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Appraising the Socio-Economic Turn in Reparations: Transitional Justice for Cholera Victims in Haiti

Nicolas Lemay-Hébert* and Rosa Freedman**

ABSTRACT[∞]

After belatedly apologizing for the cholera epidemic in Haiti, the ‘New Approach to Cholera in Haiti’ by the UN and the promise of material assistance to victims through a ‘victim-centred approach’ highlight how the victims turn and the socio-economic turn are increasingly pivotal in the field of transitional justice. In light of these growing calls, we suggest a matrix to clarify the debate made of two separate dimensions: the focus of reparations – collective versus individual – and the means of reparations – symbolic versus material. Based on fieldwork conducted in March 2017 in the communities most affected by the cholera outbreak, this article demonstrates how the tensions between reparations offered by the UN (with a preference for collective symbolic reparations) and the reparations demanded by the victims (individual material reparations) can help understand the current stalemate in Haiti, and hopefully inform the next steps in the process of remedy for the victims.

KEYWORDS: Cash transfers, compensation, peacebuilding, peacekeeping, United Nations

INTRODUCTION

There is a growing discussion in the literature on whether or not gross human rights violations occurring during natural disasters should be addressed through transitional justice processes, and in parallel, there is international legal momentum behind claims for reparations and compensation.¹ The case of cholera in Haiti was a catalyst

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¹ Megan Bradley, ‘More Than Misfortune: Recognizing Natural Disasters as a Concern for Transitional Justice,’ *International Journal of Transitional Justice* 11(3) (2017): 400–420; Pamina Firchow and Roger

in bringing these issues to the forefront. The actual role of the United Nations in the Haitian tragedy, an actor whose mandate included bringing stability to the country, makes this discussion all the more relevant. If other instances of natural disasters are met with a relative sense of fatality by Haitians, the discussion took a different turn in Haiti once the clear source of the epidemic had been established as the United Nations Nepalese camp near Mirebalais. One could argue that all natural disasters include injustices and that massive violations of human rights should be properly dealt with, but the case of the cholera epidemic became an emblematic case for Haitians in terms of reparations and compensation.

This article makes the point that debates around transitional justice – understood as ‘efforts to redress the legacies of massive human rights abuses’² – can inform the process of finding a right and just solution to this issue. Transitional justice is usually understood to include four distinct pillars: truth, justice, reparation and guarantees of non-recurrence. In the context of this article, we will focus exclusively on the reparation pillar. This article engages with the literature on compensation and reparation in transitional justice,³ by connecting two specific turns in the literature: the victim-centred turn and the socio-economic turn. To clarify the policy debates around reparations, we suggest a matrix made of two separate dimensions: one analysing the means of reparations (symbolic versus material) and the other one looking at the focus of reparations (collective vs individual). We suggest that this model can help understand the variety of practices in specific contexts, and help inform the current debate on how the international community should compensate cholera victims in Haiti. One of the main findings of our research is the unmitigated desire from local communities to access individual material reparations instead of the standard collective reparation that is usually presented as the *de facto* solution for the compensation issue. The UN has outlined two potential approaches to material assistance, namely community projects in areas most affected by cholera (the community or collective approach) and payments to the families of those who died (the individual approach). The UN has pledged to consult with victims in developing the material assistance package, but in practice it ‘has foreclosed that possibility [monetary payments] seemingly without carrying out consultations or producing a detailed feasibility assessment’ according to the 14 UN mandate holders.⁴ Hence, according to the same mandate holders, ‘compensation is ordinarily a central component of the right to an

Mac Ginty, ‘Reparations and Peacebuilding: Issues and Controversies,’ *Human Rights Review* 14(3) (2013): 231.

- 2 Pablo De Greiff, ‘Theorizing Transitional Justice,’ in *Transitional Justice*, ed. Melissa Williams, Rosemary Nagy and Jon Elster (New York: New York University Press, 2012), 40; see also: Marita Eastmond, ‘Introduction: Reconciliation, Reconstruction and Everyday Life in War-torn Societies,’ *Focaal: Journal of Global and Historical Anthropology* 57 (2010): 3–16.
- 3 If reparation generally refers to material compensation in common parlance, the concept has been used in the transitional justice literature in a wider sense as a process with the purpose of ‘relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations.’ Roman David and Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons From the Reparation of Human Rights Abuses in the Czech Republic,’ *Human Rights Quarterly* 27(4) (2005): 393.
- 4 Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘UN Inaction Denies Justice for Haiti Cholera Victims, Say UN Experts,’ 30 April 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25851&LangID=E> (accessed 5 August 2021)

effective remedy, and development projects are simply not a replacement for reparations.⁵ As such, this article answers the call for more empirical research on victims' perceptions of justice,⁶ and highlights the importance of material compensation in the process of reconciliation, an element that has been highlighted by previous landmark studies.⁷

This article is divided into three sections. The first section locates the debate around reparations in the transitional justice literature, highlighting the growing call for a victims turn as well as a socio-economic turn in the field. This article makes a unique contribution to the literature by suggesting that a matrix can help us better understand reparations debates, looking at the intersection between two variables: the focus of reparations (collective or individual) and the means of reparations (material or symbolic). In doing so, we contribute to the literature, linking international development with transitional justice, and highlighting the fact that they have more commonalities than differences between them. The second section highlights how the field of international development has increasingly shifted towards cash transfers, thus highlighting the importance of individualized material reparations. The third section briefly summarizes the cholera issue in Haiti and its significance, whilst the fourth section presents how we have used participatory action research to conduct fieldwork in Haiti. The fifth section finally presents the results of our fieldwork, and especially how participants have discussed the importance of consultation, but also their positions on individual and collective reparations. It appears clearly that the victims and representatives of victims show a preference for individual material reparations, and the article discusses why they express this opinion.

THE DIFFERENT DIMENSIONS OF REPARATIONS

This article sits at the intersection of two specific 'turns' in the transitional justice literature. First, there is a general move towards victim-centred approaches in transitional justice, understood as a victims turn in transitional justice⁸ and defined as a primary emphasis on the rights, agency and perspectives of victims.⁹ Victims are increasingly challenging the field of transitional justice, destabilizing the orthodoxy of traditional actors and their set ways.¹⁰ If victims' needs have traditionally been subordinated to statebuilding or peacebuilding objectives, transitional justice has progressively moved away from these restrictive considerations.¹¹ In this regard, through the

5 Ibid.

6 Ismael Muvungi, 'Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies,' *International Journal of Transitional Justice* 3 (2009): 181.

7 See for instance: David and Choi Yuk-ping, supra n 3; Jessie Hronešová, 'Might Makes Right: War Related Payments in BiH,' *Journal of Intervention and Statebuilding* 10(3) (2016): 339–360; Daniela Lai, 'Transitional Justice and Its Discontents: Socioeconomic Justice in Bosnia and Herzegovina and the Limits of International Intervention,' *Journal of Intervention and Statebuilding* 10(3) (2016): 361–381. The International Center for Transitional Justice has commissioned some excellent empirical work on transitional justice and generally highlighted the importance of compensation for victims.

