entitled to expect.

At the outset, this chapter posited that the measure of success is not so much whether the mechanisms established to promote and protect human rights are in fact producing outcomes for victims at all, but crucially, to what degree those outcomes resolve in some way the situation for the victims and are seen by them as satisfactory. The review undertaken shows that while efforts to redress human rights violations have produced a considerable volume of legal instruments, reports, recommendations, decisions, and programmes, and a lot has been achieved in terms of standard-setting, what victims have actually received at the end of the day is less impressive. There are some significant issues that need to be addressed. To make victims' right to reparation effective, the elaboration of a convention based on the Principles and Guidelines on reparation would be a constructive step. The outcomes for victims are patchy: more results are seen in some countries and regions than others. This chapter has provided more examples from Latin America and Europe, fewer from Africa and Asia. The fact remains that many victims of human rights violations are not able to access any avenue of redress, and this is especially the case in the aftermath of large scale violations arising from conflict.

We now know a lot about what victims say themselves about what they want when human rights violations occur, and what is beneficial for them. Surveys and studies by psychologists and others have explored the expectations and perceptions of victims of human rights violations and sought to identify what outcomes will help them to heal, move on with their lives and achieve reconciliation, as well as to assess what impact the models adopted so far have had. Political, social, economic and cultural factors may all come into play in shaping victims' perceptions, in addition to the experience of the violation itself. A key message emerging from recent scholarship on transitional justice and reconciliation is the warning that there are no easy options, and no 'one size fits all' solutions in such circumstances. Victims want a complex mix of things that cannot be presumed in advance, so efforts must be made to establish it in each instance. While it is important to take action to prevent future violations and reconcile societies, the need remains to provide relief to victims who have already suffered violations.

What also emerges is the importance of procedural justice and victim-centred approaches; going through various reparations processes can be positive and empowering, but it is important to ensure that victims are properly supported through the process and can have a voice. Human rights law needs to be demystified and humanized, support structures created and procedures made less stressful for victims. More can be done to develop and make available best practice guidelines and training of people who interact with victims in the course of reparative measures including lawyers, officials and NGOs, as well as in areas such as consultation and participatory processes. The interplay between group rights and remedies could usefully be further explored and clarified.

Finally, to put victims at the centre and do more to give them what they want and need, requires paying more attention not only to achieving *more* remedies for victims, but the *right* ones. If this is not done, there should be no pretence that it is for the sake of the victims.

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