



Human Rights Law Clinic Papers 2026

UNJUST ENRICHMENT IN INTERNATIONAL HUMAN RIGHTS LAW AND TRANSITIONAL JUSTICE

To: Huquqyat

Submitted by: Flo Cooke, Isabelle Dyer and Ella Stodart

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Statute for the International Criminal Tribunal for Rwanda (adopted 8 November 1994) UNSC Res 955

iii. Table of Abbreviations

ICC – International Criminal Court

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for the Former Yugoslavia

NGO – Non-Governmental Organisation

SCSL – Special Court for Sierra Leone

TFV – Trust Fund for Victims

TRC – Truth and Reconciliation Commission

UNICEF – United Nations International Children’s Emergency Fund

1. Introduction

There is growing literature exploring the benefits of the application of the legal principle of unjust enrichment in the context of human rights and atrocity crime litigation. Its provision of gain-based remedies suggests the ability for such litigation to begin to address systemic injustices within a State. In a transitional justice context, this can remedy systematic enrichment and profiteering from human rights violations by both individuals and corporations.

Huquqyat is exploring the benefits of mobilising gain-based remedies alongside the traditional loss-based approach to human rights abuses. Huquqyat's research intends to promote a survivor-centred approach to justice in the context of Syria's developing transitional justice framework. Under the Assad regime, significant examples of unjust enrichment were present through both individuals and corporations, making the possibility for the incorporation of the principle of unjust enrichment into the subsequent transitional justice framework paramount to consider for securing justice for all survivors.¹ As Syria is not party to the Rome Statute, and the conflict has been occurring for a significant period of time, it is important to identify the barriers these issues could create in mobilising unjust enrichment.

This memorandum assesses the practical possibility for the principle of unjust enrichment as a gain-based remedy to be applied in a human rights and atrocity crime context for the purpose of providing recommendations as to how this could be achieved in a post-conflict justice context. Gain-based remedies, which aim to strip the perpetrator of gains accrued through their crimes,² are analysed in the context of various actors, and criminal and domestic settings in transitional justice circumstances. By exploring different elements of justice, with a focus on transitional and transformative justice, the manner through which unjust enrichment could positively contribute to these frameworks, alongside the identifiable barriers to this inclusion, is evaluated. An analysis of emerging legislation regarding asset seizure demonstrates the varying ways gain-based remedies can be implemented, followed by an analysis of case studies. Through the examination of existing transitional justice frameworks, in Colombia and South Africa, the benefits and drawbacks of the application of unjust enrichment are explored, alongside growing elements of gain-based remedies.

¹ MA Research Architecture Live Project 2025 (Internal Huquqyat WIP Project) (Confidential).

² F Giglio, 'Gain-Related Recovery' (2008) 28 Oxford Journal of Legal Studies 501, 502.

2. Principles of Unjust Enrichment and Transitional Justice

2.1. Definitions

As a legal principle, unjust enrichment is defined as ‘a doctrine that requires an equitable remedy on behalf of one who has been injured by the unjust enrichment of another.’³ Relating to human rights violations and atrocity crimes, enrichment can take many forms, including war profiteering and expropriation of land. This enrichment is unjust as it occurs to the detriment of many people within a society, including direct and indirect victims. In the context of unjust enrichment, gain-based restitution can provide a suitable route in achieving justice due to unjust enrichment’s basis in equity, rather than focusing on stricter boundaries which are found within claims based in tort or criminal law.⁴ Gain-based restitution focuses on how the perpetrator has unjustly gained, focusing on the value of the enrichments, with the overall goal being to reverse the procurement of the unjustly obtained wealth or benefits.⁵

Loss-based remedies are the primary response to resolving human rights abuses and atrocity crimes, traditionally taking the form of reparations in this context. Reparations can be understood simply as ‘replacing [or restoring] what one has taken or destroyed’, commonly through making amends or paying damages,⁶ which overlaps with similar concepts such as compensation, atonement, restitution, rehabilitation and satisfaction.⁷ Loss-based restitution is compensatory in nature; the overall goal being to attempt to repair the harm and put the victim back to the same place they were before, whether through financial, symbolic or political measures.⁸

In the context of human rights violations, gain-based restitution can be applied to instances of systemic enrichment and war profiteering to ensure that those who have accrued benefits from these situations are stripped of those gains. As Castellino emphasises, unjust enrichment can be used as a legal remedy to create real, systemic change, particularly in the context of corporate and State liability for colonial and environmental damage.⁹ Vardi emphasises that unjust enrichment seeks to substantiate and address injustices; so despite it

³ Merriam-Webster, “Unjust enrichment.” (Merriam-Webster.com Legal Dictionary) <<https://www.merriam-webster.com/legal/unjust%20enrichment>> accessed 27 February 2026.

⁴ N Vardi, ‘Unjust Enrichment in Recent So-Called ‘Human Rights Litigation’’ (2011) 1 Osservatorio del Birito Civile e Commerciale 159; C Binder and C Schreuer, ‘Unjust Enrichment’ [2017] Oxford Public International Law 1, 3.

⁵ Giglio (n 2) 502.

⁶ S Sharpe, ‘The idea of reparation’ in G Johnstone and D Van Ness *Handbook of Restorative Justice* (2006 Willan Publishing) 49.

⁷ Office of the High Commissioner of Human Rights ‘Reparations: OHCHR and transitional justice’ (OHCHR) <<https://www.ohchr.org/en/transitional-justice/reparations>> accessed 4 March 2026.

⁸ Sharpe (n 6) 51-52.

⁹ J Castellino, *Calibrating Colonial Crime: Reparations and The Crime of Unjust Enrichment* (Bristol, 2024; online edn, Policy Press Scholarship Online, 23 Jan. 2025).

being a private law remedy, he claims unjust enrichment has theoretically evolved to eliminate the accountability gap in restitution law when tort, property, and contract law failed.¹⁰

2.2 Unjust Enrichment as a Principle of International Law

Unjust enrichment is recognised as a principle in international law but has not frequently been utilised in a human rights context, despite its identified effectiveness in theory.¹¹ The recognition of unjust enrichment in international law was, for example, affirmed in *Sea-Land Service Inc. v. The Government of the Islamic Republic of Iran, Ports and Shipping Organisation* in the Iran-US Claims Tribunal.¹² This case acknowledged that unjust enrichment is 'codified or judicially recognised in the great majority of the municipal legal systems of the world and is widely accepted as having been assimilated into the catalogue of general principles of law'¹³ which highlights its basis in domestic law. The parameters for a claim to be identified as unjust enrichment are set out as follows:

There must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched.¹⁴

The Iran-US Claims Tribunal is the primary example cited for the concept of unjust enrichment being utilised in an international setting.¹⁵ The principle of unjust enrichment has not been used in any recent, major cases regarding profiteering from human rights or humanitarian law violations within any regional and international judicial mechanisms. Rather, the principle of unjust enrichment is cited most often in arbitration of international investment disputes.¹⁶ In these scenarios, calculation of enrichment is easier to achieve than in cases of enrichment based on human rights or humanitarian violations in which

¹⁰ Vardi (n 4) 159.

¹¹ Castellino (n 9) 133, 134.

¹² *Sea-Land Service Inc. v. The Government of the Islamic Republic of Iran, Ports and Shipping Organisation* (1984), Iran-US CTR, Case No. 33, 60.

¹³ *ibid.*

¹⁴ *ibid.*, 62.

¹⁵ A Weinbaum, 'Unjust Enrichment: An Alternative to Tort Law and Human Rights in the Climate Change Context?' (2011) 20 Washington International Law Journal 429, 448; C Binder and C Schreuer, 'Unjust Enrichment' [2017] Oxford Public International Law 1.

