



# Handbook on Civil Society Organisations and Donors Engagement on Reparations

Reparations, Responsibility

 Victimhood in Transitional Societies

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This handbook is produced as part of the ‘Reparations, Responsibility and Victimhood in Transitional Societies’ project - a three-year project funded by the Arts and Humanities Research Council. It intends to inform civil society organisations (CSOs) and donors’ engagement on reparations in societies transitioning from conflict.

The project examines the role of reparations in societies transitioning from conflict, paying particular attention to contested notions of victimhood and the role of non-state armed groups, civil society and donors. Although there is increasing practice and international standards on reparations, there remains a large gap in implementation on the ground.

This project draws from six case studies (Colombia, Guatemala, Nepal, Northern Ireland, Peru and Uganda) and a reparations database to provide comparative analysis on the challenges on implementing reparations during and after conflict. The project team is based at Queen’s University Belfast School of Law, University of Essex, Dublin City University and Brandeis University. As part of translating research into real world applications, this handbook aims to share some of our findings in a more accessible, user-friendly and practical output.

Interviews were conducted with over 250 individuals across the six case studies, including victims, ex-fighters (state and non-state actors), civil society, reparation programme staff and donors. The project partner is the REDRESS Trust, with collaborating organisations of the International Centre for Transitional Justice (ICTJ) and the International Organisation for Migration (IOM). The project team, REDRESS, ICTJ and IOM held a one-day workshop in the Open Society Foundation, New York in December 2019 where they were joined by key experts and practitioners working on civil society and donor engagement with transitional justice. We wish to thank those who attended and a special thanks to Kelen Meregali (ICTJ) and Edit Bain (Open Society Justice Initiative) for assisting in the organisation and facilitation of the event.

This handbook is one of two written by the project team, the other on non-state armed groups, along with guidelines on reparations and twelve thematic and country reports that can all be found on our website: <https://reparations.qub.ac.uk/> with updates on our Twitter handle @TJreparations

## Executive Summary

The implementation of reparations in societies transitioning from mass atrocities often require the support of civil society organisations and donors to make them effective and sustainable. Civil society organisations play a number of key roles in connecting victims with policy makers, developing reparations agendas, sensitising and mobilising affected communities, advocating for redress through political, social and legal forums as well as facilitating the application and delivery of reparations. Donors can make a significant contribution to the realisation of reparations being delivered to victims, including through funding support to civil society organisations, provision of technical capacity, and oversight of funding. Together civil society organisations and donors can provide a supportive network to facilitate victim mobilisation and assistance to build a platform for advocacy for reparations. Such support can create a space for victims to be consulted on, articulate and co-design reparations appropriate to their needs in remedying their harm. Such backing should not be a means to achieve the vision, values or goals of civil society organisations or donors, but to empower victims to realise their right to an effective remedy and reparations.

Securing redress for victims does not involve 'quick returns', but requires sustained and strategic support from both civil society and donors. Victims should be actively involved in the negotiation, design and implementation of reparations processes so that these processes can appropriately and effectively remedy their harm. Civil society organisations should encourage victims to outline their needs rather than seeking to tell them what their needs are. While lessons can be learned from our situations and experiences, seeking to impose processes or mechanisms that cut against localised norms, overlooks the important specificities of a local context, or uncritically replicates what has been done elsewhere without appreciate that reparations are a process that requires local ownership to nurture it. Reparations need to be prioritised and supported to the same or greater extent that trials, truth commissions or disarmament, demobilisation and reintegration processes are given. This is not to say that they are more important than these other processes, but they are often funded more than reparations and often considered a 'luxury' when victims continue to live with the consequences of war and gross violations of human rights.

## Principles of Engagement for Civil Society Organisations:

- Working with victims on reparations should be based on genuine consultation and co-ownership that facilitates victim participation in the design, implementation and monitoring of reparation programmes.
- Engaging with victims and providing them space to articulate what reparations should look like and can change over time is essential in informing the appropriate forms of reparations. This may require knowledge exchange and sensitisation campaigns to make victims aware of their rights, the practices in other countries and creative thinking on what is appropriate for a victim and victimised groups.
- Consider what is feasible, realistic and in keeping with the ethos and capacity of the organisation when making reparations.
- Reparations need to be viewed as holistic measures. Not fulfilling promises can be worse than promising less. Reparation advocacy and delivery can take years or decades to see redress delivered and even then such measures will be modest, so victims' expectations should be informed of what is likely, but to also push the boundaries on what is possible.
- Working with victims should be conducted on an ethical, non-discriminatory and dignified basis.

## Principles of Engagement for Donors:

- Support victim groups and local civil society organisations in developing their own reparations agenda and have measured expectations on its progress and delivery.
- Consider a staged approach to funding support to victim groups and civil society organisations as reparation mobilisation, advocacy and implementation can take years or decades.
- Working with victim groups and civil society organisations to co-design appropriate and effective support mechanisms and assistance to victims.
- Invest in transitional justice and ensure that reparations are a key part of conflict transformation, development and peacebuilding agendas at the national, regional and international levels.
- The financial resourcing of reparations by donors should be exceeded by dedicated and budgeted funding by a responsible State to ensure its sustainability and satisfaction of victims' rights. Funding of reparations is separate from development and assistance, they can complement, but not replace each other.

