Working Paper 2: Business Involvement in Reparations and Transitional Justice: Precedents and Lessons Learnt

By: Emma Baldi

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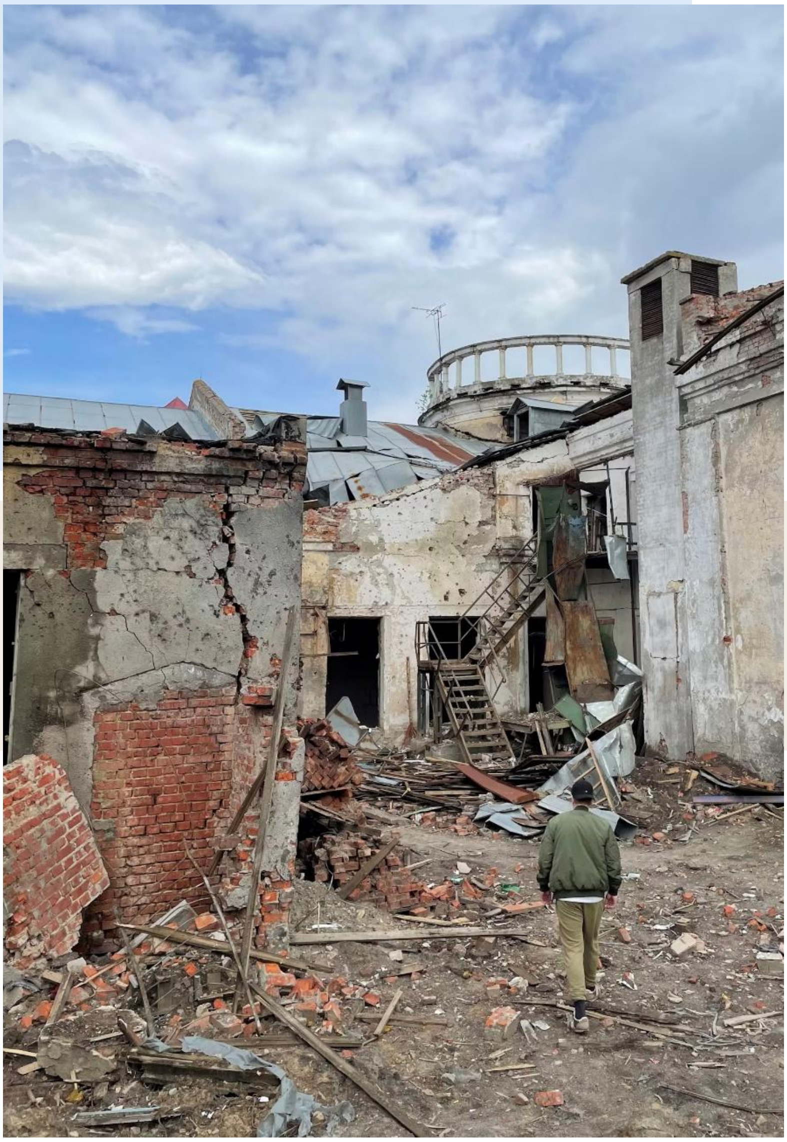

Engaging Businesses
in Repairing War-Related Damage
Working Paper Series

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Working Paper 2: Business Involvement in Reparations and Transitional Justice: Precedents and Lessons Learnt

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The building of a cinema and youth center in Chernihiv, Ukraine that was destroyed by an aerial bomb in March 2022. Chernihiv, Chernihiv Oblast, Ukraine

This Working Paper addresses the following questions: *What precedents exist for the involvement of businesses in transitional justice processes, notably in relation to reparations? To what extent have these initiatives been successful in practice, and what factors account for their effectiveness or lack thereof?*

Before turning to the substantive analysis, a number of terminological clarifications are warranted. First, transitional justice refers to the range of judicial and non-judicial, legal and political processes and mechanisms associated with societies' attempts to come to terms with legacies of armed conflict or repression and associated widespread and systematic human rights violations, with a view to fostering accountability, social trust, and a transition towards peace and democracy.[1] Four main and complementary processes are generally understood to lie at the core of transitional justice, namely, justice, truth, reparation, and guarantees of non-recurrence.[2] For the purposes of this analysis, a somewhat broad understanding of transitional justice is adopted. Accordingly, the discussion also encompasses historical precedents that predate the formal emergence of transitional justice as a field, including those developed in the aftermath of the Second World War.

Reparations refer to the various measures provided to victims of human rights violations with the aim of redressing — to the extent possible — the harm they have suffered. These measures typically include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[3] While reparations constitute a core pillar of transitional justice, all four pillars may be understood as contributing, in different ways, to substantive remediation.[4] As will become apparent throughout the analysis, however, adopting a strictly legal definition of reparations gives rise to conceptual tensions with other forms of intervention — such as development assistance, economic recovery, reconstruction, and humanitarian aid — which often overlap but differ from reparations — at least *sensu stricto* — in who they target, their goals, and legal and normative foundations.

Finally, the analysis primarily refers to businesses, understood as profit-oriented legal entities, and businesspeople, understood as natural persons acting either in their capacity as corporate officers, directors, or other authorised representatives of a business, or as individuals engaging in economic activity in their personal capacity without establishing a separate legal entity. At the same time, the analysis acknowledges that a broader range of actors may be involved in the commission of gross human rights violations in contexts of armed conflict or repression. For this reason, terms such as 'businesses', 'economic actors', 'business sector', and 'private sector' are used interchangeably throughout the paper.

There is a broad consensus that transitional justice has historically developed as a predominantly state-centric project. Transitional justice processes have largely conceptualised the state as the

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[1] See, 'Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (2010) <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf >.

[2] It should be noted that, according to the UN Special Rapporteurs on the promotion of truth, justice, reparation and guarantees of non-recurrence, guarantees of non-recurrence are better characterised as a function, rather than as a set of measures — as is the case with truth, justice, and reparation — within a comprehensive transitional justice framework. See, e.g., Human Rights Council, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff: Guarantees of Non-Recurrence' (7 September 2015) UN Doc A/HRC/30/42, paras 23-24.

[3] See, UNGA, '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' (16 December 2005) UN Doc A/RES/60/147, principles 19-23.

[4] See, Human Rights Council, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises – Implementing the Third Pillar: Lessons from Transitional Justice Guidance by the Working Group' (8 June 2022) UN Doc A/HRC/50/40/Add.4, para 22

primary bearer of responsibility for widespread and systematic gross human rights violations and, correspondingly, as the principal actor tasked with providing truth, justice, and reparation to the victims of those violations.

Over time, transitional justice practice has expanded in some ways, most notably through the inclusion of non-state armed groups as relevant perpetrators and actors bearing responsibilities within transitional justice frameworks. By contrast, the role of businesses in situations of armed conflict and repression, and, crucially, their responsibilities in post-conflict and post-repression processes, have largely remained at the periphery of transitional justice practice. This marginalisation has been especially pronounced with respect to reparations**.**

This relative neglect sits uneasily with the growing body of evidence concerning the role of business enterprises in conflict-affected and repressive contexts. It is now widely acknowledged that business enterprises operating in conflict-affected and other high-risk contexts are not neutral actors. Their presence, operations, and commercial relationships inevitably shape conflict and repression dynamics. In such contexts, businesses may directly perpetrate, facilitate, or benefit from gross human rights violations and abuses.[5] Empirical research and policy practice consistently demonstrate that some of the most egregious business-related human rights harms occur precisely in situations of armed conflict and widespread violence.[6]

Against this background, corporate accountability has frequently been described as the 'missing piece' of the transitional justice agenda in both scholarly and policy debates.[7] With the benefit of further empirical research, however, it has become increasingly clear that this characterisation, while analytically useful, risks oversimplification.[8] In fact, as will be discussed below, transitional justice processes have, in a number of contexts, sought, albeit with mixed results and overall limited success, to engage with corporate involvement in past abuses. Ultimately, these efforts indicate that corporate accountability has not been entirely absent from transitional justice practice.
That said, it remains accurate to observe that the involvement of economic actors in transitional justice processes has been limited, fragmented and uneven in its outcomes, particularly with respect to reparations.[9]

Several factors may help explain the historically peripheral role of corporate accountability within transitional justice. One such factor is the tendency — actually largely shaped by the financial, institutional, and practical constraints that characterise transitional and, particularly, post-conflict

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[5] See, e.g., Andrew Clapham and Scott Jerbi, 'Categories of Corporate Complicity in Human Rights Abuses' (2001) 24 *Hastings Intl & Comp LR* 339; Anita Ramasastry, 'Corporate Complicity: From Nuremberg to Rangoon – An Examination of Forced Labour Cases and Their Impact on the Liability of Multinational Corporations' (2002) 20 *Berkeley J Intl L* 91.
[6] See, e.g., UNGA, 'Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie – Business and Human Rights in Conflict-Affected Regions: Challenges and Options Towards State Responses' (27 May 2011) UN Doc A/HRC/17/32, para 5; Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Doc A/HRC/17/31 (UNGPs) commentary to principle 7.
[7] See, e.g., Juan Pablo Bohoslavsky and Veerle Opgenhaffen, 'The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship' (2010) 23 *Harvard Hum Rts J* 157, 160. See also, Louise Arbour, 'Economic and Social Justice for Societies in Transition' (2007) 40(1) *NYU J Intl L & Pol* 1, 4; Dustin N. Sharp, 'Introduction: Addressing Economic Violence in Times of Transition' in Dustin N. Sharp (ed), *Justice and Economic Violence in Transition* (Springer 2014) 9.
[8] See, Leigh A. Payne, Gabriel Pereira and Laura Bernal-Bermúdez, 'The Business of Transitional Justice' in Jens Meierhenrich, Alexander Laban Hinton and Lawrence Douglas (eds), *Oxford Handbook of Transitional Justice* (Oxford University Press 2025) 674. See also, Irene Pietropaoli, Business, Human Rights and Transitional Justice (Routledge 2020) 67.
[9] See, e.g., Taygeti Michalakea, *When Corporate Accountability Meets Transitional Justice* (Cambridge University Press 2025) xiv, 11.

contexts, and by the resulting need for prioritisation — to focus accountability efforts towards those *identified* as the primary or principal perpetrators of gross human rights violations, most notably state agents and, progressively, non-state armed groups.[10] In doing so, transitional justice processes have often marginalised scrutiny of actors whose involvement in past violations *is assessed* as only secondary or minor.[11] In practice, this has had the effect of under-recognising the structurally significant role that businesses have frequently played in enabling, facilitating or profiting from gross human rights violations in times of armed conflict and repression. While corporate involvement has usually not taken the form of direct physical perpetration,[12] it has nonetheless often constituted a critical enabling condition for the commission of violations.[13] This dynamic reveals a mismatch between, on the one hand, the complex and interconnected realities of violence on the ground — within which economic actors may exercise considerable influence — and, on the other hand, the comparatively narrow accountability horizons traditionally embraced by transitional justice processes.