8 Jemima García-Godos, 'Victims in Focus,' *International Journal of Transitional Justice* 10(2) (2016): 350.

9 United Nations, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence,' UN Doc. A/74/147, 12 July 2019, para. 6.

10 Rosalind Shaw and Lars Waldorf, 'Introduction: Localizing Transitional Justice,' in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, ed. Rosalind Shaw, Lars Waldorf and Pierre Hazan (Stanford: Stanford University Press, 2010), 3.

11 Similarly, there is a 'local turn' in peacebuilding at the moment, which challenges also the orthodoxy of peacebuilding practices. See: Roger Mac Ginty and Oliver P. Richmond, 'The Local Turn in Peace

victims turn in transitional justice, the focus on reparations in transitional justice implies not only doing something against perpetrators (what is usually subsumed under retributive justice) but also doing something specifically for victims (what is usually subsumed under restorative justice).¹²

The second turn, which is arguably more aspirational than actual, it is the socio-economic turn in transitional justice. Traditionally, transitional justice literature and practice have more often than not marginalized the socio-economic dimension. In effect, most of the literature on transitional justice – not unlike the peacebuilding literature¹³ – focuses on normative or symbolic aspects while marginalizing material implications. In the context of transitional justice mechanisms being associated with higher-than-average increases in inequality,¹⁴ some calls have been made in the transitional justice literature to stop the neglect of economic and social justice issues.¹⁵ Despite polls of survivor populations making apparent the reality that socio-economic concerns take priority over punishment, historical accounting or reconciliation,¹⁶ the socio-economic dimension of transitional justice has remained in the shadow of the political dimension of transitional justice, with an emphasis on civil or political rights. This situation is increasingly challenged by victims and their representatives, pushing for the inclusion of this dimension in transitional justice mechanisms.

Building: A Critical Agenda for Peace,' *Third World Quarterly* 34(5) (2013): 763–783; Nicolas Lemay-Hébert, 'The Bifurcation of the Two Worlds: Assessing the Gap Between Internationals and Locals in State-Building Processes,' *Third World Quarterly* 32(10) (2011): 1823–1841.

- 12 Jemima García-Godos and Chandra Lekha Sriram, 'Introduction,' in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, ed. Chandra Lekha Sriram et al. (London: Routledge, 2012), 4–8; Ruth Rubio-Marín and Pablo de Greiff, 'Women and Reparations,' *International Journal of Transitional Justice* 1(3) (2007): 319.
- 13 For a critique, see: Nicolas Lemay-Hébert and Stefanie Kappler, 'What Attachment to Peace? Exploring the Normative and Material Dimensions of Local Ownership In Peacebuilding,' *Review of International Studies* 42(5) (2016): 815–914; Catherine Baker and Jelena Obradovic-Wochnik, 'Mapping the Nexus of Transitional Justice and Peacebuilding,' in *Handbook on Intervention and Statebuilding*, ed. Nicolas Lemay-Hébert (Cheltenham: Edward Elgar, 2019), 184–197.
- 14 Geoff Dancy and Eric Wiebelhaus-Brahm, 'Bride to Human Development or Vehicle of Inequality? Transitional Justice and Economic Structures,' *International Journal of Transitional Justice* 9 (2015): 65.
- 15 Louise Arbour, 'Economic and Social Justice for Societies in Transition,' *NYU Journal of Law and Politics* 40(1) (2007): 1–28; Christine Chinkin, 'The Protection of Economic, Social and Cultural Rights Post-Conflict,' *Paper series for the Office of the United Nations High Commissioner for Human Rights*, 1 January 2007, https://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf (accessed 5 August 2021); Frank Haldemann and Rachele Kouassi, 'Transitional Justice Without Economic, Social, and Cultural Rights?' in *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges*, ed. Eibe Riedel, Gilles Giacca and Christophe Golay (Oxford: Oxford University Press, 2014), 498; Zinaida Miller, 'Effects of Invisibility: In Search of the "Economic" in Transitional Justice,' *International Journal of Transitional Justice* 2 (2008): 266–291; Muvingi, supra n 6; Tafadzwa Pasipanodya, 'A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal,' *International Journal of Transitional Justice* 2(3) (2008): 378–397; Evelyne Schmid and Aoife Nolan, 'Do No Harm? Exploring the Scope of Economic and Social Rights in Transitional Justice,' *International Journal of Transitional Justice* 8(3) (2014): 363.
- 16 Padraig McAuliffe, 'Dividing the Spoils: The Impact of Power Sharing on Possibilities for Socioeconomic Transformation in Postconflict States,' *International Journal of Transitional Justice* 11 (2017): 198; Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,' *Social and Legal Studies* 21(2) (2012): 175.

In many ways, the two ‘turns’ are closely connected together; victims have forced their way to the front of the transitional justice scene precisely through the mechanism of material reparations, prompting the field to look beyond traditional justice and truth-telling debates.¹⁷ These two turns – victims-centred and socio-economic – have certainly been prominent in the specific context of UN peacebuilding, where there has been an increase of third-party claims, asking for material reparations in the case of human rights abuses. In the *Mothers of Srebrenica* case, family members of individuals who died during the Bosnian War (when the UN was supposed to protect them in a safe haven) have demanded compensation from the United Nations and the Kingdom of the Netherlands by alleging that both are responsible for the failure to prevent the genocide at Srebrenica. The court cases have revolved around the absolute immunity of the United Nations, which has been upheld by Dutch courts but is nevertheless increasingly contested (as also made clear in the Haiti cholera case), but also the legal responsibility of the Dutch state in protecting individuals. The *Kosovo Lead Poisoning* case involves the Roma, Ashkali and Egyptian minorities of Kosovo, forced from their homes in Mitrovica after the Kosovo war. The UN, as Kosovo’s sovereign at that time, resettled about 600 of them between 1999 and 2013 in camps contaminated from nearby mines included in the Trepča mines complex. In 2016, in response to a complaint submitted by 138 individuals from these communities, the UN Human Rights Advisory Panel – created by UNMIK to examine alleged violations of human rights by UNMIK – found that UNMIK had violated people’s rights to life and health, and recommended that the UN apologize and pay individual compensation. The UN has however only created a voluntary trust for community assistance projects, described by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, as ‘inoperative and fundamentally flawed (...) which will neither provide justice nor the necessary elements of an effective remedy for the victims.’¹⁸ And finally, there is obviously the *Haiti cholera case* discussed in this article. These third-party claims do also mirror wider claims for reparations against former colonial powers¹⁹ – something that has been discussed more precisely in the context of Haiti. In this regard, some argue for the expansion of transitional justice into the realm of redistributive justice, highlighting discrimination and marginalization at play through unequal access to socio-economic rights.²⁰ Without entering into the much disputed area of the longstanding economic disparities (or economic violence) that are present in all societies and how to address these wide-

17 García-Godos, *supra* n 8.

18 United Nations Human Rights Office of the High Commissioner, ‘UN Must Urgently Provide Redress for Minorities Placed in Toxic Kosovo Camps, Says UN Rights Expert,’ 13 March 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24319&LangID=E> (accessed 5 August 2021).