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## Introduction

This handbook is directed at civil society organisations (CSOs) and donors involved in reparations processes. It draws on comparative international fieldwork undertaken in six different countries to offer practical guidance and advice on how CSOs and donors can, and should, be involved in reparation processes in post-conflict contexts. Recognising the important role that both CSOs and donors have to play in reparations processes, the handbook seeks to encourage a more victim-centric approach to reparations. Using insights gained from discussions with victims, practitioners and policy makers, it presents a model of good practice based on consultation so that victims' needs are clarified, the best way of meeting these is identified, and informing their expectations.

The handbook is structured as follows. It opens by defining and clarifying key concepts like reparations, CSO and donor. It then proceeds to discuss the relevance of each concept to transitional justice processes. The handbook then critically examines the role that CSOs can and should play in reparations processes. It identifies the many roles that CSOs perform on the ground in post-conflict societies and the unique contribution that they can make to reparation processes. This is followed by a section that analyses the role that donors can play in reparations processes. While there are many benefits to donor involvement in reparations processes, we acknowledge and discuss some of the challenges that increased donor involvement may present for reparations processes. The handbook then continues by exploring how CSOs and donors can coordinate with victims on reparations issues. Here we suggest that these engagements should be based on genuine consultation and co-ownership that facilitates victim participation in the design, implementation and monitoring of reparation programmes. This consultative approach can allow victims' needs to be identified and provide them with a better understanding of how reparations processes work. This will help inform the expectations of victims in terms of what they can expect from such bodies, how long it will take for this to be delivered, and avenues to struggle for better outcomes. The handbook closes by providing policy advice for CSOs and donors to adopt and incorporate into their policy and practice.

## Reparations, Civil Society Organisations and Donors

### 1. What are reparations?

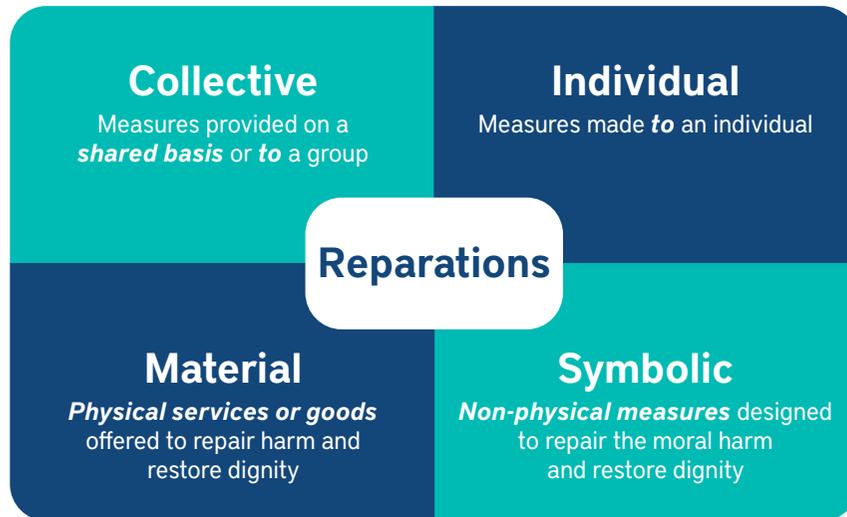
Reparations are a range of measures aimed at remedying the harm caused to a victim. The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation state that '[a]dequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.'<sup>1</sup> Reparations for such violations can be delivered to individuals or collective groups of victims and can include measures that are material and/or symbolic. Reparations should include restitution, compensation, rehabilitation and measures of satisfaction and guarantees of non-repetition.<sup>2</sup>

- Restitution involves reinstating the victim in the position they would have been in if the harm had not occurred, which can include 'restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.'
- Compensation involves providing victims with money in a lump-sum or periodic payments to alleviate the consequences of the harm they suffered.
- Rehabilitation involves providing a range of social, medical and legal services that can allow a victim to improve their quality of life and live a dignified existence.

1 Principle 15, 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, A/RES/60/147, 16 December 2005.

2 Principles 19-23, A/RES/60/147 (2005).

- Measures of satisfaction publicly vindicate victims' dignity and cease the harmful effects of violations. They include acknowledgement of responsibility, public apologies, dignification, uncovering the facts, recovery, identification and appropriate funeral rites of the remains of those disappeared and missing, holding to account those responsible, and the commemoration of victims.
- Guarantees of non-repetition are institutional, legislative and organisational reforms aimed at removing the root causes of violations. Guarantees may include reform and training on human rights and international humanitarian law for members of the military and police, the creation of an independent judiciary, the promotion of mechanisms for conflict resolution and codes of conduct in line with international standards.