¹⁶ *Saluka Investments B.V. v. The Czech Republic* (1976) UNCITRAL Partial Award, Case No. 2001-04; *Azurix Corporation v Argentina*, Award, ICSID Case No ARB/01/12, IIC 24 (14th July 2006); *SM Jaleel & Co Ltd and Guyana Beverages Inc v The Co-Operative Republic of Guyana* [2017] CCJ 2 (OJ).; *HRVATSKE ŠUME d.o.o., Zagreb v BP Europa SE* [2021] C-242/2.

the value of enrichment can be difficult to ascertain. Calculating the value of gain procured through situations such as arbitrary detention or torture can be abstract, as the gain may not have an explicitly identifiable link to the specific act.¹⁷ This is compounded in contexts of atrocity crimes in which enrichment could have taken place over an extended period of time with multiple perpetrators, including third-party actors profiting, and large numbers of victims. Questions arise over ensuring that, when a gain-based remedy is awarded, all perpetrators are stripped of their enrichment and that these procurements are returned to all victims. In *Re African-American Slave Descendants Litigation*,¹⁸ the claim was dismissed due to a purported lack of proximity between the victims and the harm.¹⁹ The issues which arise regarding achievement of true restitution of the enrichment to victims are ones which echo the major discourse surrounding reparations for victims of human rights and humanitarian law abuses. This discourse questions the ability to accurately trace the gains, while maintaining jurisdiction and redistributing such gains to all appropriate victims.²⁰ Unjust enrichment as a principle within international law thus faces initial difficulty in its practical application to atrocity crime and human rights litigation due to it being grounded in private, domestic law, despite substantial theoretical bases being established within academia, and its suitability to varying contexts of justice.

2.3 Approaches to Justice

In combining unjust enrichment with human rights and atrocity crime litigation, the varying approaches to justice must be considered.

2.3.1 Retributive Justice

Most commonly applied in such litigation is retributive justice, where the criminal system judicially punishes those who have 'intentionally committed known, morally wrong actions'.²¹ This has been internationalised through institutions such as the International Criminal Court (ICC), and war crimes tribunals such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY and ICTR respectively). However, it has been argued that using purely retributive approaches to crimes is somewhat insufficient in reducing international

¹⁷ B Redwood, 'Reframing reparations: Sovereign Unjust Enrichment Claims as a Private Law Model for Reparatory Justice' (2025) *Fordham International Law Journal* 631, 672.

¹⁸ *re African-American Slave Descendants Litigation*, MDL 1491, 471 F.3d 754 (7th Cir. 2006).

¹⁹ Redwood (n 17) 652-653.

²⁰ *ibid* 640.

²¹ K Carlsmith and J Darley, 'Psychological Aspects of Retributive Justice' (2008) 40 *Advances in Experimental Social Psychology* 194.

crimes,²² and dealing with state rebuilding in a transitional setting.²³ Court cases in international criminal tribunals can be lengthy, delocalised and inaccessible, and can be seen as too Westernised – all of which can be discouraging, harmful and delegitimising for victims.²⁴

2.3.2 *Transitional and Restorative Justice*

Restorative justice emerged in the 1970s and has been used to encompass a variety of practices. Zehr presents restorative justice as an ‘alternative framework’ which has a flexible and holistic approach.²⁵ Restorative justice emphasises the role of victims and offenders, and inclusive and collaborative processes, with the overall goal to ‘put right the wrongs’.²⁶ Restorative justice is often paired with transitional justice, which has also become an emerging process in dealing with truth, justice, reconciliation and peace in a way that ‘reflects a transformation process in a country that has gone through a critical time of conflict and its turn to democracy’.²⁷ This can be done through mechanisms such as truth commissions, trials, amnesties, reparations and institutional reform.²⁸ Both approaches have independent techniques, but their combination is important.²⁹

A restorative justice approach can create space for the incorporation of unjust enrichment as a response to human rights and atrocity crime litigation, as the emphasis on collaborative process could encourage the systemic reform available through unjust enrichment’s application.³⁰ Combined with transitional justice, the process of institutional reform can be assisted and promoted through the restitution of gains in instances of war profiteering and state capture. Sarkin has encouraged the incorporation of restorative justice and transitional justice approaches into the jurisprudence of the ICC, as the sole application of retributive justice in international criminal tribunals can create gaps in such frameworks.³¹ This incorporation could assist in the centring of victims in approaches to justice in human rights and atrocity crime litigation, and create space for not only the stripping of the unjust

²² M Drumbl, *Atrocity, Punishment and International Law* (CUP 2007) 5.; Julian Ku & Jide Nzelbie, ‘Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?’ (2006) 84 WULR 781.

²³ J Sarkin, ‘Why the International Criminal Court Should Apply Restorative and Transitional Justice Principles to Improve the Impact of its Criminal Trials on Societies Around the World’ (2025) 19 IJTJ 260-278.

²⁴ *ibid* 267-269.

²⁵ H Zehr, *The Little Book of Restorative Justice: Revised and Updated* (Good Books 2015) 26.

²⁶ *ibid*.

²⁷ J Sarkin, ‘Enhancing the Legitimacy, Status and Role of the International Criminal Court Globally by using Transitional Justice and Restorative Justice Strategies’ (2011) 6 Interdic. JHRL 87.

²⁸ M Evans and D Wilkins, ‘Transformative Justice, Reparations and Transatlantic Slavery’ (2019) 28(2) Socio & Legal Studies 138.

²⁹ J Sarkin, ‘Enhancing the Legitimacy, Status and Role of the International Criminal Court Globally by using Transitional Justice and Restorative Justice Strategies’ (n 27) 88.

³⁰ Zehr (n 25).

³¹ J Sarkin, ‘Enhancing the Legitimacy, Status and Role of the International Criminal Court Globally by using Transitional Justice and Restorative Justice Strategies’ (n 27) 83.

gains from the perpetrator, but the restitution of those gains to the victims through the emphasis on victim participation. From this shift in approach, the use of unjust enrichment as a remedy within criminal law approaches could be improved through a broadened approach to justice.

2.3.3 Transformative Justice

Another emerging idea has been transformative justice, created from the shortcomings of transitional justice. In the book *From Transitional to Transformative Justice*, it is argued that the 'performance and impacts of transitional justice mechanisms have been at best ambiguous and at times disappointing'.³² The authors present transformative justice as an alternative approach that goes 'beyond the notion of adaptation and small-bore reforms' that can be applied more variedly and will go further to address structural instabilities and violence.³³ Transformative justice is further described as 'a framework that can promote structural change that addresses the root causes, ongoing legacies and accountability demands associated with protracted conflicts'.³⁴ This developing approach builds on ideas from transitional justice, but stresses the necessity of structural change. Combining this approach with theoretical understandings of unjust enrichment suggests the possibility for its application in human rights and atrocity crime contexts as the prioritisation of structural and institutional change can be assisted through the redistribution of unjust gains accrued through these situations.³⁵

By emphasising the foundations created by these justice frameworks, it is clear that these varying approaches to justice would benefit from the inclusion of gain-based remedies. Issues with the lack of jurisprudence of unjust enrichment in the international context are clear, which creates difficulties in its initial incorporation, making the following evaluation of response to atrocity crimes paramount in assessing the potential for the principle of unjust enrichment's inclusion in these contexts.

3. Approaches to Atrocity Crimes and Difficulties Achieving Restitution

3.1 The Current International Court System

³² P Gready and S Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' in P Gready and S Robins (eds) *From Transitional to Transformative Justice* (CUP 2019) 31.

³³ P Gready, 'Introduction' in P Gready and S Robins (eds) *From Transitional to Transformative Justice* (CUP 2019) 2.

³⁴ J Balint, K Lasslett and K Macdonald, "'Post-Conflict' Reconstruction, the Crimes of the Powerful and Transitional Justice' (2017) 6 State Crime Journal 4, 5.

³⁵ Castellino (n 9).

The preeminent approach within the international legal sphere regarding responses to atrocity crimes, and other crimes committed during conflict, is one which focuses on delivering retributive justice.³⁶ The deliverance of this form of justice occurs in various international judicial mechanisms, including in the permanent ICC and in *ad hoc* tribunals which are created in the wake of specific mass atrocity contexts.³⁷ These *ad hoc* tribunals can be international or hybrid in character (for example, the ICTY for the former and The Special Court for Sierra Leone (SCSL) for the latter).³⁸ These *ad hoc* criminal tribunals are created with the specific mandate that their function is to use international law, coupled with domestic law in hybrid mechanisms, to investigate and prosecute individuals for the most serious crimes.³⁹ These are defined as crimes against humanity, crimes of aggression, genocide, and war crimes.⁴⁰ International criminal tribunals are credited with helping address impunity as trials provide a platform in which perpetrators of atrocity crimes face accountability.⁴¹ Despite some successes at ensuring that high-profile perpetrators do not evade criminal accountability for their actions, the enduring focus on retributive justice means that reparations are often not prioritised in large-scale international mechanisms.⁴²

3.2 Difficulties Achieving Reparations in the International Criminal System

Under international human rights guidelines, victims of gross violations of international human rights law and international humanitarian law have the right to access remedies.⁴³ One such remedy is ‘adequate, effective and prompt reparation for harm suffered’.⁴⁴ This provision includes restitution which is described as encompassing actions which ‘restore the victim to the original situation before the gross violation of international human rights law or serious violations of international humanitarian law occurred’.⁴⁵ The United Nations guidelines do not include explicit reference to either loss-based compensation or gain-based restitution,

³⁶ S Southey, ‘The Futility of Retributive Justice in International Law’ [2023] *The Beacon Journal* 16, 16.