A second critical factor concerns the economic and political power wielded by businesses, which, in several contexts, has enabled them to impede or weaken efforts to hold them accountable for their involvement in gross human rights violations during periods of armed conflict or repression. In the literature, this dynamic has been described as the 'veto power' of businesses, with corporate actors characterised as 'veto players' capable of influencing and constraining accountability processes in post-conflict and post-repression settings.[14] Additionally, attempts by victims and civil society organisations to address corporate participation in atrocity crimes in transitional justice settings have at times been constrained by credible threats of retaliation by businesses themselves, thereby reinforcing the structural gap between transitional justice processes and corporate accountability.[15] This veto power is often closely intertwined with the political and economic calculations and agendas of transitioning governments, particularly concerns that pursuing corporate accountability may jeopardise access to private-sector cooperation and investment deemed essential for post-conflict reconstruction and recovery.[16] These concerns often stem from the adherence of transitioning governments — frequently reinforced by the expectations of their international partners — to market-oriented, neo-liberal paradigms that emphasise collaboration with business actors as a driver of economic recovery and growth.[17] As a result, the veto power exercised by businesses, coupled with

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[10] A comparable line of reasoning has been advanced in relation to the traditional focus of transitional justice on violations of civil and political rights, often at the expense of violations of economic, social, and cultural rights, including economic crimes. This selective focus has been shown to contribute to the limited scrutiny of the role played by economic actors in contributing to, enabling, or benefiting from violence. See, e.g., Arbour (n 7); Sharp (n 7); Zinaida Miller, 'Effects of Invisibility: In Search of the "Economic" in Transitional Justice' (2008) 2 *Intl J Transitional J* 26; Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes' (2008) 2 *Intl J Transitional J* 310.

[11] See, e.g., Joris van de Sandt and Marianne Moor, 'Peace, Everyone's Business! Corporate Accountability in Transitional Justice: Lessons for Colombia' (PAX 2017) 15.

[12] See, e.g., Jennifer Zerk, 'Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies – A Report Prepared for the Office of the UN High Commissioner for Human Rights' (2012) <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf>, 24.

[13] See, e.g., Payne, Pereira and Bernal-Bermúdez (n 8) 684.

[14] See, Leigh A. Payne, Gabriel Pereira and Laura Bernal-Bermúdez, *Transitional Justice and Corporate Accountability from Below* (Cambridge University Press 2020). The authors argue that, in transitional justice contexts, the strong veto power exercised by businesses, coupled with limited international pressure for corporate accountability, may nevertheless be counterbalanced through the mobilisation of victims and civil society actors, as well as through the innovative use of legal tools by institutional actors, including judges, prosecutors, and members of truth commissions. This bottom-up dynamic is conceptualised by the authors as an 'accountability from below' or 'justice from below' model.

[15] See, e.g., van de Sandt and Moor (n 11) 15.

[16] See, e.g., ibid 16.

[17] See, Joanna Kyriakakis, 'Industry and Transitional Justice' in *Corporations, Accountability and International Criminal Law* (Edward Elgar 2021) 182-183.

the limited political willingness of transitioning governments to pursue corporate accountability measures perceived as economically or politically costly, has frequently prevailed over efforts to scrutinise corporate involvement in past abuses, contributing to the sidelining of corporate accountability within transitional justice processes.[18] As discussed below, this dynamic — operating alongside other factors — helps explain the limited effectiveness of attempts to involve businesses in transitional justice processes, particularly in relation to reparations.

Finally, it should be acknowledged that corporate accountability — and the business & human rights field more broadly — is an area of rapid and ongoing development. While a growing body of international and domestic standards has significantly clarified corporate responsibilities with respect to preventing and redressing human rights harm, these standards — many of which are authoritative yet non-binding — remain fragmented and only partially articulated when it comes to, *inter alia*, questions of corporate complicity and reparation duties, particularly in transitional justice contexts. These gaps have proven particularly challenging for transitional justice processes — notably, truth and reconciliation commissions (TRCs) discussed below — which have often lacked clear frameworks for addressing corporate complicity and reparation obligations, while also making limited efforts to ground their findings and recommendations in robust legal analysis.

Having said that, a few additional remarks are in order. As effectively shown in the scholarship, transitional justice is not inherently incompatible with addressing questions of corporate accountability.[19] On the contrary, a growing body of scholarship and practice suggests that, where businesses have been involved in the perpetration of gross human rights violations during periods of armed conflict or repression, addressing corporate accountability may be necessary to fulfil the core objectives of transitional justice itself.[20] A strong case can therefore be made for treating corporate accountability as an integral component of transitional justice efforts in such contexts. This insight can be articulated across the different pillars of transitional justice. Under the truth pillar, transitional justice seeks to establish a comprehensive and authoritative account of past violations, including their causes, dynamics, and consequences. This objective cannot be met without examining the role played by *all actors*, including businesses, when their conduct contributed to patterns of abuse. Excluding corporate involvement may result in accounts that are incomplete, in that they do not fully reflect the dimensions of violence. Similar considerations arise under the justice pillar, which is concerned with accountability for past violations. Where businesses were implicated in serious violations, excluding them from justice processes undermines the principle that responsibility should attach to all relevant perpetrators and contributors, and may reinforce perceptions of selective or unequal justice.

The relevance of corporate accountability is particularly evident in relation to reparations. Involving economic actors in transitional justice processes responds not only to states' international obligations

[18] Tunisia offers a pertinent example. Although the Truth and Dignity Commission documented corporate involvement in corruption under the Ben Ali regime, subsequent policy choices prioritised economic stabilisation and the maintenance of an investment-friendly environment. In particular, the 2015 draft Economic and Financial Reconciliation Bill proposed mechanisms shielding private actors implicated in corruption from accountability, reportedly following sustained business-sector lobbying. These dynamics contributed to the marginalisation of broader corporate accountability efforts beyond Ben Ali and his immediate entourage. See, Michalakea (n 9).

[19] See, Payne, Pereira and Bernal-Bermúdez (n 8) 675; Cath Collins (ed), 'Roles and Responsibilities of the Private Sector in Transitional Justice Processes in Latin America' (Due Process of Law Foundation, 2021) <https://pure.ulster.ac.uk/ws/portalfiles/portal/100268612/RolesResponsibilsPrivSector_TJLA_Arg_Col_Guate.pdf>.

[20] See, UN Doc A/HRC/50/40/Add.4 (n 4) para 41; Michalakea (n 9) 21-22.

to provide reparation,[21] but also to the legal responsibilities of business actors themselves.[22] In addition, it may open up complementary and vital sources of funding for reparations,[23] most notably but not exclusively for domestic reparations programmes, in situations where transitioning states, especially in post-conflict settings, often face severe financial constraints and a high number of victims with legitimate claims to redress. Finally, corporate accountability is closely linked to guarantees of non-recurrence. Transitional justice aims not only to address past harm but also to prevent or reduce the likelihood of future violations. Without confronting the corporate drivers of violence, including business practices that facilitated or incentivised abuse, transitions risk leaving key structural causes of violence unaddressed.[24] From this perspective, the failure to engage corporate actors may weaken the preventive and transformative potential of transitional justice as a whole.

As noted above, notwithstanding the prevailing perception outlined earlier, corporate accountability has not been completely outside the purview of transitional justice processes, including in relation to reparations. In several contexts, transitional justice mechanisms have engaged — albeit unevenly — with the role of business actors in situations of armed conflict or repression, both within truth-seeking and accountability processes, and have, in some instances, succeeded in securing, or at least pursuing, business contributions to reparations. This section maps both implemented practices and publicly documented[25] attempts to involve business actors in reparations within transitional justice contexts.[26]

As is well established, reparations for victims of gross human rights violations in transitional justice settings may be pursued through two broad avenues: judicial mechanisms — primarily civil, and to a more limited extent criminal, proceedings — and domestic reparations programmes.[27] The analysis below is structured around this broad distinction, while recognising that the boundary between these avenues is often blurred in practice. As will be shown, TRCs may — and frequently do — play a significant role in facilitating access to reparations through their authoritative, albeit non-binding, findings and recommendations. Accordingly, the section concludes with a set of critical reflections on the role of TRCs in this regard.

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[21] See, Basic Principles and Guidelines (n 3).

[22] See, UNGA, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises – Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action' (21 July 2020) UN Doc A/75/212, para 85.

[23] See, e.g., Anton Moiseienko, Emily Bell, Matthew Neuhaus and Dmytro Koval, 'War Funders and Profiteers: Economic Complicity in International Crimes in Ukraine and Beyond' (Australian National University, 2025) 36. See also, UNGA, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli – Financing of Reparation for Victims of Serious Violations of Human Rights and Humanitarian Law' (14 July 2023) UN Doc A/78/181.

[24] For instance, the limited pursuit of corporate accountability in the context of South Africa's transition has resulted in a continuing search for justice among victim groups as well as unresolved accountability claims. See, *In re South African Apartheid Litigation*, 617 F.Supp.2d 229 (SDNY 2009); Charles P. Abrahams, 'Lessons from the South African Experience' in Sabine Michalowski (ed), *Corporate Accountability in the Context of Transitional Justice* (Routledge 2013) 170-172.

[25] This mapping exercise is necessarily subject to limitations, given the uneven availability of publicly accessible information on certain transitional justice experiences, particularly with respect to the concrete outcomes of attempts to involve business actors in reparations. As a result, some initiatives may be under-documented or only partially reflected in the analysis.

[26] As described above, all four pillars of transitional justice represent forms of substantive remediation (see, A/HRC/50/40/Add.4 (n 4) para 22. As a result, the truth, justice, and guarantees of non-recurrence components of transitional justice are also discussed here, in addition to the reparations pillar.