19 Luke Moffett, ‘Transitional Justice and Reparations: Remediating the Past?’ in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther, Luke Moffett and Dob Jacobs (Cheltenham: Edward Elgar, 2017), 377–400.

20 Jemima García-Godos, ‘Victims’ Rights and Distributive Justice: in Search of Actors,’ *Human Rights Review* 14(3) (2013): 241–255; Miller, *supra* n 15.

Table 1. Dimensions of reparations.

		Focus of Reparations	
		Individual	Collective
Means of Reparations	Symbolic	(1) Apology to Victims in Communities; Ceremonies or Performances	(2) Public Apology; Memorialization
	Material	(3) Cash Transfers; Financial Compensations	(4) Development or Community Projects

ranging inequalities through transitional justice mechanisms,²¹ one could practically circumscribe the socio-economic turn to the reparations debates, in practice focusing on the nature of the reparation.²² Of course, the two issues are not neatly separated; neglecting the socio-economic needs of victims will more often than not amount to increasing long-standing inequalities in societies. However, we posit here that reparations can either be of a material or symbolic nature, and need to be tailored to the needs expressed by the victim population. Whilst symbolic reparations have traditionally been the focus of transitional justice, the material dimension of reparations does offer a window into the socio-economic turn as discussed above.

By taking the socio-economic turn in reparations debates seriously, and juxtaposing this on debates between collective and individual reparations, we suggest four ideal-typical situations, connected with different transitional justice mechanisms. This is made by connecting two separate dimensions of reparations – the means of reparations (symbolic or material) and the focus of reparations (individual or collective), captured in Table 1. A caveat needs to be added at this stage. The situations described below are ideal-typical situations, both a simplification of a much more complex reality and the accentuation of one of several aspects of reality following Weberian sociology.²³ We fully acknowledge that material means of reparations can

21 This is an angle developed in Lisa J. Laplante, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework,' *International Journal of Transitional Justice* 2 (2008): 331–355; Miller, supra n 15; Muvungi, supra n 6; Dustin N. Sharp, 'Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice,' *Fordham International Law Journal* 35(3) (2012): 780–814. We agree with Schmid and Nolan that economic and social rights violations can be discrete and do not necessarily need to be treated through a structural lens. Schmid and Nolan, supra n 15 at 372.

22 The focus on historic economic disparities is what makes a number of scholars dubious about the feasibility of the socio-economic turn in transitional justice. See for instance: Waldorf, supra n 16; Padraig McAuliffe, 'The Prospects for Transitional Justice in Catalyzing Socioeconomic Justice in Postconflict States: A Critical Assessment in Light of Somalia's Transition,' *Northeast African Studies* 14(2) (2014): 77–110.

23 Philipp Lottholz and Nicolas Lemay-Hébert, 'Re-reading Weber, Re-conceptualizing Statebuilding: From Neo-Weberian to Post-Weberian Approaches to State, Legitimacy and State-building,' *Cambridge Review of International Affairs* 29(4) (2016): 1470.

translate into symbolic forms of reparations for instance, or that symbolic reparations shape how the material conditions of human existence are rendered intelligible.²⁴ Furthermore, the situations discussed below are not mutually exclusive. One could certainly imagine an actor involved in a transitional justice process combining many different means of reparations through different individual policies, with different loci of interventions. However, we would argue that each specific transitional justice process, once the different policies are aggregated, tends to privilege one of the scenarios over the others.

On the symbolic axis, the first situation (Situation 1 in Table 1) encompasses a focus on the individual as an actor of choice for symbolic reparations. This might involve apologies by perpetrators of human rights abuses delivered on a personal basis, annual ceremonies or performances or gestures of recognition and atonement.²⁵ It could include apologies by perpetrators themselves (private apologies), or public apologies made in a face-to-face setting or with individualized letters of apology sent to each victim.²⁶ The UN's decision to send officials to listen to stories of victims and relatives of victims of cholera in Haiti, and offer an apology in this setting, can hence be seen to be part of this scenario. This category can even include hybrid institutions such as *gacaca* courts in Rwanda, used to punish perpetrators and reconcile communities through public confessions.²⁷ If one leaves the punitive element of the *gacaca* courts aside, which is beyond the analysis of this article, there is a clear performative emphasis on localized reconciliation in this practice.²⁸

The second situation (Situation 2 in Table 1) involves a focus on symbolic means of reparations with a public or collective focus. This typically encompasses apologies made to the community or to the country as a whole, but without a direct and personal connection in the delivery of the apology, or memorial practices meant to foster justice and social reconciliation such as commemorative sites, memory museums or the renaming of public spaces.²⁹ This is the option that tends to be privileged by a number of important organizations, probably because of the practicality of it. It enables actors to engage in reconciliation efforts without having to undertake potentially costly financial reparations to victims (Situation 3 and 4 in Table 1) or to engage in symbolic reparations in locally relevant ways or through potentially tricky local interactions (Situation 1 in Table 1). If most collective symbolic reparation projects are accompanied with other forms of reparations, notably material, a few examples can help to discern the boundaries of such an approach. The South African Truth and Reconciliation Commission is generally represented as a template for the symbolic dimension of reparation. The Inter-American Court of Human Rights is also a good

24 Robin Adèle Greeley, Michael R. Orwitz, José Luis Falconi, Ana María Reyes, Fernando J. Rosenberg and Lisa J. Laplante, 'Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights,' *International Journal of Transitional Justice* 14(1) (2020): 187; Lisa Magarrell, 'Reparations in Theory and Practice,' *International Center for Transitional Justice Reporative Justice Series* (2007), 4.

25 Robin Adèle Greele et al., *supra* n 24 at 166.

26 United Nations Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (Geneva: UN, 2008), 23.

27 Joanna Pozen, Richard Neugebauer and Joseph Ntaganira, 'Assessing the Rwanda Experiment: Popular Perceptions of *Gacaca* in Its Final Phase,' *International Journal of Transitional Justice* 8(1) (2014): 31–52.

28 Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge: CUP, 2010).