³⁷ V Bílková and F Cristani, ‘Mechanisms of International Justice to Fight Impunity: International Tribunals, Universal Jurisdiction and Transitional Justice Processes’ (European Parliament, DROI Subcommittee, 13 November 2025) 8.

³⁸ See also: International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals for international *ad hoc* mechanisms and Special Tribunal for Lebanon, Extraordinary Chambers in the Court of Cambodia and the Kosovo Specialist Chambers as examples of hybrid *ad hoc* mechanisms.

³⁹ B McGonigle, ‘Two for the Price of One: Attempts by the Extraordinary Chambers in the Courts of Cambodia to Combine Retributive and Restorative Justice Principles’ (2009) 22 *Leiden Journal of International Law* 127, 130.; Bílková and Cristani (n 37) 5.

⁴⁰ Bílková and Cristani (n 37) 5.

⁴¹ *ibid* 9.

⁴² McGonigle (n 39) 130.

⁴³ UN General Assembly, ‘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’ (21 March 2006) UN Doc/A/Res/60/147, 1.

⁴⁴ *ibid* 6.

⁴⁵ *ibid* 7.

although focus on the victim points towards a loss-based understanding of reparations. Despite the right for victims to access reparations, the ICC continues to prioritise the deliverance of retributive justice over reparations.⁴⁶ This is evidenced by the fact that the ICC has ordered reparations in just five cases, despite possessing the explicit mandate to under Article 75 of the Rome Statute.⁴⁷

Even in these five cases, several issues arise which make the deliverance of monetary reparations difficult to achieve in practice. One of the primary hurdles is that each of the convicted individuals has been indigent.⁴⁸ In 2024, the ICC ordered that €52,429,000 be awarded to 49,772 victims in *The Prosecutor v. Dominic Ongwen* case, including an individual payment of €750 to eligible victims and collective community-based measures.⁴⁹ Ongwen was charged with 61 crimes which amounted to crimes against humanity and war crimes committed whilst he was Commander of the Lord's Resistance Army in northern Uganda.⁵⁰ The ICC sent an 'Order for Request' to Uganda for the 'identification, tracing, freezing, or seizing of assets' belonging to Ongwen which could be used for reparations, yet Ugandan authorities could not identify any assets belonging to Ongwen.⁵¹ Article 93(k) of the Rome Statute pertains to State cooperation with the Court during investigations and prosecutions, including asset tracing, freezing or seizure for prospective orders of reparations.⁵² Owing to the fact that Ongwen was indigent at the time of his conviction, it falls to the ICC's Trust Fund for Victims (TFV) to facilitate a reparations programme.⁵³ However, the TFV does not possess the financial resources to implement the order of the Court which reveals one of the major pitfalls of the execution of reparations orders.⁵⁴ A gain-based model of restitution is completely unobtainable within this context as the perpetrator no longer possesses any assets which were potentially gained through their human rights and humanitarian law abuses.

⁴⁶ Y Yang, 'The Gap Between the International Criminal Court and Victims: Criminal Trial Reparations as a Case Study' (2023) 12 Laws 72, 72.

⁴⁷ *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06 (2012).; *The Prosecutor v. Germain Katanga* ICC-01/04-01/07 (2012).; *The Prosecutor v. Ahmad Al Faqi Al Mahdi* ICC-01/12-01/15 (2016).; *The Prosecutor v. Bosco Ntaganda* ICC-01/04-02/06 (2019).; *The Prosecutor v. Dominic Ongwen* ICC-02/04-01/15 (2021); Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art. 75.

⁴⁸ L Moffett and C Sandoval, 'Tilting at Windmills: Reparations and the International Criminal Court' (2021) *Leiden Journal of International Law* (34) 749, 752.

⁴⁹ FIDH, 'International Criminal Court's largest ever reparation order paves the way for victims of Ongwen's crimes' (29th February 2024, International Federation for Human Rights' <[https://www.fidh.org/en/region/Africa/uganda/international-criminal-court-s-largest-ever-reparation-order-paves#:~:text=The%20International%20Criminal%20Court%20\(ICC\)%20has%20issued,%E2%82%AC100%2C00%20for%20acts%20of%20apology%20and%20monuments](https://www.fidh.org/en/region/Africa/uganda/international-criminal-court-s-largest-ever-reparation-order-paves#:~:text=The%20International%20Criminal%20Court%20(ICC)%20has%20issued,%E2%82%AC100%2C00%20for%20acts%20of%20apology%20and%20monuments)> accessed 04 April 2026.

⁵⁰ ICC, 'Ongwen Case' (International Criminal Court, 2025) <<https://www.icc-cpi.int/uganda/ongwen>> accessed 04 April 2026.

⁵¹ *The Prosecutor v. Dominic Ongwen* (Trial Chamber IX, Decision) ICC-02/04-01/15-1898 (15 November 2021); *The Prosecutor v. Dominic Ongwen* (Registrar, Transmission) ICC-02/04-01/15-1994 (11 May 2022).

⁵² Rome Statute (n 47) art 93(k).

⁵³ FIDH (n 49).

⁵⁴ *ibid*.

3.3 Use of Unjust Enrichment in Atrocity Crime Litigation in the United States

The principle of unjust enrichment has been utilised in several cases within the federal court system in the United States to argue for reparations to address mass-scale injustices, the impacts of which, rather than being contained in the past, continue to reverberate today.⁵⁵ Unjust enrichment was used in a flurry of class-action lawsuits that were filed in the 1990s in American federal courts on behalf of Holocaust survivors.⁵⁶ Claims were lodged against Swiss banks for continuing to hold assets deposited by Jewish individuals in bank accounts at the advent of World War II, and against other private corporations for profiteering from war-era slavery and enforced labour.⁵⁷ The use of the unjust enrichment argument allowed this case to 'overcome the 50 years that had passed' as the plaintiffs argued that corporations continued to wrongfully hold gains accrued through 'taking advantage of the plight of victims of Nazi governmental oppression'.⁵⁸ Over a period of six years, these claims were settled and resulted in almost \$8 billion being distributed amongst Holocaust victims.⁵⁹ This is an example of gain-based restitution as money retained unjustly was returned to individuals who had never been repaid their deposits of money and valuables.⁶⁰ Holocaust-era reparations from various private corporations and the German government mark the most successful reparations programme to date and included successful utilisation of the principle of unjust enrichment to secure restitution in the Swiss banks litigation. However, this success is not mirrored in reparation claims related to other mass atrocities.

In 2003, a number of class-action lawsuits submitted under several State jurisdictions on behalf of African-American descendants of enslaved people were consolidated into a federal lawsuit which sought reparations from eighteen named corporations which were unjustly enriched through slave labour.⁶¹ The plaintiffs sought restitution alongside symbolic reparative actions such as the creation of an independent historic commission.⁶² The claims were dismissed at multiple levels of the federal court system for numerous reasons including the perceived lack of personal and direct injury to the plaintiffs, exceedance of the statute of

⁵⁵ Amnesty International, 'Why do reparations for colonialism and slavery matter?' (17 October 2025) <<https://www.amnesty.org/en/latest/campaigns/2025/10/why-do-reparations-for-colonialism-and-slavery-matter/>> accessed 03 April 2026.

⁵⁶ L Bilsky, 'Transnational Holocaust Litigation' (2012) 23 EJIL 349, 350.

⁵⁷ *ibid.*

⁵⁸ *ibid* 356.; B Neuborne, 'Holocaust Reparations Litigation: Lessons for the Slavery Reparations Movement (2003) NYU Annual Survey of American Law 58 615, 617.

⁵⁹ Neuborne (n 58) 615.

⁶⁰ Claims Conference, 'Swiss Banks Settlement' (January 2005) <[https://www.claimscon.org/about/history/closed-programs/swiss-banks-settlement/#:~:text=In%20exchange%20for%20the%20\\$1.25,%2C%20or%20classes%2C%20of%20individuals](https://www.claimscon.org/about/history/closed-programs/swiss-banks-settlement/#:~:text=In%20exchange%20for%20the%20$1.25,%2C%20or%20classes%2C%20of%20individuals)> accessed 04 April 2026.