[27] See, e.g., Human Rights Council, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: Practical Experiences of Domestic Reparation Programmes' (11 July 2019) UN Doc A/HRC/42/45, paras 31-37.

In the aftermath of armed conflict and repression, victims of alleged business-related gross human rights abuses[28] have sought reparations through civil and criminal courts, often in circumstances where access to domestic reparations programmes was unavailable, ineffective, or entirely foreclosed.[29]

With respect to civil litigation, claims have been pursued both before the courts of transitioning states and—more frequently, in light of the institutional, political, and capacity constraints affecting many such jurisdictions—transnationally, typically before the courts of businesses' home states. Notwithstanding the significant legal, procedural, and practical obstacles faced by victims in pursuing litigation,[30] particularly in transnational proceedings, in a limited number of cases, victims were actually able to secure compensation[31] from businesses for the harm suffered.

By way of illustration, in 2024, a United States court ordered Chiquita to pay more than USD 38 million in compensatory damages to Colombian plaintiffs, finding the company liable for providing substantial assistance in the form of cash payments and other means of support to paramilitary groups (i.e., the United Self-Defense Forces of Colombia (AUC)) responsible for extrajudicial killings, torture, enforced disappearances, and other crimes against humanity perpetrated against civilians in the Urabá region of Colombia.[32] More recently, a US court ordered BNP Paribas to pay USD 20.75 million in damages to Sudanese plaintiffs for harm suffered as a result of the bank's provision, between 1997 and 2007, of critical financial infrastructure and banking services that facilitated gross human rights violations committed by the former government of Omar al-Bashir in Darfur, Sudan.[33]

At the domestic level, civil claims for compensation have also been brought in a number of jurisdictions, particularly in Latin America,[34] by survivors and next-of-kin of victims of gross human rights violations committed during periods of armed conflict or repression, albeit with uneven outcomes.[35]

It is important to note that the vast majority of civil claims brought against businesses for their alleged involvement in conflict- or repression-related gross human rights violations have ultimately been resolved through out-of-court settlement between the parties rather than adjudication on the merits.[36]

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[28] This paper uses the term 'business-related gross human rights abuses' to refer to gross violations of international human rights and humanitarian law in which business actors are implicated through some form of involvement or contribution. For the purposes of this analysis, terms such as 'participation', 'contribution', 'complicity', and related expressions are used interchangeably to denote the various modalities through which business actors may become implicated in gross human rights violations in contexts of armed conflict or repression.

[29] See, e.g., Abrahams (n 24).

[30] As is well known, victims of business-related human rights abuses face numerous challenges, both legal and practical, in accessing remedies. These challenges are exacerbated and heightened in transitional justice contexts. See, e.g., A/HRC/50/40/Add.4 (n 4) para 28.

[31] Compensation is the most common remedy in domestic legal systems, especially Western ones. 'Compensation', 'monetary compensation', and 'financial compensation' are used interchangeably here.

[32] US District Court for the Southern District of Florida, *John Doe 1 et al. v. Chiquita Brands International, Inc.*, Case No 08-MD-01916 (10 June 2024). The verdict is currently under appeal.

[33] US District Court for the Southern District of New York, *Kashef, et al. v. BNP Paribas, et al.*, Case No 1:2016cv03228 (17 October 2025).

[34] See the findings of the Corporate Accountability and Transitional Justice database, as incorporated into Payne, Pereira and Bernal-Bermúdez (n 14). The database shows that winning cases against companies concentrate in Latin America, including as a result of the innovative combined use of civil and labour law. See, Payne, Pereira and Bernal-Bermúdez (n 8) 679.

[35] See, for example, the proceedings brought in Argentina against Siderca S.A. concerning the enforced disappearance of Oscar Orlando Bordisso, a company worker who was abducted in 1977 while travelling home from the workplace. In 1995, his wife, Ana María Cebrymsky, initiated a claim based on Argentina's worker safety law. In 2007, the Supreme Court of the Province of Buenos Aires upheld the award ordering Siderca to pay Ms Cebrymsky compensation for the death of the husband.

[36] See, several civil proceedings brought in the United States and ultimately resolved through out-of-court settlements, including claims against Chiquita by US nationals alleging the company's complicity in the kidnapping and murder of

In this respect, out-of-court settlements have constituted a significant — often the only realistic — avenue through which victims of gross business-related human rights abuses have been able to obtain financial compensation from corporate actors.

At the same time, such settlements raise several well-documented concerns, notably from a victims' rights perspective.[37] These include, first, issues of transparency, given that settlement agreements are frequently confidential and therefore shielded from public scrutiny, thereby also limiting the flow of information within affected communities. Second, settlements typically entail a trade-off between different, yet equally fundamental, forms of reparation under international human rights law:[38] while defendant companies may agree to provide monetary compensation, this is often coupled with express denials of wrongdoing and responsibility, as well as the absence of apology and other forms of satisfaction. Third, settlements inherently preclude the establishment of legal liability and the development of case law, as disputes are resolved without a judicial determination on the merits. Finally, settlement agreements commonly require victims to waive their claims against the defendant, thereby foreclosing the possibility of pursuing further remedies in exchange for compensation.

Partially analogous dynamics can be observed in a distinct, yet closely related, category of negotiated resolutions: agreements concluded between prosecuting authorities and corporate defendants. A prominent illustration is provided by Brazil, in relation to civil proceedings initiated by public prosecutors, including following complaints by survivors,[39] against Volkswagen Brazil concerning the company's alleged involvement in gross human rights violations — most notably the repression of workers — during the 1964-1985 military dictatorship. In September 2020, public prosecutors and Volkswagen Brazil announced that they had reached an agreement,[40] under which the company agreed to pay a total of R$36.3 million[41] and to publish a public statement in widely circulated newspapers on the facts ascertained in the investigations and the subject matter of the agreement, in exchange for the formal closure of the civil investigations initiated against it. The agreement was generally welcomed as a meaningful step towards corporate accountability in post-dictatorship Brazil.[42] Yet, it has also attracted criticism[43] with respect to the limited consultation of

missionaries by Colombian paramilitary groups; against General Motors by South Africans in connection with abuses committed under the apartheid regime; against ExxonMobil by Indonesian villagers alleging complicity in murder, torture, and rape committed by members of the Indonesian military hired to protect its operations in Aceh; and against Unocal by Burmese villagers alleging complicity in forced labour, forced displacement, and other abuses committed by the Myanmar military in connection with the Yadana gas pipeline project. See also the settlements reached with German companies and Swiss banks in litigation brought by Holocaust survivors in the US in the late 1990s, discussed below.

[37] See, e.g., A/HRC/50/40/Add.4 (n 4) para 29; UN General Assembly, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises – Access to Effective Remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework' (18 July 2017) UN Doc A/72/162, para 46; Clara Sandoval and Gill Surfleet, 'Corporations and Redress in Transitional Justice Processes' in Sabine Michalowski (ed), *Corporate Accountability in the Context of Transitional Justice* (Routledge 2013) 109-110. For a less critical analysis of out-of-court settlements, see, e.g., Leora Bilsky, *The Holocaust, Corporations, and the Law: Unfinished Business* (University of Michigan Press 2017).

[38] See, Basic Principles and Guidelines (n 3) principles 19-23.

[39] See, e.g., 'Volkswagen in Brazil: Automobile Group Collaborated with Military Dictatorship' (ECCHR) <https://www.ecchr.eu/en/case/volkswagen-in-brazil-automobile-group-collaborated-with-military-dictatorship/>.

[40] See, 'Volkswagen assina acordo com Ministério Público sobre repressão na ditadura' (MPSP, 23 September 2020) <https://mpsp.mp.br/w/volkswagen-assina-acordo-com-minist%C3%A9rio-p%C3%BAblico-sobre-repress%C3%A3o-na-ditadura>.

[41] The funds were allocated as follows: R$16.8 million to the Henrich Plagge Association for individual compensation of former Volkswagen employees subjected to politically motivated persecution during the military dictatorship; R$9 million to federal and regional funds for the protection of collective and diffuse rights; and R$10.5 million to truth and memory initiatives, including the construction of a memorial by the São Paulo section of the Brazilian Bar Association and research and forensic exhumation projects led by the Federal University of São Paulo.

[42] See, e.g., Thierry Ogier, 'In Brazil, It's Reparation Time for Volkswagen' (JusticeInfo.Net, 6 October 2020) <https://www.justiceinfo.net/en/45592-brazil-reparation-time-volkswagen.html>.

[43] See, e.g., Felipe Colla de Amorim, Vitor Sion and Rodolfo Machado, 'Accountability for Volkswagen's Role in the Brazilian Dictatorship' in Leigh A. Payne, Laura Bernal-Bermúdez and Gabriel Pereira (eds), *Economic Actors and the*

victims regarding the allocation of the funds,[44] the language of the agreement framing the payment as a gesture of solidarity rather than as reparation (with the funds characterised as a 'donation' without any acknowledgement of responsibility), and the significant temporal distance between the violations and the settlement itself.[45]

Criminal proceedings have also, albeit to a limited extent, provided victims with an avenue to access reparations. As is well established, unlike civil litigation, the primary function of criminal trials is the punishment of offenders and, to some degree, the deterrence of future violations, rather than the redress of harm suffered by victims. Nevertheless, in a number of legal systems, victims of criminal conduct may attach civil or compensation claims to criminal proceedings, thereby enabling them to seek reparations for the harm suffered in connection with the offences for which the accused is convicted through so-called 'adhesion procedures'. This procedural possibility allows victims to obtain compensation within the framework of criminal justice, without the need to initiate and sustain separate civil proceedings.

At the same time, it should be acknowledged that such civil claims cannot always be adjudicated within criminal proceedings, either because this procedural mechanism is not recognised in the relevant jurisdiction in the first place or because the criminal court declares the civil claim inadmissible, notably where the assessment of damages is considered too complex to be undertaken by a criminal court.[46] In such circumstances, victims may still pursue reparations through separate civil actions brought after the conclusion of the criminal trial, with the criminal conviction serving as a crucial factual and legal basis for subsequent civil litigation concerning the same harm.[47] However, this additional step may entail further procedural and substantive hurdles, including the protracted duration and increased costs of civil proceedings.