29 UNOHCHR, *supra* n 26 at 23.

example of an organization focusing on collective symbolic reparation,³⁰ with a specific focus on public apologies or memorial practices. In one specific case, having judged the Mexican state guilty of violating its international responsibility to safeguard the lives and personal integrity of young female victims of femicide in Mexico, the Inter-American Court of Human Rights judged it pertinent for the state to ‘erect a monument to commemorate the women victims of gender-based violence in Ciudad Juárez.’³¹ The monument was not well received by the victims’ families, who saw it as an effort to divert attention from structural violence in Mexico.³² Other examples include ex post apologies by UN Secretary-Generals after lengthy independent inquiries. For instance, the UN Secretary-General Kofi Annan apologized and expressed remorse in 1999 for the 1994 genocide in Rwanda and the 1995 fall of Srebrenica, which happened under Boutros Boutros-Ghali’s tenure.³³ Another example is the issue of reparations to former colonies, which has traditionally been dealt with through symbolic means of reparations. If this involves in very specific cases material compensations – such as the recent decision by the Netherlands to pay reparations to Indonesian victims of colonial atrocities (which would fall under Scenario 3 in Table 1) – former imperial powers generally favour memorialization or public apologies whilst shying away from the material side of the argument. The third situation (Situation 3 in Table 1) includes material means of reparation with a focus on the individual. This tends to be operationalized through judicial reparations procedures, operating on a case-by-case basis and usually tailoring the compensation to the proportion of the harm suffered, or through out-of-court programmes, compensating everyone within the same category violation roughly the same way.³⁴ Taking some policies outside of the wider context of justice and reparations, examples would include Colombia’s recent promise of US\$27.5 billion for victims’ reparations, Poland’s promise of US\$125 million for former political prisoners following its transition to democracy³⁵ or US\$224,000 awarded to families of those disappeared in Argentina.³⁶ Individual material reparations can include payments in cash or provision of service packages, which may in turn include provisions for education, health and housing.³⁷

The fourth situation (Situation 4 in Table 1) involves collective material reparations. This traditionally includes collective development projects aimed at mitigating the effects of the conflict or disaster, or targeting the specific needs of the victim population. Most postconflict or post-disaster countries are likely to favour future-oriented collective reparations that will in principle benefit larger social groups than

30 Adèle Greele et al., *supra* n 24.

31 Adèle Greele et al., *supra* n 24 at 169.

32 Adèle Greele et al., *supra* n 24 at 171. If femicide has been a major issue in Mexico (and in many other countries), it is even more the case with COVID-19 restrictions, which led between 80,000 and 120,000 women to march in Mexico City on 8 March 2020 to demand justice.

33 United Nations, ‘Kofi Annan Emphasizes Commitment to Enabling UN Never Again to Fail in Protecting Civilian Population from Genocide or Mass Slaughter,’ UN Doc. SG/SM/7263/AFR/196, 16 December 1999.

34 Marín and de Greiff, *supra* n 12 at 321–322.

35 Dancy and Wiebelhaus-Brahm, *supra* n 14 at 53–54.

36 Moffett, *supra* n 19.

37 UNOHCHR, *supra* n 26 at 22.

spending scarce resources on individual reparations would,³⁸ and as such will argue that ‘development is reparation.’³⁹ In this context, there is a need to make sure that this is not in fact a ploy to label existing programmes as ‘reparations’ without actually engaging with the specific needs and concerns of the victim population.

THE NEXUS BETWEEN TRANSITIONAL JUSTICE AND DEVELOPMENT: FROM COLLECTIVE TO INDIVIDUAL FOCUS

Scholars have already questioned the artificial disconnect between transitional justice and development, and have suggested that both fields share a similar structure of practice.⁴⁰ Some see international development as focusing on the collective level when transitional justice is more focused on the individual level,⁴¹ however, we have suggested a more nuanced perspective in the previous section. To build on the contribution of the matrix above, we argue that recent developments in international development literature and practice, especially the increasing focus on cash transfer programmes, can shed new light on reparation debates, especially in terms of the debate between collective and individual material reparations. The field of development is increasingly embracing the individual scale of practice, and this has ramifications for debates on the feasibility and suitability of individual material reparations in transitional justice.

Actually, over the past 25 years a ‘quiet revolution’ has seen governments in the developing world invest in increasingly large-scale cash transfer programmes.⁴² There are over 130 low- and middle-income countries that have at least one non-contributory unconditional cash transfer (UCT) programme in place, with even more conditional cash transfer programmes operating in parallel.⁴³ First and foremost, while cash transfers are not a panacea for development, they empower individual recipients as decision-makers, promoting a ‘rights-based approach to development.’⁴⁴ Cash transfers are particularly appropriate in situations either where it is physically difficult to reach the poorest and those in need (such as in the

38 Christopher J. Colvin, ‘Purity and Planning: Shared Logics of Transitional Justice and Development,’ *International Journal of Transitional Justice* 2 (2018): 418.

39 UNOHCHR, *supra* n 26 at 26; Naomi Roht-Arriaza and Katharine Orlovsky, ‘A Complementary Relationship: Reparations and Development,’ Research Brief, International Center for Transitional Justice, July 2009.

40 Rama Mani, ‘Editorial: Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development,’ *International Journal of Transitional Justice* 2 (2008): 253–265; Colvin, *supra* n 38 at 419.

41 Colvin, *supra* n 38 at 418.

42 UK Department for International Development, *Cash Transfers: Literature Review*, Policy Division, April 2011, <https://reliefweb.int/sites/reliefweb.int/files/resources/cash-transfers-literature-review.pdf> (accessed 5 August 2021).

43 Francesca Bastagli, Jessica Hagen-Zanker and Georgina Sturge, ‘Cash Transfers: What Does the Evidence Say? A Rigorous Review of Programme Impact and the Role of Design and Implementation Features,’ London: Overseas Development Institute, July 2016, 13, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11316.pdf> (accessed 5 August 2021). We will not discuss the specifics about the conditional versus unconditional cash transfer programmes, as this has limited benefits to the current discussion. Rather, we will focus primarily on unconditional cash transfer schemes, as this would be potentially more suitable for any reparation scheme to the victims of cholera in Haiti.

44 George Ingram and John MacArthur, ‘From One to Many: Cash Transfer Debates in Ending Extreme Poverty,’ *Brookings Institution*, 19 December 2018, <https://www.brookings.edu/blog/future-develop>

aftermath of disasters or conflicts) or where the state infrastructure is simply excluding the poorest from its reach, as is certainly the case in Haiti. Cash transfers are ‘transformative,’ increasing individuals’ sense of self-worth, dignity and assertiveness.⁴⁵ It has also been noted that ‘unconditional cash transfers have significant impacts on economic outcomes and psychological well-being.’⁴⁶

Chris Blattman has demonstrated that:

cash grants to the poor are as good as or better than many traditional forms of aid when it comes to reducing poverty. Study after study has shown that recipients of cash grants invest the money or spend it on such basic items as food and better shelter. Poor people don’t always make the best choices with their money, of course, but fears that they consistently waste it are simply not borne out in the available data.⁴⁷

Actually, a systematic review of all the evidence on the effects of cash transfers on individuals and households over 15 years from 2000 to 2015 (including 201 studies) reflects ‘how powerful a policy instrument cash transfers can be, and highlights the range of potential benefits for beneficiaries.’⁴⁸

Amongst the main worries about cash transfer programmes are that there will be price effects⁴⁹ or that conditionality might restrict individual agency.⁵⁰ There are also traditional paternalistic arguments at play,⁵¹ with some actors doubting that poor people can make reasonable and well-informed choices. The systematic review of the cash transfer literature demonstrates that the evidence does not support these concerns and that ‘for studies reporting statistically significant results, the vast majority are in the direction policy-makers intend to achieve.’⁵² As previously mentioned, cash transfer programmes are not necessarily a panacea, but any discussion of their limitations should happen in conjunction with a discussion of the limitations of ‘traditional’ development project as well.⁵³

ment/2018/12/19/from-one-to-many-cash-transfer-debates-in-ending-extreme-poverty/ (accessed 5 August 2021).