## 2. Who are civil society organisations and donors?

'Civil society' refers to not-for-profit formal or informal groups that are independent from the State and outside its control.<sup>3</sup> Although civil society organisations (CSOs) are distinct from the State, the family and the market, they do not have to be in opposition to the government nor do they have to be close to the public or at the grassroots.<sup>4</sup> CSOs can be key actors in public debates and discussions, but they often have no formal role in policy processes.<sup>5</sup> CSOs are key actors in transitional justice processes.<sup>6</sup> CSOs can be local, national or international.<sup>7</sup> In today's 'global age' of transitional justice the local, national, regional and international networks are all interconnected through civil society.<sup>8</sup> It is common for international non-governmental organisations (NGOs), like the ICTJ, REDRESS, Advocates San Frontières (ASF), Human Rights Watch (HRW) and Oxfam for example, to work in partnership with local CSOs in transitioning societies, such as the Refugee Law Project in Uganda, the National Coordinator for Human Rights (CNDDHH) in Peru, or MOVICE in Colombia.<sup>9</sup> CSOs are not the same nor do they share a 'unified position'; they may compete or contradict each other on what is best regarding a reparations agenda, or be a loose coalition of organisations that agree reparations should be delivered to victims.<sup>10</sup>

3 Daniel Posner, 'Civil society and the reconstruction of failed states' in Robert Rothberg (eds) *When states fail: Causes and consequences* (Princeton: Princeton University Press, 2004).

4 Lydiah Bosire & Gabrielle Lynch, 'Kenya's search for truth and justice: The role of civil society', *International Journal of Transitional Justice*, (2014) 8: 256 – 276.

5 Emily Haslam, 'Subjects and objects: International Criminal Law and the institutionalisation of civil society', *International Journal of Transitional Justice*, (2011) 5: 221 – 240.

6 Eric Brahm, 'Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies' (2007) 9 *International Journal for Not-for-Profit Law* 62; Melissa Ballengee, 'The 63 Critical Role of Non-Governmental Organizations in Transitional Justice: A Case Study of Guatemala' (1999) 4 *UCLA Journal of International Law and Foreign Affairs* 477.

7 Roger Duthie, *Building trust and capacity: Civil society and transitional justice from a development perspective* (New York: ICTJ, 2009), 5.

8 Iavor Rangelov & Ruti Teitel, 'Global civil society and transitional justice' in Helmut Anheier et al (eds) *Global civil society 2011: Globality and the absence of justice* (New York: Springer, 2011), pp. 162 – 177.

9 Barbara Oomen, 'Donor-driven justice and its discontents: The case of Rwanda', *Development & Change*, (2005) 36 (5): 887 – 910.

10 Nicole Dicker, 'Development Aid for Reparations in the Solomon Islands', *Transitional Justice in Practice*, (2017) 203-228, p222.

CSOs might not represent all victims,<sup>11</sup> but may also include veteran associations that can compete with victims to minimise or undermine their reparation claims.<sup>12</sup>

'Donors' refer to those bodies and groups that provide the assistance and the aid necessary for transitional justice processes to take place. This reflects that most post-conflict States cannot afford to finance, or do not prioritise in the short-term, these processes and mechanisms themselves.<sup>13</sup> Donor support would normally involve funding projects, goods, services, organisations or specific State budget lines. Donors can include major international bodies like the United Nations (U.N.), third party states, and private philanthropic trusts. For example, the Balkan Transitional Justice initiative that documents war crimes committed in the region is supported by the European Commission, the Swiss Ministry of Foreign Affairs, the Dutch Ministry of Foreign Affairs, and the Robert Bosch Stiftung.<sup>14</sup> Similarly, transitional justice programmes in Cambodia have been funded by USAID, third party States like Germany, Japan and the UK, multilateral agencies like the EU, and private donors like the Heinrich Boll Foundation.<sup>15</sup> Most donors are Western-based, while most (but not all) of those receiving their support are in non-Western transitioning societies. The economic inequalities caused by colonialism continue to shape the relationship between donors and aid-recipients, bringing into question the motivation for, and appropriateness of, external interventions that touches on a number of competing political, moral, cultural, and socio-economic perspectives.<sup>16</sup>

Like CSOs, donors are now seen as an integral part of the transitional justice 'community',<sup>17</sup> with increasing amounts of international aid now being allocated to transitional justice processes.<sup>18</sup> This is highlighted by the Sustainable Development Goals (SDGs), including Goal 16 to 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all

11 Peter Van der Auweraert, *The Potential for Redress: Reparations and Large-Scale Displacement*, in R. Duthie (ed.), *Transitional Justice and Displacement*, ICTJ (2012), 139-186, p158.

12 See Amy Rothschild, *Victims versus Veterans: Agency, Resistance and Legacies of Timor-Leste's Truth Commission*, *International Journal of Transitional Justice*, 11(3)(2017) 443-462.

13 Ismael Muvingi, 'Donor-driven transitional justice and peacebuilding', *Journal of Peacebuilding & Development*, (2016) 11 (1): 10 - 25.

14 See <https://balkaninsight.com/balkan-transitional-justice-home/donors/>

15 Somaly Kum, 'How do donors shape transitional justice in Cambodia', (2019) *Swiss Peace Cambodian Working Paper Series*.

16 Sara Kendall, 'Donor's justice: Recasting international criminal accountability', *Leiden Journal of International Law*, (2011) 24: 585 - 606; William Muck & Eric Wieblehaus-Brahm, 'Patterns of transitional justice assistance among the international community' *Sixth European Consortium for Political Research General Conference*, (2011); Upendra Baxi, *The Future of Human Rights* (Oxford: Oxford University Press, 2007), 111.