Limits of Transitional Justice: Truth and Justice for Business Complicity in Human Rights Violations (Oxford University Press 2022); Juan Pablo Bohoslavsky and Juan Cruz Goñi, 'Negociando la rendición de cuentas por violaciones de los derechos humanos: el caso del acuerdo Volkswagen do Brasil' (2021) 5 Homa Publica - Revista Internacional de Derechos Humanos y Empresas 1; 'Due Reparation: What Does the Volkswagen Agreement in Brazil Mean?' (Centro de Estudos Sobre Justiça de Transição, 8 October 2020) <https://cjt.ufmg.br/en/due-repair-what-does-the-volkswagen-agreement-with-the-public-ministry-mean/>.

[44] For example, the decision to allocate part of the settlement funds to the completion of the Memorial of the Fight for Justice attracted criticism from former workers subjected to Volkswagen-facilitated state repression, who had initiated the complaints leading to the civil investigations and, ultimately, the 2020 settlement. These workers had instead expressed a preference for the establishment of a memorial specifically dedicated to the history of the labour movement. Ultimately, only a limited portion of the amount paid by Volkswagen Brazil was allocated directly to survivors of the military dictatorship. This outcome must, however, be understood in light of the legal nature and function of *compromissos de ajustamento de conduta* under Brazilian law, which are designed primarily to address collective, diffuse, or homogeneous individual harms, rather than to serve as mechanisms for individual victim compensation.

[45] By way of illustration, during the prolonged interval between the alleged violations and the conclusion of the settlement, one of the former Volkswagen Brazil employees who had initiated the complaint, Lúcio Bellentani, passed away.

[46] For example, in the *Lundin* case, which is currently pending before Swedish courts and involves charges of complicity in war crimes against two former executives of the Swedish energy company, the Stockholm District Court decided to separate damage claims from the main criminal trial on the basis that the assessment of complex civil harms could not be effectively addressed within the criminal forum. See, Fanny Holm, 'Reparations for Corporate Involvement in War Crimes: The Lundin Trial and Prospects for Victims' Justice' (2024) 9 *Business & Hum Rts J* 402.

[47] An illustrative example is provided by the case of Frans van Anraat, a Dutch businessman convicted for complicity in international crimes committed by the Saddam Hussein regime during the Iran-Iraq War, including chemical attacks against the Kurdish population, for having supplied chemical precursors used in the production of mustard gas. Although a group of Iranian and Iraqi victims submitted compensation claims within the criminal proceedings, those claims were declared inadmissible. The victims subsequently initiated separate civil proceedings, in which Dutch courts awarded € 25,000 in compensation to each victim. See, Liesbeth Zegveld, 'Compensation for Victims of Chemical Warfare in Iraq and Iran through Domestic Criminal and Civil Proceedings in the Netherlands' in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (2nd edn, Brill Nijhoff 2020).

Even where victims are unable — or choose not — to attach civil or compensation claims to criminal proceedings, such trials may nonetheless result in fines or asset forfeiture being imposed on convicted businesses or businesspeople. By way of illustration, in 2007, Chiquita was fined US$ 25 million after pleading guilty to financing a Colombian paramilitary organisation, to which it had channelled more than US$ 1.7 million between 1997 and 2004.[48] Similarly, in 2022, Lafarge and its Syrian subsidiary pleaded guilty to conspiring to provide material support to the Islamic State of Iraq and the Levant and the al-Nusra Front, resulting in a US$ 90.78 million fine and US$ 687 million in forfeiture.[49]

While fines and forfeited assets may, in principle, represent a significant source of financial resources for reparations, their allocation for the benefit of the victims of the crimes facilitated by corporate actors is contingent upon specific legal requirements in each domestic legal system.[50] In practice, the earmarking of such funds for reparative purposes has proven highly complex, often constrained by prosecutorial discretion and limited political will.[51]

The possibility of channelling corporate fines or recovered assets into reparations has nevertheless been explicitly articulated within some transitional justice frameworks, albeit never ultimately implemented. An illustrative example is Liberia, where the TRC recommended that the proposed Reparations Trust Fund be financed, *inter alia*, through funds recovered from ‘economic criminals’ sentenced by domestic courts.[52] In practice, however, this proposal — together with the TRC’s recommendations more broadly — was rejected or left unimplemented by governmental authorities, and the envisaged use of corporate fines and recovered assets to fund reparations was never realised.[53]

By contrast, Colombia appears to offer — at least on paper — a somewhat more explicit legal pathway. Under Law 1448 of 2011 (the so-called ‘Victims and Land Restitution Law’), amounts established in judicial decisions as a consequence of companies’ illegal financing of organised armed groups may be channelled into the domestic reparations programme.[54]

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[48] See, ‘Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization and Agrees to Pay $25 Million Fine’ (US Department of Justice, 19 March 2007) <https://www.justice.gov/archive/opa/pr/2007/March/07_nsd_161.html>.
[49] See, ‘Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations’ (US Attorney's Office, Eastern District of New York, 18 October 2022) <https://www.justice.gov/usao-edny/pr/lafarge-pleadsguilty-conspiring-provide-material-support-foreign-terrorist>.
[50] Typically, fines and forfeited assets are transferred to the State treasury to finance public expenditures, rather than to meet individualised reparation needs.
[51] According to publicly available information, for instance, the fines paid by Chiquita and Lafarge have not been directed towards reparations for Colombian and Syrian victims. See, Tomas Hamilton, ‘Could the Lafarge Settlement provide Reparations for Victims of ISIL?’ (EJIL:Talk!, 3 July 2023) <https://www.ejiltalk.org/could-the-lafarge-settlement-provide-reparations-for-victims-of-isil/>; Stephany Caro Mejia, ‘Collective Reparations for Victims of ISIS’ (Just Security, 9 August 2023) <https://www.justsecurity.org/87521/collective-reparations-for-victims-of-isis/>; ‘Statement: Urging U.S. Attorney General to Direct Lafarge Asset Forfeiture to Benefit Victims and Survivors’ (17 June 2024) <https://crd.org/2024/06/17/statement-urging-u-s-attorney-general-to-direct-lafarge-asset-forfeiture-tobenefit-victims-and-survivors/>.
[52] See, ‘Final Report of the Truth and Reconciliation Commission of the Republic of Liberia, Volume III, Title III’ <https://www.trcofliberia.org/resources/reports/final/volume-three-3_layout-1.pdf>, 43-44. The TRC had determined that businesses — particularly private companies active in the extraction of natural resources — had played a ‘crucial role’ in the internal armed conflict. Corporate involvement included the provision of financial and, at times, military support to successive governments, including the Taylor regime, in exchange for illegal economic benefits, as well as engagement in looting, forced displacement of civilians, and arms smuggling.
[53] See, van de Sandt and Moor (n 11) 117, 119.
[54] See, *Ley 1448 del 2011 por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones* (adopted 10 June 2011, entered into force 10 June 2011) art 177.

Finally, it should be acknowledged that, including in transitional justice contexts, criminal proceedings brought against businesses and businesspeople,[55] whether resulting in convictions[56] or remaining pending,[57] may themselves perform a modest but not insignificant reparative function for victims.

At this stage of the analysis, it is useful to reflect on both the possibilities and the limits of court-ordered reparations by business actors. On the one hand, under certain conditions, the very process of seeking reparations through judicial proceedings may itself have reparative value for victims. Litigation can contribute to public acknowledgement of the harm suffered, raise broader societal awareness of business-related violations in times of armed conflict and repression, and provide victims with a forum in which to narrate their experiences and have them formally recognised. Moreover, where successful, court-ordered reparations — most commonly in the form of monetary compensation — are typically higher than the amounts available through domestic reparations programmes, reflecting an individualised assessment of harm. On the other hand, court-ordered reparations also present significant limitations. Judicial substantive remedies are generally confined to financial compensation and thus tend to be predominantly backwards-looking, offering limited scope for transformative or forward-looking rationale. In addition, reparations awarded through litigation benefit only the claimants in the proceedings, even if such outcomes may still generate indirect or 'spillover' effects for other victims or affected communities.[58] Finally, litigation is often lengthy, costly, and procedurally demanding, and may impose a considerable emotional burden on victims, including the risk of re-traumatisation.

The possibility of involving business actors in domestic reparations programmes, reparations funds, or related initiatives has been explicitly articulated in a number of transitional justice processes, even if it has rarely translated into concrete implementation. In several instances, TRCs have recommended that businesses contribute — directly or indirectly — to the financing of reparations for victims of gross human rights violations perpetrated in times of armed conflict or repression.
A particularly detailed articulation of this approach can be found in the recommendations of Liberia's TRC. After finding that businesses and businesspeople had provided financial and military support to successive Liberian governments in return for illegal economic benefits,[59] the TRC proposed that

[55] It should be noted that bringing criminal complaints and proceedings against businesses as legal entities is not always possible for not all jurisdictions around the world recognise the principle of corporate criminal liability.
[56] As is well known, following the Second World War, several business leaders were prosecuted and, in some cases, convicted by Allied military tribunals for complicity in the atrocities committed under the Nazi regime, including knowingly providing chemicals used in the mass extermination of concentration camps inmates as well as using slave labour. In Argentina, two former executives Ford Motor Argentina were sentenced to 10 and 12 years in prison for complicity in crimes against humanity, notably the illegal detention and torture of workers, committed by the military during the dictatorship. In the Netherlands, two businessmen, Frans van Anraat and Guus Kouwenhoven, were sentenced to 17 and 19 years in prison for complicity in war crimes through the provision of chemicals to the Saddam Hussein's regime in Iraq and the provision of weapons to the Charles Taylor's regime in Liberia, respectively. In Norway, Sadi Bugingo, a Rwandan businessman, was sentenced to 21 years in prison for knowingly supporting the Interahamwe militia during the genocide in Rwanda.
[57] The criminal trial in Sweden against former Lunding Oil executives Ian Lundin and Alexandre Schneiter, who are accused of complicity in war crimes committed by Sudanese government forces in today's Sudan between 1999 and 2003, concluded its hearings in May 2026, with judgment scheduled for December 2026. In April 2026, the Paris Criminal Court convicted Lafarge of financing a terrorist enterprise and violating international financial sanctions in connecting with payments to armed groups (Jabhat al-Nusra and the Islamic State) in Syria between 2013 and 2014. The company was fined EUR 1.125 million and ordered, jointly and severally with four former executives, to pay a customs fine of EUR 4.57 million. The defendants announced their intention to appeal, while a separate investigation into alleged complicity in crimes against humanity remains ongoing.
[58] For example, the USD 15 million out-of-court settlement reached in *Wiwa v. Shell* allocated USD 5 million to establish the Kiisi Trust Foundation, tasked with supporting community development initiatives — including in the fields of education, health, women's empowerment, and local development — for the wider Ogoni communities.
[59] See, 'Truth and Reconciliation Commission of the Republic of Liberia, Volume Two' <http://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf>, 289-296.