⁶¹ C J. Ogletree Jr., 'Litigating the Legacy of Slavery' (*The New York Times*, 31 March 2002), C9.

⁶² Civil Rights Litigation Clearinghouse, 'Case: In re Descendants of African Slavery' (31 October 2021) <<https://clearinghouse.net/case/17998/>> accessed 03 April 2026.

limitations and the causal chain being too long and weak.⁶³ Reparations claims often face significant hurdles, with the aforementioned arguments being deployed often by critics of reparations meaning that, to date, no country nor major US corporation has paid reparations to descendants of enslaved individuals.⁶⁴ The claim of unjust enrichment failed to secure the plaintiffs success in securing monetary reparations.

Whilst both class-action lawsuits, filed just over a decade apart, used the principle of unjust enrichment to argue that the plaintiffs deserved reparations, only one succeeded in securing monetary restitution. The Holocaust-Swiss banks case leveraged the fact that there were identifiable sums of money and valuables which continued to be retained by the bank to the detriment of Jewish victims and therefore moved past any statute of limitations, whilst the class-action filed against corporations was denied partially due to the exceedance of the statute of limitations. With evidence of both success and failures based on the use of the principle of unjust enrichment related to mass human rights abuses, it is difficult to ascertain the potential for success in a court setting. However, the lessons which can be gleaned from the successful Holocaust-Swiss banks case is the importance of the existence of identifiable sums of money whilst the failure of the Slavery class-action reveals that timing is paramount to the potential successes of use of unjust enrichment and proving direct injury as a result of the retention of unjust gains. Mass-scale abuse, such as the above cases, and post-conflict settings have an intertemporal character which means it can be incredibly difficult to trace which actors directly profited from particular human rights abuses to meet evidentiary standards in existing judicial mechanisms.⁶⁵

4. Frozen Assets

4.1 Overview

The seizure of assets would be favourable in the context of atrocity crimes and human rights violations with a gain-based remedy approach as it would work to strip the wrongdoer of the profits they have unjustly gained at the detriment of the victim(s).⁶⁶ Unlike loss-based

⁶³In *Re African-American Slave Descendants Litigation* appeals of Deadria Farmer-paellmann, et al, and Timothy Hurdle, et al, 471 F3d 754 (7th Cir 2006) (Date Unknown) <https://law.justia.com/cases/federal/appellate-courts/F3/471/754/512635/> accessed 03 April 2026.

⁶⁴F Duarte, "The gravest crime against humanity": What does the UN vote on slavery mean? (BBC News, 28 March 2026)

<<https://www.bbc.co.uk/news/articles/c0rxqng5pyno#:~:text=Even%20nations%20that%20have%20formally,clos e%20relatives%2C%20were%20still%20alive>> accessed 03 April 2026.

⁶⁵S Krawiecki, 'Towards a New Standard for Assessing Compensation in Collective Human Rights Violations' (2022) 63 *Harvard International Law Journal* 245, 245-246.

⁶⁶Giglio (n 2) 502.

remedies, which focus purely on returning the victim to the state they were before (as much as is possible to do so),⁶⁷ in the context of atrocity crimes and human rights violations it is arduous as harm cannot always be financially repaired.⁶⁸ By dispossessing the wrongdoer of any financial and non-financial assets gained, mechanisms must subsequently be implemented to use these funds to improve the standard of living for the victim(s), as well as improve and address the structural and institutional problems and inequalities that may have caused the conflict in the first place.⁶⁹ While this may not fix all of the psychological and material harms the victims have faced, a combination of unjust enrichment and asset seizure could help prevent future abuses occurring and improve conditions across the whole country/society, addressing harm on a wider scale.⁷⁰

However, there can be complications with this type of approach, which are explored in the following section. Firstly, the seizure of assets and subsequent transition of these into funds that can be used for systemic reconstruction is a convoluted and often difficult legal process. This revolves around issues of jurisdiction, procuring evidence and judicial ability. Furthermore, there are limited countries with the appropriate legal frameworks for the repurposing of seized assets, however there are some emerging prominent examples. Various non-governmental organisations are increasingly calling for the repurposing of frozen assets and related fines to be used in reparation mechanisms for gross human rights or humanitarian violations.⁷¹ There are references in multiple international documents which point towards the utility of repurposing assets towards victims of human rights violations.⁷² For example, the Council of Europe has published Guidelines for the Management of Seized Assets which

⁶⁷ *ibid.*

⁶⁸ For example, how to financially repair psychological harm, leading to an emphasis on healing through Truth-telling, see Thomas Antkowiak, 'Truth as Right and Remedy in International Human Rights Experience' (2002) 23 Michigan Journal of International Law 4 997.

⁶⁹ This method has been proposed for the rebuilding of Ukraine using frozen Russian assets however with an unfortunate issue being Ukraine may only use the money for weapon purchasing rather than replenishing the Ukrainian budget, see Alexander Kolyandr, 'Has the EU found a way to use frozen Russian assets to help Ukraine?' (Carnegie Endowment for International Peace, 21 October 2025) <<https://carnegieendowment.org/russia- Eurasia/politika/2025/10/europe-russia-assets-strategy>> accessed 14 April 2026.

⁷⁰ This could be done through using frozen assets to pay for compensation awards issued through the European Court of Human Rights, see Open Society Justice Initiative, 'Legal possibilities of using Russian Central Bank assets to enforce European Court of Human Rights judgments' (April 2025) <<https://www.justiceinitiative.org/uploads/049e765b-58b2-458b-8731-f58814b7ba35/osji-legal-possibilities-of-using-russian-central-bank-assets-to-enforce-european-court-of-human-rights-judgments-20250513.pdf>> accessed 14 April 2026.

⁷¹ See: REDRESS, 'Innovative Avenues to Finance Reparations in the UK' (January 2024) <<https://redress.org/storage/2024/01/Innovative-Approaches-Report-v.4.pdf>> accessed 16th March 2026.; Christopher Thorntorn, 'Deploying Frozen Assets for Humanitarian Needs? Responding to the ODA Crisis' (Humanitarian Practice Network, July 24 2025) <<https://odihpn.org/en/publication/deploying-frozen-assets-for-humanitarian-needs-responding-to-the-oda-crisis/>> accessed 16 March 2026.; Global Survivors Fund, 'Financing Reparations' (2025) <<https://www.globalsurvivorsfund.org/our-work/transversal-issues/financing-reparations/>> accessed 16 March 2026.

⁷² United Nations Interregional Crime and Justice Research Institute, 'The Social Re-Use of Seized and Confiscated Assets: Good Policies and Practices' (United Nations Publication, 2025) <<https://unicri.org/sites/default/files/2025-10/Social-Reuse-of-Seized-and-Confiscated-Assets-Good-Policies-and-Practices-Oct--2025.pdf>> accessed 16 March 2026, 13.

includes provisions surrounding the ‘social reuse’ of confiscated assets to be given back to communities who are impacted by crime.⁷³ REDRESS stresses the importance of ensuring that perpetrators of human rights and humanitarian violations do not continue to profit from their abuses.⁷⁴ It is vital that there is transparency surrounding where confiscated money lands.

4.2 Asset Seizure for Humanitarian Aid

One contemporary example of frozen assets being used to support humanitarian aims is the use of confiscated funds from Chadian diplomats to support different international NGOs.⁷⁵ A 2018 High Court order granted the Serious Fraud Office the use of a civil recovery order of £4.4 million from two Chadian diplomats who had taken bribes from a Canadian oil company which entered the UK’s jurisdiction after the company was acquired by a UK corporation.⁷⁶ This money entered the UK’s Consolidation Fund at the Bank of England, as is typical with confiscated funds, but was reserved and used to support Chad’s COVID-19 response in 2021, whilst the rest was directed to the World Food Programme, International Committee of the Red Cross and UNICEF.⁷⁷ Whilst the confiscation was based on criminal action, rather than based on a violation of human rights norms, this is an example of how frozen assets can be used to support humanitarian concerns.