17 Laurel Fletcher & Harvey Weinstein, 'How power dynamics influence the 'North-South' gap in transitional justice', *Berkley Journal of International Law*, (2018) 36 (2): 190 - 217.

18 Colleen Duggan, "'Show me your impact": Evaluating transitional justice in contested spaces', *Evaluation and Program Planning*, (2012) 35 (1): 199 - 205.

and build effective, accountable and inclusive institutions at all levels'. While the SDGs do not explicitly mention gross violations or transitional justice, meeting targets of improving the rule of law, prevention of violence, inclusive institutions, access to justice, good health and wellbeing, gender equality and equality in societies emerging from conflict, authoritarianism or occupation are going to be difficult to achieve without transitional justice mechanisms.<sup>19</sup> Donors have a crucial role here in supporting CSOs and investing in transitional justice to lessen the 'justice gap' for those traditionally marginalised and subjected to repeated violations.<sup>20</sup>



Memorial grave site to those disappeared at former army base, Ayacucho, Peru

19 See *On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations*, Report of the Working Group on Transitional Justice and SDG16+, ICTJ, May 2019.

20 *Ibid.* p5.

### 3. Why are reparations different from development, humanitarian assistance and other fields where donors and CSOs may have more experience knowledge?

During and after armed conflict and gross violations of human rights, civil society and humanitarian organisations can be vital in supporting victims' basic needs. Victims' suffering caused by armed conflict and gross human rights violations is often compounded on the ground by damaged infrastructure, broken social services, displacement, targeted civil society, and the breakdown of the private sector.<sup>21</sup> It can be difficult to differentiate reparations, which take place in transitional justice processes, and the provision of development programmes and humanitarian assistance by CSOs and donors.

Transitional justice, development and assistance activities are all trying in different ways to alleviate the effects of violence on those most affected and contribute to societal transformation by addressing the root causes of conflict in the face of locally limited resources, damaged infrastructure and disrupted communal or social support networks. Reparations and development can often overlap as both aim to promote civic trust, resilience and social solidarity in societies emerging from violent conflict.<sup>22</sup>

There are fundamental differences between reparations, assistance and development. While assistance programmes might address the immediate needs of individuals and communities that have become vulnerable following conflict, reparations programmes respond more specifically to violations of civil, political, cultural or socio-economic rights.<sup>23</sup> Victims of gross violations of human rights have a right to reparations as a legal entitlement, but the right to humanitarian assistance is not yet legally recognised.<sup>24</sup> Development programmes can also have reparative effects, but they do not specifically target the victims of violations to offer services or payment in acknowledgment of the harm they suffered.<sup>25</sup>

21 Naomi Roht-Arriaza, 'Reparations, Decisions and Dilemmas', *Hastings International and Comparative Law Review*, (2004) 27 (1): 157 – 220.

22 Lisa Laplante, 'On the indivisibility of rights: Truth commissions, reparations, and the right to development', *American University International Law Review*, (2007) 23 (1): 51 – 90.

23 Naomi Roht-Arriaza and Katharine Orlovsky, 'A complementary relationship: Reparations and development' in Pablo De Greiff & Roger Duthie (eds) *Transitional justice and development* (New York: Social Science Research Council 2009).

24 See Dub Cubie, *The International Legal Protection of Persons in Humanitarian Crises: Exploring the Acquis Humanitaire*, Hart (2017).

25 Naomi Roht-Arriaza, 'Reparations in the aftermath of repression and mass violence' in Eric Stover & Harvey Weintein (eds) *My Neighbour, My Enemy: Justice and community in the aftermath of mass atrocity* (Cambridge: Cambridge University Press, 2004), pp. 121 – 139.

Reparations and development often serve diverging purposes, meaning that while they can certainly complement each other and at times overlap, one cannot be a substitute for the absence of the other. Assistance and development programmes can provide a broader range of support to affected communities, whereas reparations more modestly seek to redress the violations suffered by a victim population defined by eligibility criteria.<sup>26</sup> Each process is ultimately in response to different goals; development is the process of rebuilding a society shattered by conflict whereas reparation is about remedying the harm suffered by those who have had their rights violated during that conflict.

On the ground, those most in need may not be able to distinguish between reparation, development and assistance where it is provided as a collective measure. While those designing reparation programmes might see nutritional support, medical aid and access to education as 'development problems' rather than 'victim problems', these are often the very things that victims need in living with the everyday consequences of violence.<sup>27</sup> One Ugandan interviewee spelt out this reality to us:

Reparations has two aspects. One is the form of justice, the classical courts, like, you take me to court and make sure that a ruling is made. But then how that ruling translates to my livelihood is [a] totally different question. From our work we've learned that people might not be so much interested right now in what is going on in The Hague because it does not give them food on the table... So for them as victims if you like, OK, yes, I might participate in the formal process, but I cannot be hungry the entire time until a judgment is passed... people need to continue living, they need to continue making a living out of whatever they have. So that's why we think economic empowerment and the formal justice system should actually meet. You can't do this in isolation.<sup>28</sup>

26 Naomi Roht-Arriaza and Katharine Orlovsky, 'A complementary relationship: Reparations and development' in Pablo De Greiff & Roger Duthie (eds) *Transitional justice and development* (New York: Social Science Research Council 2009).