the envisaged Reparations Trust Fund be financed, *inter alia*, through judgments against so-called 'economic criminals'. It identified three principal avenues: (i) the recovery of unpaid tax arrears from timber, mining, petroleum, and telecommunications companies that had evaded fiscal obligations under the Taylor regime; (ii) funds obtained from economic actors sentenced by Liberian courts to pay restitution or other financial penalties; and (iii) the use of criminal and civil confiscation mechanisms in foreign jurisdictions to repatriate misappropriated Liberian assets.[60]

Similar, albeit less detailed, recommendations were advanced in other transitional justice contexts. Timor-Leste's TRC recommended that Indonesian and international businesses that had profited from the conflict or benefited from the occupation — including through arms sales — contribute to the funding of reparations for victims of human rights violations.[61] In Ghana, the TRC suggested that corporate bodies be encouraged to make voluntary contributions to the Reparations and Rehabilitation Fund.[62] Likewise, the TRC of Sierra Leone recommended that profits and monies recovered through criminal prosecutions or civil actions against persons who had profited from the conflict be channelled into the Special Fund for War Victims.[63]

Yet, the implementation of the above TRC recommendations concerning business contributions to reparations has consistently encountered significant resistance. In practice, government opposition, combined with the structural 'veto power' of business actors — often grounded in their perceived importance for economic stability, investment, and post-conflict recovery — has undermined political willingness and resulted in the systematic non-implementation of these proposals.

Under Law 1448 of 2011 (the Victims and Land Restitution Law), the domestic reparations fund may receive resources not only from amounts established in judicial decisions concerning companies that illegally financed organised armed groups, but also from voluntary contributions by, *inter alia*, corporate actors.[64]

In Rwanda, Law No. 2/1998 envisaged a mandatory financing role for businesses within the fund to be reserved for the assistance of the most needy victims of genocide and massacres, committed in Rwanda between October 1, 1990 and December 31, 1994.[65] Businesses were conceived as systematic contributors to the Fund's assets, alongside, *inter alia*, the State (the primary contributor, through an annual allocation of 5% of the ordinary budget), individuals (via salary-based contributions), and other entities, including non-profit organisations. More precisely, the law required registered businessmen and business entities operating in Rwanda to make annual payments to the Fund, with amounts differentiated according to economic activity and legal form.[66] Business

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[60] See, 'Truth and Reconciliation Commission of the Republic of Liberia, Volume Three' <https://www.trcofliberia.org/resources/reports/final/volume-three-3_layout-1.pdf>, 43-44.

[61] See, 'Final Report of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR)' <https://chegareport.org/Chega%20All%20Volumes.pdf>, 2620.

[62] See, 'National Reconciliation Commission of Ghana, National Reconciliation Commission, Final Report' <https://atjhub.csvr.org.za/wp-content/uploads/2021/08/2004-Final-Report.pdf>, 169. Ghana's Commission included reporting on, *inter alia*, alleged corporate involvement in torture and extrajudicial killings.

[63] See, 'Report of the Sierra Leone Truth & Reconciliation Commission, Volume 2' <https://rscsl.org/download/volume-2/>, 269. The Commission's findings framed corporate complicity primarily in structural and systemic terms, concluding that the business elite, along with successive political elites, was involved in the plundering of national assets, notably mineral resources, thereby contributing to the dynamics of conflict and violations.

[64] See, *Ley 1448 del 2011* (n 54) art 177.

[65] Note that, the Rwandan government's predominantly assistance-oriented approach was criticised by genocide survivors, who consistently maintained that assistance measures do not amount to reparation. See, Felix Mukwiza Ndahinda, 'Debating and Litigating Post-Genocide Reparations in the Rwandan Context' in Carla Ferstman and Mariana Goetz (2nd edn, Brill Nijhoff 2020) 640-641.

[66] See, Law No. 2/1998 of 22 January 1998 Establishing a national Assistance Fund for Needy Victims of Genocide and Massacres Committed in Rwanda Between 1 October 1990 and 31 December 1994, art 12. Specifically, registered

compulsory contributions were generalised, grounded in considerations of solidarity, rather than in findings of liability for genocide-related harm.

This framework was fundamentally revised in 2008, when Law No. 69/2008 replaced the list of funding sources contained in Law No. 2/1998 with a new one that no longer singled out businesses as a distinct category of mandatory contributors. Business involvement was instead confined to indirect and non-specific forms of participation, such as voluntary grants or donations, or through the holding of assets or interests generating returns for the fund.[67] Ultimately, Law No. 69/2008 was repealed in 2013 and replaced with Law No. 81/2013, which omitted any previous reference to reparations.[68]

One of the most significant experiences of businesses contributing to reparations programmes in transitional justice contexts (understood broadly, as clarified above) arguably concerns the reparations frameworks established for Holocaust survivors. These frameworks emerged from civil litigation initiated in the late 1990s in the United States, where a series of class action lawsuits were brought against German companies[69] and Swiss banks[70] for their alleged involvement in atrocities committed under the Nazi regime.

The litigation resulted in two distinct out-of-court settlements — one involving Swiss banks and the other involving German companies — both of which entailed corporate payments into dedicated reparations funds for Holocaust survivors, particularly those excluded from earlier post-Second World War compensation schemes. In exchange, claimants agreed to waive their claims and release the defendants — as well as other non-defendant corporate and government actors as discussed further below — from further judicial proceedings. Especially in the case of German companies, these payments were expressly framed as voluntary and 'humanitarian' contributions, rather than as part of an acknowledgement of wrongdoing or compliance with a legal obligation to provide reparations.[71]

Despite these common features, the two settlements differed in important respects, including the methods for the allocation of funds.[72]

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businessmen were required to contribute at least 10,000 RWF (retailers), 50,000 RWF (wholesalers), or 100,000 RWF (manufacturers, importers, and international transporters). Companies and public or commercial entities were also subject to mandatory contributions, set at a minimum of 20,000 RWF for limited companies and 100,000 RWF for public establishments, parastatals, and commercial companies other than limited companies.

[67] See, Law No. 69/2008 of 30 November 2008 relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organisation, powers and functioning, art 22.

[68] See, Mukwiza Ndahinda (n 65) 639.

[69] See, *In re Nazi Era Cases Against German Defendants Litigation,* 198 F.R.D. 429 (D.N.J.2000). These class action lawsuits, brought by Holocaust survivors in US federal courts and later consolidated, concerned the alleged involvement of German companies in atrocities committed under the Nazi regime, notably through the use of forced and slave labour. See, John Authers, 'Making Good Again: German Compensation for Forced and Slave Laborers' in Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press 2006).

[70] See, *In re Holocaust Victim Assets Litigation*, F.Supp.2d 139, 141-42 (E.D.N.Y. 2000). These class action lawsuits, filed in 1996-1997 by Holocaust victims in US federal courts and later consolidated in a case before the US District Court for the Eastern District of New York (Judge Edward R. Korman), alleged that Swiss financial institutions collaborated with and aided and abetted the Nazi regime by knowingly retaining and concealing Holocaust victims' assets, as well as by accepting and laundering illegally obtained Nazi loot and profits from slave labour. See, Judah Gribetz and Shari C. Reig, 'The Swiss Banks Holocaust Settlement' in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide and Crimes against Humanity* (2nd edn, Brill 2009).

[71] See, van de Sandt and Moor (n 11) 65-66.

[72] See, Bilsky (n 37).

In the context of the class action litigation brought against Swiss banks, the parties were able to reach a 'Global Settlement' (i.e., an agreement in principle) in August 1998, subsequently followed by a 'Settlement Agreement',[73] which was signed on 26 January 1999 and became final on 30 March 1999, following the endorsement by the seventeenth Jewish organisation. The settlement created a USD 1.25 billion Settlement Fund.

Since the claims against the Swiss banks were brought as a class action under the Federal Rules of Civil Procedure,[74] both the negotiation and the implementation of the settlement were subject to judicial supervision, overseen by Chief Judge Edward R. Korman of the United States District Court for the Eastern District of New York. The settlement required court approval, which was granted on 26 July 2000,[75] after the court determined that it was 'fair, reasonable and adequate'.[76] That approval, however, was conditioned on the introduction of a number of safeguards and amendments, designed in particular to facilitate the effective review and processing of claims.[77]

The settlement established five 'classes' of compensable claims. These comprised: (i) the 'deposited assets class', covering claims by individuals who had deposited money and/or other assets in Swiss banks before or during the Holocaust and whose accounts were never been returned; (ii) the 'slave labor class I', encompassing claims by individuals who, during the Holocaust era, performed slave labour for German corporations whose profits from such labour were deposited with or transacted through Swiss banks and other financial institutions; (iii) the 'slave labor class II', covering claims by individuals who during the Holocaust era performed slave labour for Swiss corporations; (iv) the 'refugee class', encompassing claims by those who, during the Holocaust era, were turned away from the Swiss border or expelled from Switzerland, or were admitted into Switzerland but abused or mistreated while seeking refuge there; and (v) the 'looted assets class', covering claims by individuals whose property was looted by the Nazis and subsequently disposed of through Swiss banks and other institutions. Following an amendment to the settlement agreement, a sixth class was subsequently created de facto to cover claims relating to certain Holocaust-era insurance policies against insurance companies that had agreed to participate in the settlement.