- 45 Maxine Molyneux, Nicola Jones and Fiona Samuels, ‘Can Cash Transfer Programmes Have “Transformative” Effects?’ *The Journal of Development Studies* 52(8) (2016): 1095.
- 46 Johannes Haushofer and Jeremy Shapiro, ‘The Short-Term Impact of Unconditional Cash Transfers to the Poor: Experimental Evidence from Kenya,’ *The Quarterly Journal of Economics* 131(4) (2016): 1973–2042.
- 47 Christopher Blattman and Paul Niehaus, ‘Show Them the Money: Why Giving Cash Helps Alleviate Poverty,’ *Foreign Affairs* 93(3) (2014): 117–126.
- 48 Bastagli et al., supra n 43.
- 49 Jesse Cunha, Giacomo de Giorgi and Seema Jayachandran, ‘The Price Effects of Cash Versus In-Kind Transfers,’ *Review of Economic Studies* 86 (2019): 240–281; Deon Filmer et al., ‘Cash Transfers, Food Prices, and Nutrition Impacts on Nonbeneficiary Children,’ Policy Research Working Paper 8377, World Bank, March 2018.
- 50 Birte Vogel, Kristina Tschunkert and Isabelle Schlapfer, ‘The Social Meaning of Money: Multidimensional Implications of Humanitarian Cash and Voucher Assistance,’ *Disaster* (online first) (2021).
- 51 Janet Currie and Firouz Gahvari, ‘Transfers in Cash and In-Kind: Theory Meets the Data,’ *Journal of Economic Literature* 46(2) (2008): 333–383.
- 52 Bastagli et al., supra n 43 at 12–13.
- 53 See the impact of traditional development aid on the labour market in Haiti: Nicolas Lemay-Hébert et al., ‘The Internal Brain Drain: Foreign Aid, Hiring Practices, and International Migration,’ *Disasters* 44(4) (2020): 621–640.

BACKGROUND: THE HAITI CHOLERA CASE AND ITS RAMIFICATIONS

Before discussing the specific case study of Haiti and the findings of our field research, it is important to put the Haiti cholera case in context. Between 2004 and 2018, the UN has fielded a peacekeeping mission in Haiti, the United Nations Stabilization Mission for Haiti (MINUSTAH),⁵⁴ and some of those peacekeepers brought cholera with them.⁵⁵ The UN did not properly screen its peacekeepers for cholera,⁵⁶ and poor sanitary practices at the UN base contributed to raw faecal waste carrying cholera flowing directly into a stream, the Meille River, that runs into a tributary that feeds Haiti's main river, the Artibonite. Given that vast numbers of people rely on the Artibonite River for washing, cooking, cleaning and drinking, cholera quickly spread around many parts of the country. Over 820,000 people have been infected and 9,792 people have died due to the illness; however, the real death toll could be three times the official figures because of underreporting in the initial outbreak.⁵⁷ The illness completely upended the life of whole communities: children have lost parents and breadwinners, resulting in severe instability and lost schooling, and families continue to struggle to pay off debt for medical care and burial expenses, and such debt has often plunged them deeper into poverty.⁵⁸ In January 2020, Haiti celebrated one full year of being free of cholera, with no new case reported since 24 January 2019.⁵⁹ However, if the illness has been stopped in its tracks, the issue of reparation to the cholera victims has not progressed, which has led a group of 14 UN mandate holders to send an allegation letter to the UN Secretary-General and Haitian government critiquing the ongoing failure to deliver effective remedies for victims of cholera in Haiti. If the worldwide coronavirus crisis brings relief efforts back to the

- 54 For more on the history of the peacekeeping mission, see: Nicolas Lemay-Hébert, 'Chapter 61: United Nations Stabilization Mission in Haiti (MINUSTAH),' in *Oxford Handbook of United Nations Peacekeeping Operations*, ed. Joachim A. Koops Norrie MacQueen, Thierry Tardy, and Paul D. Williams (Oxford: Oxford University Press, 2015), 720–730.
- 55 Whilst there has been a debate regarding the origin of the disease in the early days of the outbreak, 'scientific evidence now points overwhelmingly to the responsibility of the peacekeeping mission as the source of the outbreak,' in the words of the UN Special Rapporteur on Extreme Poverty and Human Rights. United Nations, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights,' UN Doc. A/71/367, 26 August 2016.
- 56 UN protocol requires that troops pass a basic health screening. Symptomatic individuals undergo laboratory tests for infectious diseases but individuals who do not exhibit active symptoms are not tested. However, many of those shedding viable cholera bacteria remain asymptomatic. Furthermore, the South Asian strain of cholera active in Haiti has been shown to cause a greater number of asymptomatic cases, to persist longer in the environment and to exist in higher concentrations in faeces. Paul Farmer, *Haiti After the Earthquake* (New York: PublicAffairs, 2011), 195.
- 57 Rick Gladstone, 'Cholera Deaths in Haiti Could Far Exceed Official Count,' *The New York Times*, 18 March 2016.
- 58 International Human Rights Clinic of the Harvard Law School, Bureau des Avocats Internationaux and Institute for Justice and Democracy in Haiti, 'Violations of the Right to Effective Remedy: The UN's Responsibility for Cholera in Haiti,' Joint Submission to the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, 2, http://hrp.law.harvard.edu/wp-content/uploads/2020/02/HLS-IHRC-IJDH-BAI-Submission-to-Special-Procedures_Cholera.pdf (accessed 5 August 2021).
- 59 Pan American Health Organization and World Health Organization, 'Haiti Reaches One-Year Free of Cholera,' 23 January 2020, https://www.paho.org/hq/index.php?option=com_content&view=article&id=15684:haiti-reaches-one-year-free-of-cholera&Itemid=1926&lang=en (accessed 5 August 2021).

forefront of the international community efforts in Haiti, ‘this new threat cannot mask past failures and ongoing violations’ in the words of the UN mandate holders.⁶⁰

At first, the UN relied on its absolute immunity from the jurisdiction of national courts to avoid accountability for introducing cholera into Haiti. The UN also failed to set up alternative dispute resolution mechanisms in Haiti, leaving victims without any possible avenue to voice their complaints.⁶¹ This policy has been dubbed ‘morally unconscionable, legally indefensible, and politically self-defeating’ by a UN Special Rapporteur.⁶² Furthermore, recent scholarship has contested the reliance on absolute immunity by organizations such as the UN,⁶³ and practitioners on the ground, representing 5,000 victims of cholera, have challenged that immunity through the New York District Court. If the legal challenge by the *Bureau des Avocats Internationaux* and the Institute for Justice and Democracy in Haiti did not result in an effective re-assessment of the UN’s absolute immunity, it certainly contributed to adding considerable pressure on the organization to modify its stance on the issue.⁶⁴