27 Marlies Glasius, 'We ourselves, we are part of the functioning': The ICC, victims, and civil society in the Central African Republic', *African Affairs*, (2008) 108 (430): 49 – 67.

28 Interview Uganda 3.

Development may be more of an expedience for States that want to obtain wider political support in assisting a greater number of their population. In Uganda the government tried to brand development programmes and peacebuilding activities, such as NUSAF and PDRP, as reparations, without providing measures that directly remedied victims' harm or acknowledged its own responsibility in atrocities.<sup>29</sup> In South Africa the Truth and Reconciliation Commission recommended individual compensation and collective reparations, but its implementation resulted in a smaller amount of compensation being paid to a limited number of victims and collective measures transformed into development projects. While South African CSOs tried to contest this, international standards on reparations proved too ambiguous or non-binding to demand prioritisation of resources to reparations over development.<sup>30</sup> Christian Correa a leading expert on reparations argues that such measures should be focused on the most serious violations and aimed at improving victims' wellbeing and a guaranteed standard of living. Development policies should address the wider socio-economic consequences of mass atrocities that concentrate on addressing the pattern of marginalisation and inequality, rather than just the violations to which reparations aim to remedy.<sup>31</sup> Civil society and donor organisations therefore need to clearly differentiate between reparations and development in order to maximise benefits brought by both and appreciate how they can complement each other.

29 Northern Uganda Social Action Fund and Peace Recovery and Development Plan – see Stephen Oola and Luke Moffett, *“Cul Pi Bal” Reparations for the Northern Ugandan Conflict*, RRV, June 2020, p15-18.

30 Aurélien Pradier, Maxine Rubin & Hugo van der Merwe, *Between transitional justice and politics: Reparations in South Africa*, *South African Journal of International Affairs*, 25(3) (2018), 301-321, p315.

31 Cristian Correa, *Integrating development and reparations for victims of massive crimes*, The Center for Civil and Human Rights (2014).

## What roles can CSOs play in reparations processes?

CSOs play an important role in narrowing the gap between victim expectations on and the implementation of reparations. CSOs can 'serve as a bridge between the State and victims',<sup>32</sup> by accompanying them on their struggle for redress. This can include CSOs:

- guiding victims through the technical requirements of bringing claims;
- helping victims with filling out forms;
- documenting violations, collecting supporting material and corroborating evidence;
- ensuring victim safety during processes;
- amplifying victims' voices through community, national or international networks and/or social media;
- seeking funding to support victims' immediate needs;
- reaching marginalised, rural and indigenous communities; and
- providing services that states cannot afford to or do not provide.

One of their key roles is to foster 'public ownership' and agency among local populations by encouraging them to participate in and have dialogue on these processes and mechanisms.<sup>33</sup> The support, input and contribution from civil society can often be central to the success of transitional justice processes and mechanisms. By way of illustration, while many truth commissions succeeded due to CSO buy-in, in Kenya the stand-offish approach adopted by local civil society actors contributed to the failure of the Kenyan Truth, Justice and Reconciliation Commission.<sup>34</sup> CSOs can further feed into transitional justice processes through direct provision of services to impacted constituencies or

32 As put by Alejandra Vicente, December 2019 workshop.

33 Renee Jeffrey, Lia Kent & Joanne Wallis, 'Reconceiving the roles of religious civil society organisations in transitional justice: Evidence from the Solomon Islands, Timor Leste and Bougainville', *International Journal of Transitional Justice*, (2017) 11: 378 – 399.

34 Lydiah Bosire & Gabrielle Lynch, 'Kenya's search for truth and justice: The role of civil society', *International Journal of Transitional Justice*, (2014) 8: 256 – 276.

through advocacy work on their behalf.<sup>35</sup> They can act as reparation service providers to victims by offering them counselling services, legal advice and commemoration activities or as pressure groups demanding that victims' rights and needs be met via mechanisms and processes.<sup>36</sup> CSOs have been active in developing reparations practice by setting standards, making rules and defining points of action, and have constructed certain problems as global issues, and formulated responses to these issues, such as gender inclusive approaches.<sup>37</sup> Even if they have limited power of implementation and enforcement, CSOs can nonetheless bring significant societal and legal pressure to bear on States and reparation programmes.<sup>38</sup>

Backer identifies that CSOs perform six broad functions in transitional justice as:

- data collection and monitoring through collating reports on human rights abuses;
- representation and advocacy in policy debates by either supporting or opposing certain initiatives or by putting forward their own proposals;
- collaboration, facilitation and consultation by translating forensics, legal and medical advice from official bodies and processes to local grassroots;
- service delivery and intervention by holding things like legal clinics for those taking legal action for abuses or offering trauma counselling services to victims;
- acknowledgment and compensation by providing a platform for restorative justice; and
- research and education by using experience and involvement in transitional processes to devise best practice and formulate guidance to help others.<sup>39</sup>

Gready and Robins have similarly categorised civil society engagement in transitional justice processes into the following five areas: persuasion/advocacy; support; mobilisation/capacity building/education; substitution/

35 Roger Duthie, *Building trust and capacity: Civil society and transitional justice from a development perspective* (New York: ICTJ, 2009), 8.