The settlement recognised five categories of 'victims or targets of Nazi persecution' as eligible for compensation: (i) Jewish persons, (ii) Roma, (iii) Jehovah's Witnesses, (iv) persons with disabilities, and (v) homosexual persons.[78]

The settlement itself did not prescribe a detailed methodology for the allocation of the funds, which required ongoing judicial supervision, as well as compliance with principles of US (class action) law. The court appointed a Special Master, Judah Gribetz, to develop a fair and equitable allocation and

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[73] The settlement is available at <https://www.swissbankclaims.com/Documents/Doc_9_Settlement.pdf>. The settlement specified as 'Settling Defendants' only Credit Suisse and UBS AG, the largest Swiss banks, and each of their former and current corporate parents, subsidiaries, affiliates, and branches. However, the settlement had the consequence of releasing from further Holocaust-related claims, in addition to the 'Settling Defendants', virtually all Swiss financial and governmental entities.
[74] See, Federal Rules of Civil Procedure, Rule 23.
[75] See, US District Court for the Eastern District of New York, *In re Holocaust Victim Assets Litigation*, 105 F.Supp.2d 139, 26 July 2000 (as corrected 2 August 2000) <https://www.swissbankclaims.com/Documents/DOC_19_OrderApprovingSettlement07_26_00.pdf>. See also, US District Court for the Eastern District of New York, *In re Holocaust Victim Assets Litigation*, 96 Civ. 4849 (ERK) (MDG) (Consolidated with 99 Civ. 5161 and 97 Civ. 461), Final Order and Judgment, 9 August 2000, <https://www.swissbankclaims.com/Documents/DOC_22_FinalOrder.pdf>.
[76] See, Federal Rules of Civil Procedure, Rule 23(e)(2).
[77] See, 'Amendment No. 2 to Settlement Agreement' <https://www.swissbankclaims.com/Documents/DOC_20_Amendment2.pdf>.
[78] Note, however, that the 'slave labor class II' was not limited to the five 'victim or target' groups.

distribution framework consistent with applicable legal principles. The Special Master's proposal (the 'Distribution Plan') was submitted on 11 September 2000 and subsequently approved by the court on 22 November 2000.[79]

A central feature of the Distribution Plan was the allocation of USD 800 million to the deposited assets claims. This allocation reflected an explicit prioritisation choice already embedded in the Settlement Agreement and was grounded in both legal and historical considerations. In particular, it took into account the estimated value of unreturned Holocaust-era accounts still held in Swiss banks and relied on fundamental principles of US law requiring an assessment of the comparative strengths and weaknesses of the asserted class action claims.[80] Within this framework, the deposited assets claims were regarded as legally and historically distinct and as possessing a unique evidentiary foundation compared to the other categories of claims.

With respect to slave labour claims, the Distribution Plan provided for standardised lump-sum payments rather than individualised assessments. Each surviving slave labourer was entitled to USD 1,000, later increased to USD 1,450, regardless of the duration of the labour performed or the nature of the work. This approach was underpinned by a legal presumption, derived from extensive historical research, concerning the pervasive financial links between the Nazi regime, German industry, and Swiss financial institutions. On that basis, the Plan presumed that the proceeds of slave labour for German entities had been transacted through Switzerland, and that all former slave labourers of German corporations should therefore be treated as members of the relevant class. A comparable lump-sum payment structure was adopted for former slave labourers of Swiss corporations.

Different distribution techniques were applied to other classes of claims. Refugees who had been turned away at the Swiss border or expelled were eligible for payments of USD 725, while those who had been admitted to Switzerland but mistreated while seeking refuge were eligible for payments of USD 3,625.

For looted assets claims, however, the Distribution Plan departed from direct cash compensation. Given the vast size of the class, the weak evidentiary link between looted property and Swiss financial institutions, and the impracticability of individualised or *pro-rata* monetary distributions, USD 100 million, later increased to USD 259 million, was allocated through a '*cy pres*' or 'next best thing' mechanism under US class action law. These funds were used to provide humanitarian assistance, including food, medicine, medical devices, shelter, and other basic necessities, to needy class members through a multi-year programme.

Finally, a separate allocation of USD 10 million, later increased to USD 14.5 million, was earmarked for research and memorialisation initiatives aimed at commemorating victims and targets of Nazi persecution.

Given the potentially broad pool of eligible claimants, the Distribution Plan, drawing on historical precedents in reparations programmes, limited eligibility for payments to heirs to a single category

[79] See, US District Court for the Eastern District of New York, *In re Holocaust Victim Assets Litigation*, Case No. CV 96-4849 (ERK)(MDG) (Consolidated with CV 96-5161 and CV 97-461), Memorandum & Order, 22 November 2000 <https://www.swissbankclaims.com/Documents/DOC_25_distplan.pdf>. The text of the 'Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds' is available at <https://www.swissbankclaims.com/Overview.aspx.html>. See also, Gribetz and Reig (n 70).
[80] See, Gribetz and Reig (n 70) 184.

of claims. Specifically, heirs (defined broadly) were eligible only in relation to the deposited assets class, which concerned the return of specific and identifiable property, namely, Swiss bank accounts. By contrast, claims based on personal harm — i.e., slave labour class I, slave labour class II, and refugee class — were in principle restricted to surviving victims, except in cases where the victim had died on or after 15 February 1999.

Under the supervision of the court and the special masters, the processing of claims and the administration of related assistance and memorialisation programmes were entrusted to several entities.

Deposited assets claims were processed by the Zurich-based Claims Resolution Tribunal (CRT-II),[81] which operated under the authority of the court and under the supervision of court-appointed Special Masters, with the support of attorneys and legal assistants. Acting with the court's authorisation and in line with principles of US law, the CRT-II was empowered to adopt evidentiary rules designed to address evidentiary obstacles and proof-related difficulties faced by claimants. These included the application of an adverse inference, whereby, given the destruction or absence of bank records, the Tribunal could presume that missing documentation would have demonstrated cooperation by banks with Nazi authorities, effectively shifting the burden of proof from claimants to defendants. The CRT-II was also authorised to rely on the earliest historically appropriate date in assessing whether an account had been transferred under duress, and to use presumptive methodologies, including average presumptive values, to determine the monetary value of accounts where precise documentation was unavailable.

Responsibility for processing slave labour claims was divided between two implementing organisations. The Conference on Jewish Material Claims Against Germany, Inc. (Claims Conference) was tasked with processing claims submitted by Jewish former slave labourers under slave labour class I, while the International Organization for Migration (IOM) was responsible for processing claims submitted by non-Jewish former slave labourers within the same class.[82] In addition, all claims falling under the slave labour class II were processed by the IOM.

A similar division of responsibilities applied to refugee claims. The Claims Conference processed claims submitted by Jewish refugees, whereas the IOM processed claims submitted by non-Jewish refugees.

In assessing eligibility, both the Claims Conference and the IOM applied relatively flexible criteria, reflecting the evidentiary constraints inherent in Holocaust-era claims.

With respect to looted assets claims, the IOM administered humanitarian assistance programmes for needy non-Jewish victims of Nazi persecution. Parallel programmes for the neediest Jewish members of the looted assets class were implemented by the American Jewish Joint Distribution Committee (JDC) and the Claims Conference, which were responsible for distributing assistance in accordance with the *cy pres* framework established under the Distribution Plan.

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[81] The CRT-II constituted the second phase of the Claims Resolution Tribunal's activities, following the establishment of the original CRT (CRT-I) in 1997 to arbitrate claims concerning dormant accounts in Swiss banks. Unlike its predecessor, the CRT-II was created specifically pursuant to the Settlement Agreement to adjudicate deposited assets claims within a court-supervised framework. In addition to bank account claims, the CRT-II also administered a programme relating to certain Holocaust-era insurance claims.

[82] The IOM administered all the claims falling within its mandate through the Holocaust Victims Assets Programme (HVAP).

The implementation of the settlement concluded in 2020 with the final distributions to claimants. As of 31 January 2020, the settlement had resulted in the payment of nearly USD 1.287 billion in compensation to approximately 458,400 claimants across more than 81 countries. Of this amount, approximately USD 720 million was distributed to the deposited assets class; over USD 280 million to slave labour class I; nearly USD 700,000 to slave labour class II; over USD 11.5 million to the refugee class; more than USD 1.4 million to the insurance class; and over USD 259 million to the looted assets class.[83]

While, as described above, both the negotiation of the settlement and the administration of the settlement fund in the Swiss banks litigation were closely supervised by US courts, ensuring third-party oversight, relative insulation from political pressures, and a meaningful degree of consultation with plaintiffs and potential beneficiaries, the settlement with German companies was the outcome of intensive diplomatic negotiations rather than a court-supervised process. These negotiations involved the governments of the United States and Germany, other interested states with significant populations of former forced labourers, the Conference on Jewish Material Claims Against Germany, representatives of German industry, and lawyers acting for claimants in the US class actions.[84] The involvement of the German government reflected concerns that prolonged litigation in US courts could have exposed German companies — and potentially the State itself — to reputational harm, competitive disadvantages, and economic countermeasures, including licence withdrawals and coordinated boycott campaigns.[85] The US government, for its part, assumed a facilitative and mediating role.

The negotiations culminated in the establishment, under German law,[86] of the 'Remembrance, Responsibility and Future Foundation' (Foundation), capitalised with DM 10 billion (approximately USD 5 billion) jointly by the German government[87] and German companies through the German Economy Foundation Initiative Steering Group,[88] each contributing half. In parallel, the US government provided guarantees of 'legal peace' for German companies in US courts with respect to claims arising from the Nazi era and the Second World War.[89]

It should also be recalled that these settlements were not without precedent. Between 1955 and 1988, a number of German companies — including IG Farben, Krupp, AEG-Telefunken, Siemens, Rheinmetall, and Daimler-Benz — had already entered into a series of out-of-court arrangements, mediated by the Conference on Jewish Material Claims Against Germany, establishing reparation

[83] See, 'Overview of Litigation and Settlement' <https://www.swissbankclaims.com/Overview.aspx.html>.
[84] See, See also, Authers (n 69).
[85] Note that, on the contrary, the Swiss government played no role in the context of the *In re Holocaust Victim Assets Litigation* in US courts.
[86] See, Law on the Creation of a Foundation 'Remembrance, Responsibility and Future' (adopted on 2 August 2000, entered into force 12 August 2000) <https://web.archive.org/web/20091201054319/http:/www.stiftung-evz.de/eng/about-us/foundation_law/>. The Foundation was governed by a Board of Trustees representing the victims, interested governments, and German companies.
[87] By contrast, the Swiss government did not participate in the financing of the USD 1.25 billion Settlement Fund.
[88] By early 2002, the entire sum of DM 10 billion had been made available to the Foundation by the German government and by German companies. Yet, to date, it is not very clear how many corporations donated to the fund. See, van de Sandt and Moor (n 11) 66.
[89] See, Agreement between the Government of the Federal Republic of Germany and the Government of the United States of America concerning the Foundation 'Remembrance, Responsibility and Future' (17 July 2000) 2130 UNTS 249. It is interesting to note that although the industrialist trials conducted in the aftermath of the Nuremberg Trials initially reflected a willingness on the part of the United States to pursue criminal accountability for business involvement in international crimes, this approach was soon recalibrated. As Cold War priorities took hold, U.S. policy increasingly privileged economic reconstruction and anti-Communist stabilisation over accountability, leading to clemency for convicted industrialists, the restoration of confiscated property, and the reintegration of German businesses deemed essential to post-war recovery. See, Payne, Pereira and Bernal-Bermúdez (n 14) 52.

funds and making payments to former forced labourers and Holocaust survivors.[90] These earlier initiatives, however, similarly rested on the framing of corporate payments as voluntary moral gestures rather than as the discharge of a legal obligation, and were likewise conditioned on the waiver of further claims by beneficiaries.