In a similar case, Riffat al-Assad was prosecuted in France in 2019, and later imprisoned in 2022, in relation to his ‘embezzlement of Syrian public funds’ and ‘ill-gotten gains’.⁷⁸ ‘Ill-gotten gains’ (*biens mal acquis*) is a French legal doctrine used to strip a person of gains accrued through wrongful conduct. To prevent confiscated assets being absorbed into the French State budget, the process of robust reform to the law on ill-gotten gains was initiated.⁷⁹ Assets totalling a value of €90 million were procured by the uncle of the former Syrian President through unjust enrichment and used in France in the purchasing of various properties. Following the 2021 restitution law, the confiscated €90 million are set ‘to be

⁷³ Council of Europe and European Union, ‘Guidelines for the Management of Frozen Assets’ (February 2023) <<https://rm.coe.int/prems-015223-gbr-2204-guidelines-for-the-management-of-seized-assets-w/1680ad3f1a>> accessed 16 March 2026, 47.

⁷⁴ REDRESS (n 71) 4.

⁷⁵ *ibid* 20.

⁷⁶ *ibid*.

⁷⁷ Foreign, Commonwealth and Development Office, Serious Fraud Office and Vicky Ford, ‘UK Aid Supports Vulnerable People in Chad Using Millions of Pounds Recovered in Corruption Case’ (UK Government, 29 November 2021) <<https://www.gov.uk/government/news/uk-aid-supports-vulnerable-people-in-chad-using-millions-of-pounds-recovered-during-corruption-case>> accessed 16 March 2026.

⁷⁸ *ibid.*; Sherpa, ‘Ill-Gotten Gains: Riffat al-Assad, uncle of Syrian President Bashar al-Assad, will stand trial in France for money laundering allegedly using funds to the detriment of the Syrian people’ (Sherpa 6 December 2019) <<https://www.asso-sherpa.org/10606-2>> accessed 9 March 2026.

⁷⁹ Human Rights Watch, ‘France: Pass Bill Enabling Return of Stolen Assets’ (Human Rights Watch 1 March 2021) <<https://www.hrw.org/news/2021/03/01/france-pass-bill-enabling-return-stolen-assets>> accessed 16 March 2026.

restituted to the Syrian population',⁸⁰ though it is unclear how this will work in practice. While not an international law mechanism, nor an element of human rights law, this law is set to be highly influential in the restitution of gains from unjust enrichment in instances of human rights violations. Vitally, the push for these types of mechanisms has the potential to gain domestic and international prevalence.

Despite examples of frozen assets or confiscated funds being used for humanitarian projects, there is not a single extensive mechanism within international law currently to facilitate a transnational project in which frozen assets are transferred to victims of human rights violations. The possibility of this would be particularly attractive in the context of Syria due to the millions of dollars from the Assad family (and Assad-regime affiliated individuals) frozen in Europe.⁸¹ Global Survivors Fund, and other groups, are calling for the creation of a fund for Syrian victims.⁸² An important next step would be ensuring this money can adequately improve living conditions and access to human rights for victims, setting a precedent for the emerging possibilities for utilising unjust enrichment.

4.3 Domestic Implementation and Interactions with Unjust Enrichment

France in particular has demonstrated influential steps in achieving gain-based remedies in the context of transitional justice and state corruption. This concept of ill-gotten gains, as enshrined in French law, while similar to *enrichissement sans cause* (unjust enrichment), differs slightly. Ill-gotten gains is a criminal law concept initially proposed in the draft legislation on solidarity-based development and the fight against global inequality, which states that:

proceeds from the sale of assets confiscated from persons definitively convicted
[of money laundering, receiving stolen goods or laundering such goods] ... shall
be returned to the population of the foreign state concerned.⁸³

In 2021, France passed the restitution mechanism,⁸⁴ a law which orders the return of funds to the original State⁸⁵ in cases of ill-gotten gains. While a significant development in French law,

⁸⁰ Sherpa, 'Condemnation of Rifaat al-Assad for money laundering and embezzlement confirmed by French Supreme Court' (Sherpa 7 September 2022) <<https://www.asso-sherpa.org/condemnation-of-rifaat-al-assad-for-money-laundering-and-embezzlement-confirmed-by-french-supreme-court>> accessed 9 March 2026.

⁸¹ Global Survivors Fund, 'Financing Reparations' (2025) <<https://www.globalsurvivorsfund.org/our-work/transversal-issues/financing-reparations/>> accessed 16 March 2026.

⁸² *ibid.*

⁸³ French Senate, 'Solidarity-based development and the fight against global inequalities', Programming Bills (Text No. 404 (2020-2021) XI) <<https://www.senat.fr/leg/pjl20-404.html>> accessed 13 April 2026.

⁸⁴ Transparency International, 'France adopts new provision for returning stolen assets and proceeds of crime: a step forward with room for improvement, Issued by Transparency International France' (3 March 2021) <<https://www.transparency.org/en/press/france-adopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement>> accessed 12 April 2026.

⁸⁵ Law n 2021-1031 (Fr).

there were concerns from NGOs about how to ensure these confiscated assets will indeed be returned to the victims.⁸⁶

Comparatively, unjust enrichment within French law is a civil concept enshrined within Article 1303 of the French Civil Code.⁸⁷ Article 1303-1 defines enrichment as benefits which have been obtained with no legal justification. If the enrichment is based on the fulfilment of an obligation or the action was carried out with liberal intent, the enrichment is justified.⁸⁸ The distinction between them highlights the shortcomings of civil procedures versus criminal, with civil law having narrower parameters, although not necessarily requiring a crime to be committed. This approach may, in some cases, be able to better respond to issues surrounding criminal proceedings, where it may be difficult to convict those who have unjustly enriched, especially in the context of atrocity crimes and human rights violations.

The *Obiang* case⁸⁹ was the first example of France confiscating assets of a foreign State national in the context of ill-gotten gains, through the seizure of assets belonging to the vice-President of Equatorial Guinea.⁹⁰ In the 2017 case, Teodorin Nguema Obiang Mangué was given a 3-year prison sentence and a €30 million fine for embezzlement of public funds, corruption and money-laundering in France.⁹¹ This case was novel as it was the first time that NGOs – Transparency International and Sherpa – were recognised as being able to file a criminal corruption complaint.⁹² Seizing Obiang's \$100 million in assets set the historic precedent that France would no longer turn a blind eye to embezzled money being havened in their country.⁹³ Despite Obiang appealing this ruling, the Paris Appeals Court confirmed his conviction and upheld the confiscation of his assets in 2020.⁹⁴ With the 2021 development on ill-gotten gains, the assets collected must be returned to the people of Equatorial Guinea under

⁸⁶ Transparency International, 'TI France releases plan for returning ill-gotten gains of grand corruption to country of origin' (Transparency.org, 26 October 2017) <<https://www.transparency.org/en/press/ti-france-releases-plan-for-returning-ill-gotten-gains-of-grand-corruption#:~:text=1..participation%20of%20civil%20society%20representatives>> accessed 13 April 2026.

⁸⁷ Code Civil [Civil Code] (Fr) Art 1303.

⁸⁸ Code Civil [Civil Code] (Fr) Art 1303-1.

⁸⁹ *Public Prosecutor v Teodoro Nguema Obiang Mangué* [2018] Cass Crim No 17-86280.

⁹⁰ Sherpa, 'Teodorin Obiang definitively convicted in the "ill-gotten gains" case: a decision that puts the final dot on the chapter of confiscation and opens the restitution one.' (Sherpa, 29 July 2021) <<https://www.asso-sherpa.org/teodorin-obiang-definitively-convicted-in-the-ill-gotten-gains-case-a-decision-that-puts-the-final-dot-on-the-chapter-of-confiscation-and-opens-the-restitution-one>> accessed 12 March 2026.

⁹¹ S Brimbeuf, 'How will France return the stolen assets to the people of Equatorial Guinea?' (Anti-Corruption Resource Centre 25 March 2020) <<https://www.u4.no/the-obiang-case-how-will-france-return-stolen-assets>> accessed 13 April 2026.

⁹² Human Rights Watch, 'Equatorial Guinea: President's Son Convicted of Laundering Millions' (Human Rights Watch, 29 October 2017) <<https://www.hrw.org/news/2017/10/29/equatorial-guinea-presidents-son-convicted-laundering-millions>> accessed 13 May 2026.

⁹³ *ibid.*

⁹⁴ Al Jazeera, 'French Courts Fined Equatorial Guinea Vice President 30m Euros' (11 February 2020) <<https://www.aljazeera.com/news/2020/2/11/french-court-fines-equatorial-guinea-vice-president-30m-euros>> accessed 18 May 2026.