36 Christopher J Colvin, 'Civil Society and Reconciliation in Southern Africa' *Development in Practice* (2007) 17 (3): 322-337.

37 See the 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation.

38 Jelena Subotic, 'The transformation of international transitional justice advocacy', *International Journal of Transitional Justice*, (2012) 6: 106-125.

39 David Backer, Civil society and transitional justice: Possibilities, patterns and prospects, *Journal of Human Rights*, 2 (3) (2003), 297-313.

independent action; and space for modelling alternatives.<sup>40</sup> It should be noted that any given CSO may perform more than one of these roles. This was highlighted by one interviewee from Northern Ireland who said of their organisation's work:

There's really two sides to it... the casework side which is trying to do kind of documentation and looking at kind of accountability and looking at mechanisms and truth-finding; that kind of thing. On the other side, there is a wellbeing, psychological and emotional support end of things, which provides alternative therapies, also trauma counselling and advice on accessing available funding mechanisms.<sup>41</sup>

The entry point for CSO involvement in reparations programmes can be at the international, national or local levels. Reparations processes might simultaneously draw in actors at all of these levels. For instance, in Rwanda the ability and willingness of international NGOs to work in partnership with local NGOs has strengthened local capacity on victims' issues.<sup>42</sup> However, the involvement of international actors should be to enable, empower and strengthen local actors, rather than replacing them or replicate their work. As one Ugandan observer found such a relationship is about adding value, so the role of international bodies is to assist local actors in implementing a humanitarian response to the legacy of conflict that is attuned with international standards.<sup>43</sup> Even if the work of international NGOs on a particular issue in a particular country is time limited, it can provide the basis for local NGOs to continue this work. For example, in the Central African Republic after a UNDP funded programme to deliver psychological counselling and livelihood training to rape victims came to an end, a local NGO emerged to continue documenting these crimes and lobbying for prosecutions.<sup>44</sup> International actors should ensure that local capacity to carry on the activities previously overseen and undertaken by them is continued on the ground before they disengage from a country.<sup>45</sup>

40 Paul Gready & Simon Robins, Rethinking civil society and transitional justice: Lessons from social movements and 'new' civil society, *International Journal of Human Rights* 21(7) (2017), 956-975.

41 Interview NI 1.

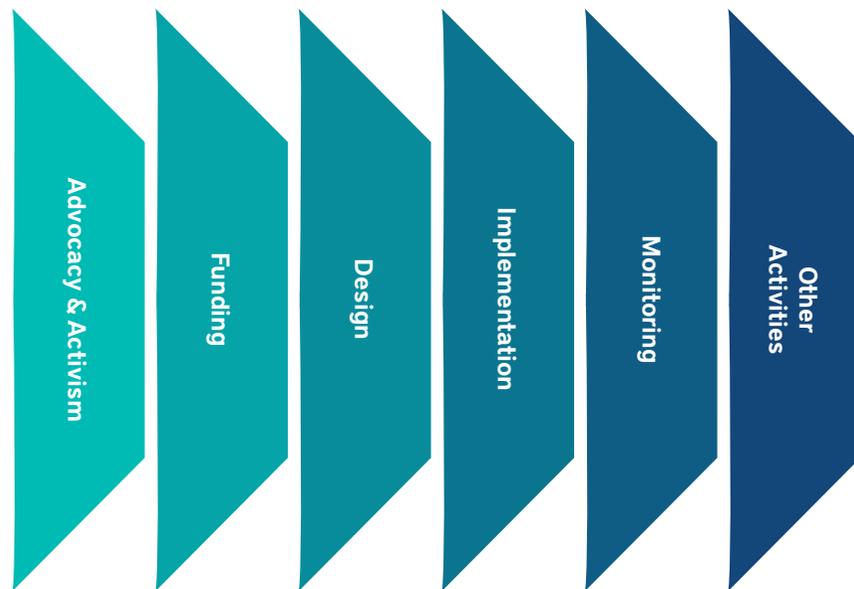
42 Barbara Oomen, 'Donor-driven justice and its discontents: The case of Rwanda', *Development & Change*, (2005) 36 (5): 887-910.

43 Interview Uganda 17.

44 Marlies Glasius, 'We ourselves, we are part of the functioning': The ICC, victims, and civil society in the Central African Republic', *African Affairs*, (2008) 108 (430): 49-67.

45 Interview Uganda 17.

Only then can a commitment to meeting victims' needs in a long-term and sustainable manner be met.<sup>46</sup>



We believe that CSOs perform the following roles in reparations programmes:

- a. Advocacy and activism
- b. Funding
- c. Design
- d. Implementation
- e. Monitoring
- f. Other activities

Interviewees offered examples of CSOs performing each of these roles on the ground in a way that mapped onto these categories.

<sup>46</sup> Impunity Watch/ REDRESS, *Victims front and centre: Lessons on meaningful victim participation from Guatemala and Uganda* (The Hague: REDRESS, 2019), 12.