The modalities for the distribution of funds under the Foundation were largely determined through the negotiation process, outside of any precise legal framework.[91]

The Foundation's primary mandate was to provide financial compensation to two principal categories of victims of National Socialist forced labour: 'slave labourers', who had been subjected to particularly brutal working conditions, and 'forced labourers', who had been compelled to work under coercive conditions for little or no remuneration.[92] Approximately 80 per cent of the total funds (around DM 8.1 billion) were allocated to compensation for these two categories of claimants.

Compensation for slave and forced labour was provided in the form of fixed lump-sum payments: DM 15,000 for each former slave labourer and DM 5,000 for each former forced labourer. Under the original design of the mechanism, payments were to be made in two instalments. Claimants would receive an initial payment of approximately 50-70 per cent upon the successful determination of their claim, with the final balance payable only once all claims had been received and assessed, reflecting the dependence of final awards on the total number of eligible claimants. Any prior compensation received from German companies was deducted from the final award, whereas payments received from public sources were not. As a general rule, payments were made only to surviving labourers; heirs were eligible only where the victim had died on or after 16 February 1999, and in all cases involving property-related claims.

To enable the timely processing of a very large number of claims, evidentiary requirements were deliberately kept low. Alternatives to documentary proof were accepted, and decision-making relied in part on presumptions derived from historical research and experience. Nevertheless, the process was marked by significant challenges, particularly in outreach, claim submission, and verification. Many claimants reportedly experienced the application process as time-consuming, distressing, and demeaning.[93]

Beyond forced and slave labour, the Foundation was also mandated to compensate other injustices stemming from the National Socialist period. Specific allocations were made for personal injuries (DM 50 million), property losses (DM 1 billion),[94] and insurance losses (DM 50 million). In addition, DM 700 million were reserved for non-individual payments through the Foundation's "Remembrance and Future" Fund, which financed projects promoting social justice, support for survivors, and international humanitarian cooperation.

For the purposes of implementation, the Foundation channelled funds through seven designated partner organisations responsible for processing claims and distributing compensation. These

[90] See, van de Sandt and Moor (n 11) 60-61.
[91] Remember that, by contrast, the distribution of the distribution of the USD 1.25 billion provided by Swiss banks was overseen by the court and had to abide by fundamental principles of US class action law. For a more in-depth analysis, see, e.g., Authers (n 69); Roland Banks and Friederike Foltz, 'German Forced Labour Compensation Programme', Max Planck Encyclopedia of Public International Law.
[92] Generally, these were all former slave and forced labourers, particularly those from Central and Eastern European countries, of the Nazi era who had been excluded from previous compensation schemes notably by Germany.
[93] See, Authers (n 69) 436.
[94] This also covered certain humanitarian assistance for the benefit of holocaust survivors and for the benefit of Sinti and Roma.

included the Claims Conference and the IOM. The Claims Conference was responsible for Jewish claimants residing outside Central and Eastern Europe, while the IOM handled non-Jewish claimants in those same regions. Five additional partner organisations were tasked with administering claims within specific Central and Eastern European countries.[95]

Each partner organisation received funds in proportion to the estimated number of eligible claimants within its area of responsibility[96] and was required to distribute compensation within that predefined financial ceiling. Where the allocated funds proved insufficient to pay full awards to all eligible claimants, payments had to be reduced accordingly. Conversely, where fewer claims were received than anticipated, unused funds were returned to the Foundation and could be reallocated to other regions with higher-than-expected numbers of claimants. This centralised reallocation mechanism was designed to minimise risks of mismanagement and corruption, as ultimate discretion over unallocated funds remained with the Foundation itself.

Claims relating to property losses were adjudicated by an independent Property Claims Commission composed of three members — one appointed by the German government, one by the United States government, and a chair selected jointly by the two — supported by a secretariat housed at the IOM. The Commission applied a number of rebuttable historical presumptions, including the presumption that property damage was causally linked to a German company where that company had benefited from the loss within one year of its occurrence.

Finally, claims concerning insurance losses were processed separately by the International Commission on Holocaust Era Insurance Claims.

The use of fiscal or quasi-fiscal measures — including taxes, levies, surcharges, or fiscal enforcement mechanisms such as the recovery of tax arrears — has also been articulated as a means of involving the business sector in the financing of domestic reparations programmes, funds, or related initiatives within a number of transitional justice processes.[97]

The most prominent example is provided by South Africa's TRC. Having concluded that the business sector had been 'central' to the apartheid system,[98] the Commission recommended a range of fiscal measures aimed at funding reparations, including a one-off wealth tax, a once-off levy on corporate and private income, a requirement that companies listed on the Johannesburg Stock Exchange make a one-time contribution equivalent to one per cent of their market capitalisation, and a retrospective surcharge on corporate profits extending back to a specified date.[99]

[95] The other five partner organisations were foundations established in Belarus (Belarusian Foundation Understanding and Reconciliation), the Czech Republic (German-Czech Future Fund), Poland (Foundation Polish-German Reconciliation), Russia, Latvia, Lithuania and other former Soviet Union states (Russian Foundation Understanding and Reconciliation), and Ukraine (Ukrainian National Foundation Understanding and Reconciliation).
[96] The responsibility was determined by the claimants' place of living on 16 February 1999.
[97] See, UN Doc A/78/181 (n 23).
[98] See, 'Report of the Truth and Reconciliation Commission of South Africa, Volume Four' <https://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>, 24-27, 58. Including as a result of the dedicated hearings held, the TRC identified different modes of involvement of the business sector in apartheid, namely helping design and implement apartheid policies (so-called 'first-order involvement'), financing the regime and selling it products and services knowing that they would been used for morally unacceptable purposes ('second-order involvement'), and benefiting from apartheid ('third-order involvement').
[99] See, 'Report of the Truth and Reconciliation Commission of South Africa, Volume Five' <https://www.justice.gov.za/trc/report/finalreport/Volume5.pdf>, 142-144. It is worth noting that, in recommending these measures, the TRC did not distinguish according to the 'order' of business involvement in apartheid. During the special hearing on the business sector held by South Africa's TRC in 1997, the Commission's Chairman invited businesses, some of which '[were] already participating in that, assisting deprived communities in all sorts of ways, building clinics, schools and we value all of that as contributing to the healing of our land', to commit to 'mak[ing] substantial contributions

These recommendations were ultimately not implemented by the government of South Africa, which prioritised economic growth and private investment as the principal means of addressing apartheid's legacy. In this context, a conciliatory and non-confrontational approach towards the business sector prevailed, favouring voluntary corporate contributions over binding reparations obligations,[100] alongside opposition from segments of the business community. Instead, a 'Business Trust' was established, funded through voluntary contributions from both the government and the private sector and capitalised at approximately R1.2 billion. In practice, however, these funds were largely directed towards tourism, education, community investment, and public works — areas more closely aligned with development policy than with reparations *stricto sensu*.[101]

The interrelationship between reparations and development initiatives, an inherently complex and contested one,[102] emerges as a recurring theme in discussions of corporate accountability within transitional justice contexts.[103] As the South African experience illustrates, business contributions to transitional justice processes have frequently been framed in terms of development interventions or humanitarian assistance, rather than as reparations *stricto sensu*. This framing has been adopted both by governments seeking to engage the business sector while avoiding economically or politically adverse consequences and by businesses themselves aiming to distance their monetary contributions from any acknowledgement of legal obligation or responsibility. As previously noted, similar dynamics are evident in the context of out-of-court settlements, where corporate payments have commonly been characterised as 'humanitarian gestures' rather than as the fulfilment of reparation duties.[104]

Going back to the broader overview of transitional justice proposals aimed at mobilising business resources for reparations through fiscal measures, comparable fiscal approaches were articulated in other contexts. The TRC of Sierra Leone, for instance, recommended that reparations be financed, *inter alia*, through a 'reparations or peace tax',[105] although the proposal was not further specified.

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to the President's Fund from which reparations, the recommendation of this Commission are going to be made who those whom the Commission designates victims'. See, 'Truth and Reconciliation Commission, Business Sector Hearing' <https://www.justice.gov.za/trc/special/business/busin1.htm>.

100 See, Abrahams (n 24) 160-162. This approach by the South African government was also reflected in the stance adopted in the context of the litigation brought by victims of the apartheid in the US. At the outset of the apartheid litigation, the South African government, under President Thabo Mbeki, actively opposed the claims, arguing that foreign court proceedings undermined South Africa's sovereignty, interfered with its transitional justice framework, and threatened reconciliation, reconstruction, and investor confidence. This position was later reversed following a narrowing of the claims to corporate aiding and abetting and a broader policy shift under President Jacob Zuma, reflecting a reduced emphasis on protecting business interests and a more state-centred approach to development.

101 See, Geeta Koska, 'Corporate Accountability in Times of Transition: The Role of Restorative Justice in the South African Truth and Reconciliation Commission' (2016) 4 *Restorative Justice: An International Journal* 41, 57; Sandoval and Surfleet (n 37) 101-102.

102 See, e.g., UNGA, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: Reparations for Gross Human Rights Violations and Serious Violations of International Humanitarian Law' (14 October 2014) UN Doc A/69/518, paras. 40-42, 60-61; Naomi Roht-Arriaza and Katharine Orlovsky, 'A Complementary Relationship: Reparations and Development' in Pablo de Greiff and Roger Duthie (eds), *Transitional Justice and Development: Making Connection* (Social Science Research Council 2009); Rodrigo Uprimny Yepes, 'Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice' (2009) 27 *Neth Q Hum Rts* 625, 635-637, 642-645.