French law.⁹⁵ While Obiang's assets are yet to be returned, this case has solidified the potential return of illegally and unjustly obtained money back to the country of origin, with a specific emphasis on ensuring this money is used to substantially benefit the victims.⁹⁶

Complications for this arise, however, when considering the existing laws available, both domestically and internationally. States and domestic bodies which have already adopted an asset seizure framework, particularly for foreign assets gained through international law violations, do so through a focus on criminal procedure. This has taken many forms, with France seizing assets as a coexisting measure to prison,⁹⁷ and Colombia adopting it as a method for victim reparations in cooperation with the convicted individual, which is used within their transitional justice framework.⁹⁸ Through the criminal process, it is ensured that those who have been convicted of human rights violations, and subsequently engaged in war profiteering, state capture or other related crimes, face accountability. However, this is limited by a lack of application in the international sphere. For example, the ICC has a similar framework, in which assets of convicted individuals can be used to pay reparations to victims, however it is rarely deployed.⁹⁹ Therefore, to be able to seize and return frozen assets which have been gained through unjust enrichment, there must be a robust system in place to ensure that the assets can be taken successfully.

4.4 Potential Issues

There are additional judicial issues that can complicate matters, especially on the international level. One practical issue surrounds the possibility that if someone is not convicted, their assets must be unfrozen and returned to their possession.¹⁰⁰ There may also be issues surrounding procedural fairness within these cases, where it must be ensured that the assets frozen are from those who have evidently gained, rather than arbitrary seizures. The seizure of assets from regime-affiliated individuals can be done through criminal prosecution. Despite the flaws of retributive justice, the elevated evidentiary support needed for a criminal charge,

⁹⁵M Shenawy and S Sboui, 'ICJ Rejects Equatorial Guinea's Request to Block Sale of Teodorin Obiang's Paris Mansion' (OCCRP, 15 September 2025) <<https://www.occrp.org/en/news/icj-rejects-equatorial-guineas-request-to-block-sale-of-teodorin-obiangs-paris-mansion>> accessed 18 May 2026.

⁹⁶B Guy, 'Definitive conviction of Teodorin Obiang in France sends strong message, allows asset restitution to Equatorial Guinea' (Transparency.org, 30 July 2021) <<https://www.transparency.org/en/press/teodorin-obiang-conviction-asset-recovery-equatorial-guinea-france>> accessed 12 April 2026.

⁹⁷*Obiang* (n 89).

⁹⁸I Bueno, 'Mass Victimisation and restorative justice in Colombia: Pathways towards peace and reconciliation?' (PhD Thesis 2013) <https://lirias2repo.kuleuven.be/bitstream/123456789/414208/1/Bueno_doctoral+dissertation_FIN.pdf> Accessed 13th April 2026 10.

⁹⁹REDRESS (n 71) 15.

¹⁰⁰D Birkett, 'Managing Frozen Assets at the International Criminal Court: The Fallout of the *Bemba* Acquittal' (2020) 18 *Journal of International Criminal Justice* 765.

over a civil one, to proceed with asset seizure decreases the risk of procedural issues arising. Some States, such as the UK, have adopted a method in which a third-party manages the frozen assets, to ensure they do not decrease in value,¹⁰¹ which would be optimal in the Syrian context due to the scale of confiscations from various regime-affiliated individuals which have amounted to over one hundred million pounds in assets.¹⁰²

A further issue with criminal procedure is jurisdiction. Cases which have been successful regarding the return of assets accrued through human rights violations have mostly been conducted against foreign nationals in Magnitsky-style sanctions,¹⁰³ meaning reliance on other States is paramount.¹⁰⁴ This is primarily due to the transnational nature of illicit funds, being stored and laundered in various countries, making it practically and legally convoluted for one country to seize assets alone.¹⁰⁵ Within the ICC, a prominent issue can be lack of jurisdiction, as it only has formal jurisdiction over those party to the Rome Statute. However, this can be circumvented in a few ways; referral by the United Nations Security Council, through the acceptance of jurisdiction on an *ad hoc* basis (as pursuant to article 12(3) of the Rome Statute), or if the crime occurs on the territory of a State party. However, this can be a lengthy and complicated process.¹⁰⁶ Consequently, it is likely that a domestic system, within Syria or elsewhere, must be relied upon. However, this can have significant setbacks. For example, the proposed fund for Afghan peoples was later overturned by Taliban which exemplifies the need for a robust transitional justice system within the State, which can be difficult to achieve.¹⁰⁷

5. Synthesis

5.1 Potential for Unjust Enrichment to be Mobilised within Existing Human Rights Settings

¹⁰¹ *ibid.*

¹⁰² N Kubesch, 'Strengthening Pathways for Recovering Syrian Assets to Deliver Reparation for Survivors' (REDRESS, 4th June 2025) <https://redress.org/news/35440/#:~:text=Exploring%20Legal%20Pathways%20*%20In%20France%20and,includin%20atrocities%20crimes%20against%20the%20Yazidi%20community.> accessed 14 April 2026.

¹⁰³ I Bogdanova, 'Targeted Financial Sanction and Asset Confiscation: a Thorny Legal Path from Freeze to Confiscate' in C Zilioli and others (eds) *International Sanction: Monetary and Financial Law Perspective* (Brill 2024) 406.

¹⁰⁴ *ibid* and Birkett (n 100).

¹⁰⁵ I Lekuona, 'Enhancing cooperation in asset recovery is vital for crime prevention' (baselgovernance.org, 16 January 2025) <<https://baselgovernance.org/blog/enhancing-cooperation-asset-recovery-vital-crime-prevention>> accessed 13 April 2026.

¹⁰⁶ B Gumpert and Y Nuzban, 'Part II: What can be done about the length of proceedings at the ICC?' (ejiltalk.org, 18 November 2019) <<https://www.ejiltalk.org/part-ii-what-can-be-done-about-the-length-of-proceedings-at-the-icc/>> accessed 13 April 2026.

¹⁰⁷ C Thorton, 'Deploying frozen assets for humanitarian needs? Responding to the ODA crisis' (Humanitarian Practice Network, July 24, 2025) <<https://odihpn.org/en/publication/deploying-frozen-assets-for-humanitarian-needs-responding-to-the-oda-crisis/?>> accessed 13 April 2026.

The potential for unjust enrichment to be mobilised within an existing human rights setting is limited. Within the current ecosystem of international judicial mechanisms, the principle of unjust enrichment has not yet been used in a major case regarding atrocity crimes. Instead, it has principally been deployed in cases of corporate disputes or in cases pertaining to the State and their relationships with individual corporations.¹⁰⁸ There is limited jurisprudence within the international sphere to draw upon to model a claim surrounding unjust enrichment from atrocity crimes and other conflict-related human rights violations on. The success of an unjust enrichment claim for human rights abuses on the domestic level, the Holocaust-Swiss banks class-action, was based on the continued retention of identifiable sums of money within named accounts. The conditions which made this claim successful are specific and not necessarily mirrored elsewhere as often ascertaining a monetary figure for human rights abuses is often very difficult.

The awarding of any reparations to victims of human rights abuses, including a gain-based model of restitution, is often relegated by international courts to the domestic level. The ICTY and ICTR, established by the United Nations Security Council in the wake of mass atrocities, are two examples of judicial mechanisms in which reparations, including gain-based restitution, are not prioritised.¹⁰⁹ Within both mechanisms, the ability for judges to award reparations to individual victims was only possible in relation to property restitution as laid out in Article 24(3) of the ICTY Statute and Article 23(3) of the ICTR Statute.¹¹⁰ In the ICTY, reparations claims unrelated to loss or seizure of property were deigned the realm of domestic courts under Rule 106(B).¹¹¹ Neither of the *ad hoc* tribunals offer any example of the principle of unjust enrichment being utilised in cases of human rights or humanitarian law abuses nor the deployment of gain-based restitution as a remedy for victims at an international level as they were instructed to seek reparations domestically.

There are potential benefits to international tribunals adopting the principle of unjust enrichment as a guiding one and, subsequently, gain-based methods of restitution. The utilisation of unjust enrichment would ensure that individual perpetrators did not continue to benefit from any wealth or resources which were accrued through actions which violate international human rights law or humanitarian law. However, the issue of ascertaining identifiable sums of money would remain the primary barrier to success alongside the

¹⁰⁸See Footnote 16.