## 1. Advocacy and Activism

CSOs can play an integral role in advocating and litigating on behalf of victims. This can take many forms including community mobilisation, political demonstrations, art installations, social media campaigns, and strategic litigation. Each of these actions can be used to complement the others or can be carried out by different organisations working together. While social media is a relatively recent part of the activist's toolkit in highlighting a cause, in a similar way in the late 1990s victim reparation movements around the German Forced Labour claims used advertisements in newspapers and magazines in the US to shame companies into making reparations alongside negotiations and litigation in US courts.<sup>47</sup> Advocacy and activism have an important role to reach out to victims, inform and sensitise them of their rights and comparative practice, mobilise broader support and awaken society to victims' claims for reparations.

CSOs also play an important role in bringing victims together to speak about their suffering, needs and rights. These can then be translated into political demands and litigation strategies. Some CSOs can draw upon a wide base of members to mobilise collective action and broaden transitional justice demands to include social justice issues.<sup>48</sup> In Colombia one interviewee spoke of their organisation's advocacy role:

*This organisation is actually born out of a specific instance of sexual violence in Urabá in Antioquia where people weren't talking about sexual violence so they decided to do this. In terms of sexual violence there is sort of a timeline where people were silent and now they're talking about it.*<sup>49</sup>

Advocacy can mean CSOs taking action to address victims' needs where no formal reparation mechanism exists, leading efforts to have such a mechanism set up, and then providing the space for victims to meaningfully and critically engage with such a mechanism.<sup>50</sup> CSOs can therefore create and/or campaign for platforms for victims to speak directly about their experiences, needs and interests, as can be seen with the case of the Plan Nacional de Reparaciones in Guatemala.<sup>51</sup>

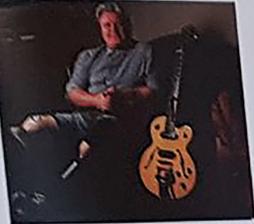
<sup>47</sup> See Bazylar; and Eizenstat.

<sup>48</sup> Eva Ottendörfer, Mariam Salehi, Irene Weipert-Fenner, and Jonas Wolff, *Labor Unions and Transitional Justice: An Exploratory Study on a Neglected Actor*, in *Justice Mosaics*, ICTJ (2018), p347-349.

<sup>49</sup> Interview Colombia 2.

<sup>50</sup> Paul Gready and Simon Robins, 'Rethinking civil society and transitional justice: Lessons from social movements and 'new' civil society', *International Journal of Human Rights*, (2017) 21 (7): 956 - 975.

<sup>51</sup> Impunity Watch/ REDRESS, *Victims front and centre: Lessons on meaningful victim participation from Guatemala and Uganda* (The Hague: REDRESS, 2019), 69.



### Mark Kelly

Mark Kelly lost both legs in a 'no warning' bomb at the Glen Inn, he had called in to pick up keys to close the near-by youth club, Glengormley 1976. Mark was 18 years old.



### Jennifer McNern

Jennifer McNern lost both legs in a bomb at the Abercorn Restaurant, she was there with her sister who also lost both legs and an arm, Belfast 1972. Jennifer was 21 years old.



### Paddy Cassidy

Paddy Cassidy was shot in the back at the corner of Ardilea Street, he has spinal injuries and walks with the aid of callipers and crutches. Belfast 1971. Paddy was 29 years old.



### Margaret Yeaman

Margaret Yeaman lost her sight in a bomb blast at an Estate Agents in Banbridge Town. A boy of 11 was killed by flying debris. Margaret was 38 years old.



### Robert Barfoot

Robert Barfoot was paralysed in a gun attack on his friend's car in 1985, as they drove home to Newbridge, Magherafelt from Portstewart. They had gone there to meet other friends for an icecream. Robert was 22 years old.



### Dr. Mary Hannon Fletcher

Mary Hannon Fletcher was paralysed in a drive-by shooting on the Grosvenor Road, she had left the cinema with her boyfriend and was on her way home, Belfast 1975. Mary was 18 years old.



### Peter Heathwood

Peter Heathwood was paralysed in a shooting at his home in North Belfast, his father Herbert Heathwood died at the scene of a heart attack when he thought Peter was dead, Belfast 1979. Peter was 26 years old.



### Alex Bunting

Alex Bunting lost a leg in a booby trap bomb underneath his car. He owned his own taxi business and had a passenger in the car at the time – the passenger was also injured, Belfast 1991. Alex was 37 years old.



### Andrew Peden

Andrew Peden lost both legs in a paramilitary shooting in the Glencairn estate. It happened the day after the Good Friday Agreement was signed, Belfast 1998. Andrew was 34 years old.



### Paul Gallagher

Paul Gallagher was paralysed in a shooting at his home in Lenadoon. He and his family were held hostage while gunmen lay in wait for his next-door neighbours. When his neighbours failed to return home they shot Paul instead, Belfast 1994. Paul was 21 years old.

Exhibition of the seriously injured victim campaign for a pension, Belfast, Northern Ireland

Likewise, where official mechanisms or processes are insufficient or inadequate, NGOs may intervene to either plug that gap or demand that it be plugged.<sup>52</sup> This might involve CSOs entering public debates to either support existing campaigns or to encourage new campaigns.<sup>53</sup> A notable example of this is the campaign by the WAVE victims' group in Northern Ireland to have a pension scheme for the seriously injured established.<sup>54</sup> Such engagement can take years and even decades given State or societal resistance or disinterest.