103 See, A/HRC/50/40/Add.4 (n 4) paras 71-73; Human Rights Council, 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli – Role and Responsibilities of Non-State Actors in Transitional Justice Processes' (12 July 2022) UN Doc A/HRC/51/34, para 39.

104 In their report, the Working Group stresses that reparations, on the one hand, and other post-conflict initiatives such as development, *socioeconomic assistance, poverty reduction,* and reconstruction ones, and corporate social responsibility steps have ontologically distinct purposes and rationales. See, A/HRC/50/40/Add.4 (n 4) paras 71-73. See also, Michalakea (n 9) 286.

105 See, 'Report of the Sierra Leone Truth & Reconciliation Commission, Volume 2' <https://rscsl.org/download/volume-2/>, 269.

This recommendation was likewise not implemented,[106] and the reparations programme subsequently established in Sierra Leone relied primarily on a USD 3.5 million grant from the UN Peacebuilding Fund.

Finally, Liberia's TRC included among the potential sources of funding for its proposed Reparations Trust Fund the recovery of tax arrears from timber, mining, petroleum, and telecommunications companies that had evaded tax liabilities under the Taylor regime.[107] As with other fiscal-based proposals, however, this recommendation ultimately failed to translate into implementation,[108] reflecting broader patterns of political resistance and the effective veto power exercised by economic actors in transitional settings.

In addition to monetary compensation, which nonetheless remains the most common modality through which businesses contribute to reparations,[109] business involvement in domestic reparations frameworks may also take other forms, notably land restitution.[110] Colombia provides a particularly instructive example in this regard. Through its land restitution programme,[111] Colombia has, in fact, established mechanisms that directly implicate the business sector in reparation processes. Under this framework, specialised judges may order businesses and businesspersons to return land and property to formal owners, possessors, and occupants who were dispossessed of, or forced to abandon, their land after 1 January 1991.[112]

According to the most recent available data, more than 200 judicial decisions have mandated the restitution of land by business actors — including small agro-industrial and forestry enterprises as well as large multinational corporations — that had opposed restitution but were unable to demonstrate that the land had been acquired in good faith and without fault.[113] In all such cases, restitution was ordered without the payment of compensation to the businesses concerned.

As the preceding analysis demonstrates, TRCs have played a meaningful — albeit often overlooked and under-realised — role in transitional justice processes with respect to corporate accountability, including in relation to reparations.[114] In several contexts, TRCs have examined the involvement of businesses and businesspeople during periods of armed conflict and repression,[115] at times extending their inquiries beyond the strict limits of their formal mandates, which did not always

[106] See, van de Sandt and Moor (n 11) 111.
[107] See, 'Final Report of the Truth and Reconciliation Commission of the Republic of Liberia, Volume III, Title III' (n 52) 43-44.
[108] See, van de Sandt and Moor (n 11) 119.
[109] See, Sandoval and Surfleet (n 37) 109. More generally, see, A/72/162 (n 35) para 45.
[110] See, A/HRC/50/40/Add.4 (n 4) paras. 65-70.
[111] See, particularly, *Ley 1448 del 2011* (n 54). According to the latest estimates of the National Victim Register, 9,092,803 persons were recognised as victims of conflict-related forced displacement in Colombia. See, <https://www.unidadvictimas.gov.co/registro-unico-de-victimas-ruv/>. As concluded by the Colombian Truth Commission, businesses took advantage of the armed conflict to acquire land following forced displacement by, inter alia, paramilitary groups. See, 'Informe final de la Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, Tomo 4' <https://www.comisiondelaverdad.co/sites/default/files/descargables/2022-08/CEV_VIOLACIONES_DIGITAL_2022.pdf >, 647.
[112] See, *Ley 1448 del 2011* (n 54) arts 72 ff. Where restitution of the original land or property proves impossible, victims must be provided with land or property of comparable characteristics or, alternatively, with compensation. In order to reduce barriers for victims to access restitution, the Victims' law introduces a number of mechanisms, including presumptions, the reversal of the burden of proof, and alternative forms of evidence.
[113] See, *Sistema de Información Sembrando Paz* <https://sempaz.forjandofuturos.org/Datos/Index>.
[114] See, A/HRC/51/34 (n 103), paras 33-38.
[115] See, Payne, Pereira and Bernal-Bermúdez (n 8) 680. The authors observe that approximately half of all TRCs that issued a final report explicitly or implicitly linked patterns of human rights violations to the responsibility of economic actors, with such findings being particularly prevalent among TRCs established in Latin America.

explicitly encompass corporate accountability.[116] Through these efforts, TRCs have made an important contribution to the realisation of victims' right to truth — and, by extension, to reparation.[117] In a number of cases, TRC findings and recommendations have also served as a catalyst for subsequent investigations, prosecutions, and, in some instances, convictions of businesses and businesspeople.[118] Moreover, as discussed above, several TRCs have issued explicit recommendations concerning business contributions to reparations.

At the same time, the record of TRCs in advancing corporate accountability and business involvement in reparations is marked by significant limitations. Most importantly for the purposes of the present analysis, TRC recommendations relating to business contributions to reparations — while authoritative — are not legally binding and, in practice, have remained largely unimplemented.[119] Across contexts, a lack of political will, and in some cases active resistance by governmental authorities, often reinforced by the economic and political influence of the business sector, has substantially constrained follow-up and implementation.

In addition, commentators have noted that many TRCs have failed to anchor their findings and recommendations firmly in established legal standards and frameworks, thereby weakening the legal grounding of their conclusions on corporate accountability and reparations.[120] This challenge is compounded, as previously noted, by the frequent vagueness of TRC recommendations on business contributions to reparations, which has further undermined their operationalisation.

Finally, it is worth noting that some TRCs — including those established in Liberia,[121] Sierra Leone,[122] Ecuador,[123] and Paraguay[124] — have also recommended measures that may be characterised as

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[116] Not all TRCs were endowed with an explicit mandate to investigate corporate accountability. Among the few exceptions were the TRCs of Chad, Timor-Leste, Kenya, and Liberia. See, Pereira and Bernal-Bermúdez (n 14) 173. The absence of a formal mandate did not, however, prevent several TRCs from revealing patterns of corporate complicity in their final reports, including as a result of victims' testimonies and submissions, as notably occurred before the South African TRC.
[117] See, Basic Principles and Guidelines (n 3) principle 22(b).
[118] By way of example, evidence concerning corporate collaboration with military regimes collected by both the Argentine CONADEP and the Brazilian National Truth Commission was subsequently relied upon in criminal proceedings against managers of Ford Motor Argentina and Volkswagen Brazil, respectively. Similarly, the prosecution and conviction of the Dutch businessman Guus Kouwenhoven followed his identification in the Liberian TRC's final report. In several instances — including Brazil, Ecuador, and Liberia — TRCs explicitly recommended that competent authorities pursue further investigations and prosecutions.
[119] See, A/HRC/50/40/Add.4 (n 4) para 51. The Working Group observes that '[s]everal truth commissions recommended business contributions to reparations programmes, but no examples of good practice as to the implementation of such recommendations currently exist'.
[120] See, e.g., Joanna Kyriakakis, 'Industry and Transitional Justice: Beyond the Criminal Trial' in *Corporations, Accountability and International Criminal Law* (Edward Elgar 2121) 190-191.
[121] See, 'Final Report of the Truth and Reconciliation Commission of the Republic of Liberia, Volume II' <https://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf>, 390-391. The Liberian TRC advanced a series of recommendations amounting to structural reforms aimed at economic empowerment, poverty reduction, and human development, such as mandatory minimum levels of Liberian ownership, shareholding, or partnership in domestic and foreign corporations and concessions, as well as calls to review natural resource exploitation policies with a view to ensuring their management in accordance with human rights and development goals.
[122] See, 'Report of the Sierra Leone Truth & Reconciliation Commission, Vol 2' <https://rscsl.org/download/volume-2/>, 185-190. The TRC recommended reforms to the mining sector, which had contributed to fuelling and exacerbating the conflict, including measures for transparency and against corruption, a system of certification of diamonds' origin, and the investment of a portion of diamond revenues for rural development.
[123] See, 'Informe de la Comisión de la Verdad Ecuador, Tomo 5, Conclusiones y Recomendaciones' <https://www.inredh.org/archivos/pdf/tomo_cinco_comision.pdf>, 448. The TRC recommended that the Ombudsman's Office and the Ministry of Justice and Human Rights implement human rights codes of conduct, taking into account existing international commitments in this area, for transnational corporations and other commercial enterprises working in communities affected by their projects or operations.
[124] See, 'Comisión de Verdad y Justicia de Paraguay, Informe Final, Tomo I' <https://codehupy.org.py/wp-content/uploads/2020/10/Tomo-I-Sintesis-y-caracterizacion-del-regimen.pdf>, 112. The TRC recommended the '[e]stablishment by the competent state agencies of standards for transnational corporations and other business

structural reforms of the business sector. In several instances, however, such measures were framed primarily in terms of economic development, poverty reduction, or similar,[125] rather than explicitly articulated as forms of reparation *stricto sensu*.[126] In a more limited number of cases, TRCs have also addressed recommendations on guarantees of non-repetition directly to business actors themselves.[127]

enterprises in the sense that they have an obligation to promote, ensure the enjoyment, respect, enforce and protect human rights, as well as the rights and interests of indigenous peoples and other groups in situations of vulnerability and risk' (unofficial translation).

[125] See, e.g., 'Final Report of the Truth and Reconciliation Commission of the Republic of Liberia, Volume II' (n 59) 390-391.

[126] It should, in fact, be recalled here that measures aimed at contributing to the prevention of human rights violations, including '[p]romoting the observance of codes of conduct and ethical norms, in particular international standards, by […] economic enterprises', represent a form of reparation for gross human rights violations. See, Basic Principles and Guidelines (n 3) principle 23.

[127] See, e.g., 'Report of the Sierra Leone Truth & Reconciliation Commission, Vol 2' <https://rscsl.org/download/volume-2/>, 165. The TRC 'call[ed] upon the business sector to develop its own Code of Corporate Governance in order to build a culture of ethical conduct' and to 'assist in the reduction of crime and corruption by sharing information with each other and law enforcement agencies'.