¹⁰⁹ UN Res 827 (25 May 1993) UN Doc S/RES/827, UNSC Res 955 (8 November 1994) UN Doc S/Res/955.

¹¹⁰ Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted 25 May 1993) UNSC Res 827 art 24(3).; Statute for the International Criminal Tribunal for Rwanda (adopted 8 November 1994) UNSC Res 955 art 23(3).

¹¹¹ Rules of Procedure and Evidence, United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, 8 July 2015, UN Doc IT/32/Rev. 50, 108.

perceived distance between the international and the domestic. The possibility of utilising unjust enrichment and gain-based restitution in existing international mechanisms is slim. However, within emerging transitional justice settings, there is perhaps increased opportunity to add experimental and novel legal mechanisms to address the legacies of conflict and atrocity crimes. The following section examines the potential for unjust enrichment to be mobilised within transitional justice mechanisms.

5.2 Potential for Unjust Enrichment to be Mobilised within a Transitional Justice Setting

This section explores the potential for unjust enrichment to be utilised within a transitional justice setting. This will be done through firstly, analysing previous prominent transitional justice mechanisms that were created in Colombia and South Africa, highlighting key successes such as reparations programmes and truth and reconciliation mechanisms, as well as the pitfalls that these created. These will be explored alongside a discussion on whether unjust enrichment as a legal principle can be utilised within these systems, or systems inspired by transitional justice, with most of the evidence indicating this will be improbable. Additionally, this section will explore, if unjust enrichment as a legal principle is limited, whether aspects of unjust enrichment can be mobilised to support social rebuilding after atrocity crimes and vast human rights violations, which may be more possible.

5.2.1 South African Transitional Justice Mechanisms

The aims of the transitional justice mechanism in South Africa after the end of formal apartheid was to 'attempt to heal the wounds of the past through a process of truth telling' in which the suffering and gross violations of human rights were acknowledged and victims offered reparations.¹¹² The Truth and Reconciliation Commission (TRC) was established in 1995 to investigate these human rights abuses which occurred between 1960 and 1994, and to facilitate an extensive programme towards peace and national unity.¹¹³ However, one of the major pitfalls of the TRC was their financial reparations programme, funded through the State and other donors.¹¹⁴ Despite the TRC's recommendations of annual payments to survivors over a period of six years, survivors were instead given a one-off payment of R30,000 (approximately £3000-3300 at the time).¹¹⁵ This payment was only awarded to the 23,000

¹¹² J Sarkin, 'The Truth and Reconciliation Commission in South Africa' (1997) 23 *Commw L Bull* 528, 529.

¹¹³ International Centre for Transitional Justice, 'South Africa' (ICTJ *Exact Date Unknown*; 2026) <<https://www.ictj.org/where-we-work/south-africa>> accessed 16 March 2026.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

individuals who had registered as victims with the TRC; however the number of victims is much higher with many being affected but not to the standard that was required by the TRC, such as was shown with rape survivors being excluded.¹¹⁶

Additionally, the TRC's list of victims was 'limited', with many people being lost during the transition from analogue to digital records, or turned away because the commission had reached its capacity.¹¹⁷ An issue with one off payments is that it does little to address the societal impact of such grave and long-standing human rights violations, as well as the foundational structures that are left after apartheid that have destabilising effects on the people and society at large, such as the inherited apartheid debt.¹¹⁸ To address these issues there must be a greater emphasis on the importance and implementation of non-reoccurrence, and the ways this can be achieved.

Overall, it is unlikely that this system would have benefitted from the utilisation of unjust enrichment, or from funding the reparations programme through unjustly gained money. If the TRC was to use the legal principle of unjust enrichment to procure funds from economic benefits gained by individuals and corporations during apartheid, it would face several barriers. As seen with colonialism and slavery reparations, it is extremely difficult both to quantify the economic harm and calculate the unjust gains to consequently accumulate these benefits. Additionally, it is subsequently unfeasible to, firstly, locate every victim, and secondly, to provide them with the reparations to mend their harm – much of which is both unquantifiable and non-financial. However, steps have been made with rulings such as from *Khulumani et al v. Barclays et al* in which the US District Court held that companies can be found liable for aiding and abetting the perpetration of gross human rights abuses¹¹⁹ and these cases can be pled under the Alien Tort Statute.¹²⁰

However, the reparations system could have benefited from the creation of a 'wealth tax' which would be used to fund reparations and would be collected from industries which had benefited from human rights and humanitarian violations.¹²¹ This suggestion, which was

¹¹⁶ D Steyn, 'South Africa: Nearly R2 Billion for Apartheid Reparations Is Unspent' (reparationscomm.org, 13 December 2022) <<https://reparationscomm.org/reparations-news/south-africa-nearly-r2-billion-for-apartheid-reparations-is-unspent/>> accessed 12 April 2026.

¹¹⁷ *ibid.*

¹¹⁸ P Dewhirst and N Valij, 'Little Joy, No Rainbow, Victimised Again' (csvr.org, 1 April 2003) <<https://csvr.org.za/little-joy-no-rainbow-victimised-again/>> accessed 12 April 2026.

¹¹⁹ *Khulumani v. Barclay National Bank, Ltd., Ntsebeza v. Daimler Chrysler*, No. 05-2141 (2d Cir. 2007) (U.S District Court for the Southern District of New York); This debate is currently being reopened in the case *Cisco Systems, Inc. v. Doe I*, for more information see <https://www.scotusblog.com/cases/cisco-systems-inc-v-doe-i/>.

¹²⁰ Khulumani Support Group, 'Khulumani Wins Lawsuit Appeal' (13 October 2007) <<https://khulumani.net/statements/khulumani-wins-lawsuit-appeal/2007/10/13/>> accessed 14 October 2026; for more information on the Alien Tort Statute see Legal Information Institute, 'Alien Tort Statute' (2024, law.cornell.edu) <https://www.law.cornell.edu/wex/alien_tort_statute> accessed 13 May 2026.

¹²¹ ICTJ, 'South Africa' (n 113).

initially recommended by the Truth and Reconciliation Commission,¹²² would have signalled a commitment to gain-based remedies in which corporations which benefited from systematic violations would be stripped of (some) profits and would 'contribute to alleviating poverty'.¹²³ While this would potentially send the message that there would be consequences for those who unjustly enriched to the detriment of others in the future, the government ultimately did not implement this programme.¹²⁴ Furthermore, recent critics have raised concerns over the potential for creating a wealth tax in South Africa,¹²⁵ with issues including limited revenue being collected, the high cost of the collection, risk of capital flight, and administrative complexity.¹²⁶ With the right domestic framework, there is a possibility for unjust enrichment to fill this administrative pitfall, however this may not be successful, due to established barriers. To conclude, unjust enrichment would likely not be the best avenue in this setting.

5.2.2 Colombian Transitional Justice Mechanisms

Comparatively, this section focuses on the Colombian Transitional Justice mechanisms which were established after years of violent warfare between guerrilla groups, the government and paramilitary forces in which extreme human rights abuses took place such as murders, forced displacement, torture, rape, kidnapping and extortion, wrecking the economic and social fabric of the country.¹²⁷ Key features of the Colombian model included a significant reduction of sentences in exchange for the ceasing of all criminal activity, truth telling and full confessions by offenders alongside the submission of all personal assets to be used for reparations for victims.¹²⁸ Central to this model of transitional justice, the Congress of the Republic of Colombia enacted Law 1424, establishing a truth seeking mechanism,¹²⁹ which focused on the need for truth telling and accountability.¹³⁰ This was supported by

¹²² SAPA, 'Wealth Tax Proposed by TRC' (SAPA 29 Oct 1998) <<https://www.justice.gov.za/trc/media/1998/9810/s981029t.htm>> accessed 12 April 2026.

¹²³ *ibid.*

¹²⁴ *ibid.*

¹²⁵ There have been recent talks about proposing a wealth tax in South Africa, see Investec, 'Wealth taxes: are they coming to South Africa?', (investec.com, 10 March 2025) <https://www.investec.com/en_za/focus/money/wealth-taxes-are-they-coming-to-south-africa.html> accessed 28 April 2026; IFC, 'South Africa: New wealth tax for South Africa off the table' (ifcreview.com, 12 December 2025) <<https://www.ifcreview.com/news/2025/december/south-africa-new-wealth-tax-for-south-africa-off-the-table/>> accessed 28 April 2026.