On 1 December 2016, in a dramatic turn of events, the UN Secretary-General Ban Ki-Moon finally apologized for the cholera epidemic in Haiti – in English, French and Haitian Creole. If the apology fell short of recognizing the UN’s responsibility for the actual outbreak, emphasizing rather a ‘moral responsibility to act’ and a ‘collective responsibility to deliver,’ it actually led to a ‘New Approach’ by the UN, including a US\$400 million plan as a ‘concrete and sincere expression of the Organization’s regret.’⁶⁵ The UN’s launch of the New

60 Office of the United Nations High Commissioner for Human Rights (OHCHR), supra n 4.

61 UN General Assembly Resolution 22(1), *Convention on the Privileges and Immunities of the United Nations*, UN Doc. A/RES/22(1) (13 Feb. 1946), s. 29. For a treatment of this issue, see: Rosa Freedman, ‘UN Immunity or Impunity? A Human Rights Based Challenge,’ *European Journal of International Law* 25(1) (2014): 239–254.

62 United Nations, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights,’ UN Doc. A/71/367, 26 August 2016.

63 See for instance: Rosa Freedman and Nicolas Lemay-Hébert, ‘Between a Rock and a Hard Place: Immunities of the United Nations and Human Rights,’ in *Cambridge Handbook on Immunities and International Law*, ed. Tom Ruys, Nicolas Angelet and Luca Ferro (Cambridge: Cambridge University Press, 2019), 579–594; Rosa Freedman and Nicolas Lemay-Hébert, ‘Towards an Alternative Interpretations of UN Immunity: A Human Rights-Based Approach to the Haiti Cholera Case,’ *Questions of International Law* 8(19) (2015): 5–18; Rosa Freedman and Nicolas Lemay-Hébert, ‘“Jistis ak reparasyon pou tout viktim kolera MINUSTAH”: The United Nations and the Right to Health in Haiti,’ *Leiden Journal of International Law* 28(3) (2015): 507–527; Rosa Freedman, Nicolas Lemay-Hébert and Siobhan Wills, *The Law and Practice of International Peacekeeping: Foregrounding Human Rights* (Cambridge: Cambridge University Press, 2021).

64 The added pressure came from a wide array of sources, including excellent reporting on the issue by journalists, a high-profile report by the UN Special Rapporteur Philipp Alston, noting that ‘the UN opted to abdicate its responsibility’ and blaming the UN’s Office of Legal Affairs (OLA) for coming up with a ‘patently artificial and wholly unfounded legal pretence for insisting that the Organization must not take legal responsibility for what it has done,’ as well as a diplomatic initiative by University of Birmingham scholars to raise the profile of the cholera issue in the UN Security Council debates. See: United Nations, supra n 61; Rosa Freedman and Nicolas Lemay-Hébert, ‘The Security Council in Practice: Haiti, Cholera, and the Elected Members of the United Nations Security Council,’ *Leiden Journal of International Law* 33(1) (2020): 157–176.

65 United Nations General Assembly, ‘A New Approach to Cholera in Haiti: Report by the Secretary-General,’ UN Doc A/71/620, 25 November 2016.

Approach presented a critical opportunity to repair victims' injuries and restore trust in the UN.⁶⁶ In the words of the Secretary-General, it became 'an important test' of the UN's commitment to its own principles.⁶⁷ The plan has two tracks: the first track focuses on intensified efforts to prevent and eradicate cholera, and the second track promises to deliver 'a package of material assistance and support to those Haitians most directly affected by cholera' to be developed in a victim-centred manner, including through consultations with victims. The plan is woefully underfunded – only 4 percent of the amount promised has been raised so far – with the UN opting to rely solely on charitable donations to fund the efforts.⁶⁸ The result is that more than 10 years after the initial cholera outbreak, and four years after the UN Secretary-General's apology, victims are still waiting for justice and for concrete reparations.

The UN Development Programme (UNDP) has been tasked with undertaking consultations with victims, owing to their expertise on community-based approaches. However, there is a fear that consultations might raise expectations, especially in terms of individual reparations which are deemed difficult to achieve.⁶⁹ There is also a recognition that projects undertaken under Tracks 1 and 2 may well be the same projects, the difference being that Track 2 has a 'symbolic aspect'.⁷⁰ The objective of this article is to contribute to this discussion by highlighting the preferences of the victims with regard to the means of reparations (symbolic or material) and the focus of the reparations (individual or collective).

DATA AND METHODS

This article is based on participatory action research (PAR) conducted by the authors in cholera-affected communities in Haiti.⁷¹ We followed a team of local lawyers from the *Bureau des Avocats Internationaux* (BAI) in March 2017 who were meeting local support groups for cholera victims and discussing possible compensation avenues with these communities. Our research team is composed of ourselves, a group of BAI's lawyers and one international lawyer from BAI's sister organization, the Institute for Justice and Democracy in Haiti (IJDH). The data was gathered between 14 and 16 March 2017 in rural localities around Mirebalais in the Artibonite region, where cholera first broke out and where some of the most affected communities are located. We made three separate trips to the Mirebalais region: one to La Chapelle (*Lachapèl*), one to Saut-D'Eau (or

66 IHRC, BAI and IJDH, *supra* n 57.

67 United Nations Secretary-General, 'Secretary-General's Remarks to the General Assembly on a New Approach to Address Cholera in Haiti,' 1 December 2016, <https://www.un.org/sg/en/content/sg/state-ment/2016-12-01/secretary-generals-remarks-general-assembly-new-approach-address> (accessed 5 August 2021).

68 See the constantly updated figures on: <http://www.time2deliver.org/> (accessed 5 August 2021).

69 Interview with Nadine Therer, Deputy Country Director (Haiti), UNDP, Port-au-Prince, Haiti, 13 March 2017.

70 *Ibid.*

71 The research project has received ethical approval from the Humanities and Social Sciences Ethical Review Committee, University of Birmingham, in February 2017 (ERN_17-0206), where the lead author of this piece was based at the time of the research.

Sodo) and one to Boucan-Carré (*Boukan Karé*). Different neighbouring communities were represented in each of these meetings.⁷² The sessions took place in communal buildings such as a church or school, and all victims and their families were invited to attend. Each session began with a video screening of Ban Ki-Moon's apology to the cholera victims. It was the first time that most victims had seen the video or had heard the words spoken by the former UN Secretary-General. After receiving an explanation of the meaning of this apology from the Haitian lawyers, the victims were told that the most important and meaningful part of the apology was when Ban Ki-Moon acknowledged that 'apologies do not cure diseases,' which was a way to introduce the reparation issue by the Haitian lawyers. Large and small group discussions focused on what the different communities want from the UN. Individuals explained why they wanted to be consulted, and the types of remedies they are seeking from the United Nations. As researchers, we listened and followed discussions regarding the establishment of these groups of victims, without intervening in the process. We opted to hold one focus group at the end of each day, to discuss the issues related to reparations without interfering too much with the work of the lawyers we were following. The focus groups were conducted in Creole (unless specific participants wanted to express opinions in French) and were translated into French or English by the lawyer from IJDH accompanying us on this trip. Focus groups were comprised of between two and five people, selected from individuals who expressed an interest in discussing these issues with us. We have also met separately with community representatives from the different localities.