¹²⁶ R Wichtmann, 'South Africa National Treasury warns against wealth tax proposals' (sovereigngroup.com, 23 April 2025) <<https://www.sovereigngroup.com/news/south-africa-national-treasury-warns-against-wealth-tax-proposals/>> accessed 12 April 2026.

¹²⁷ International Centre for Transitional Justice, 'An Overview of Conflict in Colombia' (2009) <<https://www.ictj.org/sites/default/files/ICTJ-Colombia-Conflict-Facts-2009-English.pdf>> accessed 17 May 2026.

¹²⁸ International Centre for Transitional Justice, 'The Justice and Peace Law: 20 Years of Lessons from Colombia's Transitional Justice Process' (ICTJ.org, 11 May 2025) <<https://www.ictj.org/latest-news/justice-and-peace-law-20-years-lessons-colombia%E2%80%99s-transitional-justice-process>> accessed 13 April 2026.

¹²⁹ I Bueno, S Parmentier and E Weitekamp, 'Exploring restorative justice in situation of political violence: the case of Colombia' in Kerry Clamps (eds) *Restorative Justice in Transitional Settings* (2016, Taylor and Francis Group) 9.

¹³⁰ I Bueno, 'Mass Victimisation and restorative justice in Colombia: Pathways towards peace and reconciliation?' (n 98) 38.

'restorative accountability' which incorporates symbolic reparations.¹³¹ Symbolic reparations are a key component of transformative justice, emphasising the possibility for reparations to address institutional and systemic injustices.¹³² While scholars such as Hearty have formed in-depth critiques of symbolic reparations,¹³³ imposed alongside material reparations, symbolic reparations can encourage the socio-legal reform at the heart of transformative justice.¹³⁴ This approach leans into transformative reparations, which further aim to respond to the structural inequalities within the socio-economic conditions of a society and address the underlying causes of this.¹³⁵

Colombia has established various laws and mechanisms to create reparations and land restitutions procedures for those impacted by the conflict.¹³⁶ Despite being established with the intention of being transformative to address the structural inequalities which contributed to the original conflict,¹³⁷ the reparations scheme has faced criticism. By taking a loss-based approach, it has been primarily funded through the national budget, thus limiting its ability to conduct transformative change.¹³⁸ Only those who directly suffered could make a claim whilst family members and descendants of those murdered or disappeared could receive nothing.¹³⁹ Additionally, reparations were given to the individual rather than to entire households which limits the reach of reparative payments.¹⁴⁰ Application of a gain-based approach to this reparations programme would have been beneficial, as this could have increased the money available to award to victims by basing it off of the perpetrators gains, and increase the number of recipients through a combined focus of transformative justice and unjust enrichment. However, the flaws within this programme are consistent with flaws identified within a gain-based approach to restitution in human rights and atrocity crime

¹³¹ *ibid*; restorative accountability can be defined as 'accountability aiming at the repair of the harm inflicted on victims, offenders and communities on the one hand, and the eventual reintegration of offenders on the other hand' found in I Bueno, 'Mass Victimisation and restorative justice in Colombia: Pathways towards peace and reconciliation?' (n 98) 38.

¹³² J Gallen, *Transitional Justice and the Historical Abuses of Church and State* (CUP 2023) 198; 'Symbolic reparations take a variety of forms and can comprise the renaming of public spaces, the construction of museums, processes of physical memorialisation, public apology and atonement' found in K Brown, 'Commemoration as Symbolic Reparation: New Narratives or Spaces of Conflict?' (2013) 14 Human Rights Review 273, 275.

¹³³ K Hearty, 'Problematising Symbolic Reparation: 'Complex Political Victims', 'Dead Body Politics' and the Right to Remember' (2019) 29 Social and Legal Studies 334.

¹³⁴ Gready, *From Transitional to Transformative Justice* (n 32) 195.

¹³⁵ *ibid* 193.

¹³⁶ N Sanchez & A Rudling, 'Reparations in Colombia: Where to?' in Luke Moffett and Peter Dixon (eds) *Art and Humanities Research Council Policy Paper* (2019) AH/P006965/1 31-32.; A Guarin et al, 'Reparations for Victims: Lessons from Colombia' (2023) 113 AAEA Pap Proc 2.; Global Survivors Fund, 'Country Briefing: Colombia' (November 2024) <https://www.globalsurvivorsfund.org/wp-content/uploads/2025/09/GSF_CountryBriefingColombia_EN_1124.pdf> accessed 15 March 2026.

¹³⁷ *ibid* 3-4.

¹³⁸ Guarin et al (n 136) 3.

¹³⁹ *ibid* 3.

¹⁴⁰ *ibid*.

litigation, in that the value is difficult to quantify regarding mental and physical suffering, especially in relation to crimes such as murder and disappearance.

An overall review of Colombia's approach to transitional justice regarding atrocity crimes and human rights litigation reveals that unjust enrichment has the potential to have a positive impact on this process. The overall aim of the process indicates a desire for transformative justice, and transformative reparations, meaning unjust enrichment would assist in this process through its ability to address structural inequalities, despite some needed alterations to certain processes – for example, the Victims Law. Gain-based remedies provide a potential avenue for the redirection of unjust gains which accumulate from structural inequalities. The assets recovered can then be used to promote transformative reparations and justice.

6. Conclusion

This memorandum has considered the practical potential for the transference of the principle of unjust enrichment, which resides in private and domestic law, to human rights abuses and atrocity crime cases. Several barriers to successful implementation of this principle into emerging transitional justice mechanisms have been identified including, but not limited to, difficulty in quantifying financial gain, the presence of multiple perpetrators (including third-party actors) and the vast numbers of victims, as well as problems surrounding direct personal injury and potential statute of limitations.¹⁴¹ These drawbacks can be exacerbated by the serious nature of the crimes, as well as the ongoing nature of these conflicts. It is unlikely that unjust enrichment would easily slot into a transitional justice mechanism without international coordination to trace unjust enrichments procured by companies and individuals outside of Syria, as well as extensive domestic frameworks to ensure that all victims receive a portion of the enrichments collected through human rights abuses.

Whilst there have been some examples of success on the domestic level, this does not translate to the international level in which jurisprudence of unjust enrichment claims for human rights and atrocity crime abuses is limited. Despite the Holocaust-Swiss banks class action demonstrating that the principle of unjust enrichment can succeed in atrocity contexts, it exemplifies the importance of an identifiable value of enrichment which is often hard to establish in post-conflict scenarios. The litigation on slavery reparations demonstrates the barriers, identified above, to the success of unjust enrichment claims. These can be

¹⁴¹ *re African-American Slave Descendants Litigation* (n 18); *Krawiecki* (n 65).

compounded in transitional justice contexts in which victims are often hard to locate and perpetrator gains can be impossible to quantify.

In light of deference to domestic courts often deployed by international human rights mechanisms,¹⁴² the ability for a hybrid international-domestic mechanism to utilise elements of the principle of unjust enrichment is more feasible. A hybrid mechanism would be able to utilise the gain-based remedy which accompanies the principle of unjust enrichment in their transitional justice frameworks. The growing jurisprudence surrounding the repurposing of frozen assets for humanitarian purposes, used in domestic frameworks but with an international reach, demonstrates the ability for States to use gain-based restitution models. Identification of the pitfalls of focusing solely on retributive justice and loss-based remedies leads to a clear vision of the benefits that a gain-based model of reparations could achieve for victims. This memorandum explored civil and criminal asset seizure in the French context in which elements of unjust enrichment are used to support the removal of assets from perpetrators of various crimes to be redirected to ordinary people. This could be mirrored in a transitional justice setting but with a focus on asset seizure for unjust profiteering from human rights abuses and a comprehensive transformative justice framework accompanying this to ensure that collected money is used to support survivor-centred initiatives and societal change. However, the potential for procedural complications remains present which means that this approach should be utilised predominately for high-level offenders, whereas a restorative justice approach should be deployed for lower-level offenders to encourage transformative justice.

Based on the findings of this memorandum, the recommendations are as follows:

- 1 – Unjust enrichment would not easily transfer to a transitional justice context, but a hybrid definition incorporated into criminal and domestic law would be optimal.
- 2 – Gain-based remedies should be prioritised through asset freezing for high-level offenders and corporations in emerging transitional justice mechanisms in Syria.
- 3 – All financial and other material property collected from gain-based remedies should be reincorporated into the post-conflict society for transformative justice purposes to ensure all victims' benefit.

¹⁴² Rules of Procedure and Evidence (n 111) 108.

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