A further note on the methodological approach buttressing this piece. Traditionally, participatory action research is understood as a methodological resource:

through which 'outsiders' accompany 'insiders' in processes designed to enhance critical awareness and leadership capacities through shared collaborations and to initiate collective actions aimed at improving conditions in co-researchers' lives in order to bring about a more just and equitable society.⁷³

If PAR has been used to look at the participative side of reconciliation processes, looking at how researchers can contribute to designing with local people the tools and approaches of reconciliation,⁷⁴ in our specific case the emphasis was more on the activist side of the research, what some would simply call action research,⁷⁵ or

72 For Lachapelle: Lépinard; Mathurin; La Croix; Joly; Ciprit; Ravine Canot; Haute au vent. For Saut-D'Eau: Carrefour Saut-D'Eau; Dubuisson; Lamarre; Filate; Gilo. For Boucan-Carré: Daman; Terre Blanche; Bois Cochon; Chapeauto; Cite Lila; Peligne.

73 Alison Crosby and M. Brinton Lykes, 'Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala,' *International Journal of Transitional Justice* 5 (2011): 459.

74 Angela Santamaría Dunen Muelas, Paula Caceres, Wendi Kuetguaje and Julian Villegas, 'Decolonial Sketches and Intercultural Approaches to Truth: Corporeal Experiences and Testimonies of Indigenous Women in Colombia,' *International Journal of Transitional Justice* 14(1) (2020): 56–79; Virginie Ladisch and Christalla Yakinthou, 'Cultivated Collaboration in Transitional Justice Practice and Research: Reflections on Tunisia's Voices of Memory Project,' *International Journal of Transitional Justice* 14(1) (2020): 80–101.

75 In a seminal article on the subject, John Bennett for instance separates applied from action anthropology on the basis of the nature of the relationship of the researcher with the organization under study. If the

‘passionate scholarship.’⁷⁶ Local actors did not need us to initiate a collective action, and we would certainly not claim that we enhanced local capacities through our interactions. Furthermore, we would not claim a shepherding role in the practices analysed in this article, taking local actors by the hand so to speak. The impetus of this project came from a mutual understanding that granting us access to their practice in local communities would increase the legitimacy of the data-gathering process and multiply the possibilities for the voice of the cholera victims to be heard. As such, all research actors involved – both international and local – shared a commitment to a victim-centred process of reparation, meant to bring to the forefront the voice of the cholera victims in Haiti. Finally, this research project was also built on the previous interactions and knowledge of the parties involved and on more than a decade of involvement in Haiti, and was specifically understood as a follow-up to previous collaborative initiatives between the authors and BAI/IJDH.⁷⁷

REPARATIONS: WHAT DO THE HAITIANS WANT?

The Benefit of Consultations

Beyond their contribution as symbolic reparations, consultations can also be important for recognizing the importance of the preference expressed by the victim population. Most participants in the focus groups were absolutely adamant about the importance of the consultations with the United Nations and about the fact that victims should be at the centre of the reparation process. As the community representative from Saut-D’Eau mentioned:

it is important that they hear about our suffering. When cholera broke out people would die on the roads, people were dying on the way to hospital. We didn’t have money for burials. Neighbours would chip in for funeral costs. We are left with the bill. We need to be paid back for that. What we want is a dialogue to get everyone reparations. They should come to talk to us even if they cannot give us everything we ask for. We will listen, we will respond, we will have proposals for them. They should talk to us and not to the state.

A distrust of the state – a theme that has a long tradition in Haiti⁷⁸ – was held by most participants, who feared that state officials would not represent the interests of the victims if they were tasked to represent them. According to a participant in the focus group of Lachapelle:

researcher is employed by the organization, it is ‘applied research,’ if the relationship is on a ‘voluntaristic’ basis then it is ‘action research.’ John W. Bennett, ‘Applied and Action Anthropology: Ideological and Conceptual Aspects,’ *Current Anthropology* 36 (1996): S23–S53.

76 M. Brinton Lykes, ‘Dialogue with Guatemalan Indian Women: Critical Perspectives on Constructing Collaborative Research,’ in *Representations: Social Constructions of Gender*, ed. R. Unger (Amityville: Baywood, 1989), 167–185.

77 Rosa Freedman and Nicolas Lemay-Hébert, *supra* n 63.

78 See: Nicolas Lemay-Hébert, ‘Resistance in the Time of Cholera: The Limits of Stabilization Through Securitization in Haiti,’ *International Peacekeeping* 21(2) (2014): 198–213; Nicolas Lemay-Hébert, ‘Living in the Yellow Zone: The Political Geography of Intervention in Haiti,’ *Political Geography* 67 (2018): 88–99.

we know whenever they [state officials] are involved in making decisions they don't come to us and ask, they just do what is good for them. They are always looking after themselves; and the people who are victims will not get anything.

For a participant in the focus group in Saut-D'Eau, the message was quite clear:

don't consult with the state. The state only wants to enrich itself. The state takes things for itself. We would prefer to be in direct conversation with the UN and not for them to go to the state.

Finally, according to a participant in our focus group in Boucan-Carré:

the state abuses our rights – the UN shouldn't go to the state. The state will give false information. They need to have a sense of the real situation down here, to really understand the victims' point of view. They are too many corridors with the state. The truth will get lost.

This is a poetic way to raise the issue of (mis)representation of the population and victims by the state elite, but it also highlights the issues that participants deem crucial – the need for them to be heard directly and the need for the United Nations to really understand the local priorities. According to the same participant:

it is important to consult with us. We are the victims. We want to tell our priorities. Maybe we can go further together. In any case they can come and hear from us and use it as the basis for their analysis. Consulting local victims' groups will enable the UN to have a better sense of priorities.

The Issues with Collective Material Reparations

When asked what type of reparations – collective or individual – the different victim groups would privilege, every single one of them mentioned individual material reparations, and two groups out of 18 wanted individual and collective material reparations at the same time. Not a single group mentioned a preference for collective material reparations over individual reparations. The main reason is rooted in the experience that most Haitians living in the countryside have had with the state and with international aid. Haitian history is marked by constant social struggles between the political and economic elite and the *moun andeyo* (or outsiders), those who are not considered part of the nation and are excluded from its benefits and recognition.⁷⁹ As such, expecting mainly self-subsistence farmers, living in the countryside, to trust the state or the 'international community' to deliver on promises (in this case, community projects) is simply too much to ask for many. As one individual representing the Ravine Canot locality (in Lachapelle) indicated, 'it is the role of the state to provide hospitals. Reparations shouldn't take away the responsibility of the state.' Another individual, representing this time Maturin (in Lachapelle) said: 'they

79 Gérard Barthélémy, *L'Univers Rural Haïtien: Le Pays en Dehors* (Port-au-Prince: Henri Deschamps, 1989).

will probably have died before enjoying any benefits from the collective reparations programs.’ Some also pointed out that this will not help to lift people out of poverty. This led an individual we met in Saut-D’Eau to ask us a simple question: ‘why should the state be given the money when they will keep it for themselves and we who suffered will never see any benefit from it?’

The collective projects are also unlikely to reach the remote communities and to help the most destitute. Collective projects such as health clinics or schools will create jobs, but probably jobs needing specific training:

if the UN gives other forms of [collective] help it will help people who have a little bit of education. It will not help those who need to get back onto their feet.

For another participant, ‘for people in far-away rural zones, they will not have access to services or to projects if collective ones are provided.’ For a participant in the Boucan-Carré focus group:

community projects would be good but we need to think about the structure of how they will come. We need to think about the country we are in. Those who are connected will benefit but the little farmers most affected by cholera will not benefit from collective projects.

Finally, participants also pointed out that the collective projects being discussed fall within the remit of the Haitian state, and the international community should not stand in for the state. For a participant in the Saut-D’Eau focus group:

yes, health centres are good, food is good, all these things are good. But the state has the obligation to give us these things. We lost our wives, our children, and now the state wants to let them [the UN] give us things the state has obligations to give us. The state will keep the money but it is us who suffered and should have the money.

For the same participant, who was in favour of both collective and individual reparations:

In general, collective projects are good. For example, in a very rural zone where people had to go on a goat to find a car to get to hospital, a health centre would benefit them greatly especially if another sickness comes. Community projects are good. They are the state’s responsibility but in Haiti the state doesn’t do it, so if the UN has money for building health centres then they should do it. But that does not mean we should not get individual payments.

The Benefits of Individual Material Reparations

For many participants, it all comes down to individual situations, with specific families being more impacted than others and needing financial support as soon as possible. For a specific individual representing the Daman community (Boucan-Carré): ‘we did not suffer collectively. Each person suffered individually. We were personally sick in our own bodies.’ From the participants’ perspective, the main benefit of individual reparations is that they are tailored to local needs, respecting local agency in choosing the best way to deal with the loss of income incurred by the illness. As the representative from Terre Blanche (Boucan-Carré) mentioned, ‘we want individual remedies. We want the money to come into our own hands so that if we get sick again we can look after ourselves.’ For another participant, this time from Bois Cochon (Boucan-Carré), ‘we just want to be put back on the path, to be given back the money we spent with our fingers.’ The personal situation can also differ. For the representative from Haute-au-Vent (Lachapelle): ‘I just want to buy back my land so that I can have enough money to pay for my children to go to school.’ For the representative from Lacroix (Lachapelle):

when we were sick we were the ones who had to spend money. We had to sell livestock to go far away to hospital in Mirebalais. To get there we needed a car, and we don’t have cars so we had to pay for that and to pay for medicine.

For the representative from Maturin (Lachapelle), individual reparation can lead to economic growth: ‘assistance to do commercial activity would help them [people who lost family members] to recover.’ Individual reparations can also help reach children. For the representative of Haute-au-vent (Lachapelle):

the people who especially need compensation are children who have lost their mothers and can’t go to school or to university. Many children lost family members and the UN should give them assistance to spend on activities or a garden or school or things to make their lives better.

Despite the overwhelming preference for individual reparations expressed by victims, the UN has made a unilateral decision to foreclose compensation in favour of community projects. It has established platforms to ‘support the project in the communities, serving as an interface between the project itself and the targeted areas’⁸⁰ in the Cap-Haïtien area. Hence, the only material assistance offered by the UN to date is 20 projects in four communes around Cap-Haïtien, and five US\$150,000 infrastructure projects around Mirebalais.⁸¹ As previously mentioned, the UN Special Rapporteurs pointed out that:

80 UNDP, ‘UN Haiti Cholera Response MPTF Project Quarterly Progress Report Period (Quarter-Year): 4th Q2019 as of 31 December 2019,’ <http://mdtf.undp.org/document/download/23711> (accessed 5 August 2021).

81 IHRC, BAI and IJDH, *supra* n 57.

some victims prefer monetary payments, an option that was once on the table, but the UN has foreclosed that possibility seemingly without carrying out consultations or producing a detailed feasibility assessment.

However, ‘compensation is ordinarily a central component of the right to an effective remedy, and development projects are simply not a replacement for reparations.’⁸² When we interviewed MINUSTAH staff in 2017, we could sense that there was a lot of anxiety over opening up the option of compensation to victims, with reservations about the logistics, the potentially spiralling cost of such a programme, as well as the actual efficiency of compensation in achieving development objectives on the ground.

CONCLUSION

The victims turn and the socio-economic turn in transitional justice highlight new reparation dimensions and possibilities, especially when this literature is connected with the wider international development literature. Through the focus of reparations (individual or collective) and the means of reparations (material or symbolic), this article shows the different possibilities for actors promoting and advocating for reparations. In the specific case study of Haiti, it appears clear that individual material reparations are privileged by the victim population. The New UN Plan for Haiti includes both a commitment to consult with victims and a preference for collective reparations, even if in principle all options are open. In the fieldwork conducted for this article, the victims clearly expressed the willingness to meet with and talk to UN officials, but also expressed a strong preference for individual material reparations. For many individuals, collective projects are not always followed through (by international NGOs or by the government), and these projects also tend to favour those who are already in a position to benefit from them, including through the staffing of the projects once completed. Hence, the perception is that the projects will exclude those who are not in a position to benefit from them, including the most vulnerable segment of the population and those living in the countryside. Finally, collective projects do not target specifically those who have been affected by the illness, and who are currently struggling to make ends meet. Individual material reparations, in contrast, enable targeting of specific individuals and families who have suffered and continue to suffer emotionally and economically from the consequences of the illness.

Most of the participants also emphasized the need to move quickly, a call which does not seem to be heeded by the UN and other international donors so far. Calls for urgent action seem to have fallen on deaf ears, as more than five years have passed since Ban Ki-Moon’s apology and only meagre resources have been mobilized to help the victims.

The objective of this article is not to enter into the practicalities of individual material reparations in the specific context of Haiti. There is a wide literature on how to operationalize reparations. However, when trying to make sense of the UN discrepancy between words and actions, one has to take into consideration the fact that a

Haitian life seems to be worth less than a life in most Western countries. If a previous report by Alston helped push the UN and its Secretary-General at the time to change its stance on the issue, we hope the recent letter by the 14 UN mandate holders might also push the UN to do what is right for the Haitian victims. We also hope that the present article will contribute to the conversation by highlighting the voice of Haitians in the debate around reparations.