CSOs also play a key role in sensitising society and affected communities to transitional justice concepts, domestic and international avenues for redress, and critical discussions around the past.<sup>55</sup> Identifying allies and opponents is key to advancing a redress agenda<sup>56</sup>; building alliances and networks of support can advance advocacy around reparations. In the Sepur Zarco case in Guatemala, involving the military's killing of indigenous Mayan men and sexual slavery of their wives, an Alliance for Breaking the Silence and Impunity (Alianza Rompiendo el Silencio y la Impunidad) was created with the victims which included lawyers, psychosocial professionals and women activists.<sup>57</sup>

52 David Backer, 'Civil society and transitional justice: Possibilities, patterns and prospects', *Journal of Human Rights*, 2 (3) (2003): 297 – 313.  
53 Alison Brysk, 'From above and below: Social movements, the international system and human rights in Argentina', *Comparative Political Studies*, (1993) 26 (3): 259 – 285.  
54 Luke Moffett, 'Struggling for reparations in Northern Ireland' in Carla Ferstman & Mariana Goetz (eds) *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity* (Leiden: Brill Nijhoff, 2020).  
55 Ernesto Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence*, Temple University Press (2009), p18.  
56 Strategic litigation for sexual and gender-based violence: Lessons learned, OHCHR 2019, p7.  
57 See Impunity Watch, *Changing the Face of Justice: The Sepur Zarco case*, (2019).

Using domestic law and accompaniment of indigenous Quiché women in seeking redress for sexual violence was considered an important “methodology” for “women to transform the world” to counter the power imbalances of victims seeking justice alone against powerful perpetrators.<sup>58</sup>

Choices based on the nature of the claim, available evidence and the availability of legal forums need to be made on which cases to advance with. Different litigation strategies may need to be used, including being sensitive to the judicial practice of an institution and its use of comparative precedents. One workshop participant spoke of how in their national jurisdiction in advocating for victims’ rights to reparations, citing Chilean jurisprudence appealed more to judges than Inter-American Court cases. At the same time framing reparations in terms of transitional justice may be too ‘niche’ or not fit the remedies available through domestic law, or where these are exhausted through regional or international bodies.<sup>59</sup> Such litigation may have to resonate with the narrative of the victims, such as genocide or collusion.

Strategic litigation by local and international CSOs (both at the national and international levels) has proven an effective tool to support the victims’ fight for accountability. For example the Cantuta and Barrios Altos cases before the Inter-American Court of Human Rights contributed, along with several other factors, to the eventual conviction of former Peruvian president Alberto Fujimori despite an earlier risk of him benefitting from a prospective pardon.<sup>60</sup> Similar efforts can be seen in Guatemala, Chad, the Philippines and Northern Ireland of the key role of victims, local and international CSOs coming together to hold those responsible for violations to account, whether through civil or criminal courts.

## 2. Funding

While CSOs may not be involved in providing the funding for reparations processes per se, they nonetheless play an important role in fundraising for other support they provide to victims. This funding can be used to help the CSO deliver reparative services to victims; whether that is money to pay for social outings as a group, to cover the cost of therapeutic and rehabilitative treatments for individual victims, or to financially support the maintenance of

58 G07.

59 Workshop participant.

60 *Case of La Cantuta v. Peru*. Merits, Reparations and Costs, Judgment 29 November 2006. Series C No. 162; and *Case of Barrios Altos v. Peru*. Merits, Judgment, 14 March 2001, Series C No. 75.

museums and archives where victim testimony is shared and/or stored. Or it might involve CSOs indirectly funding interim measures like strategic litigation that would allow victims access to justice. CSOs will often apply for or seek this funding from donors or State agencies, yet they can also play an important role in helping victims to navigate these complex application processes themselves; informing victims of what funding is available, where it is available from, what the eligibility criteria is, and how it can be applied for.

## 3. Design

CSOs have played a critical role in the design of reparations programmes. CSOs use their experiences and expertise in consulting, networking and working with (and for) victims to make recommendations on how reparations programmes should be designed and delivered. An interviewee in Nepal outlined the various ways that their organisation had been involved in the design of reparations programmes there:

We joint led ... the project with the CHR [Commission on Human Rights] on supporting the government with designing a number of programmes. We started with designing a reparations programme and where we developed a reparations policy and programme and then we also supported, it was with the Ministry of Peace and Reconstruction. And we did a technical assistance project with [Ministry of Peace and Reconstruction] itself on providing psychosocial counselling and support to a conflict affected person. We did not actually implement the programme but we just developed the tools and the mechanisms that were needed... We also developed monitoring and evaluation tools and outreach strategies and before that, when we finished with CHR project we actually helped the government with designing and planning a self-employment programme. That was with, I think MOPR was working with Royal Bank and where we developed these outreach strategies.<sup>61</sup>

Although this interviewee pointed out that their organisation was not involved in the implementation and/or monitoring of these programmes they had helped co-design, other interviewees spoke of their organisations’ performing these roles elsewhere. For example, an interviewee from another Guatemalan CSO

61 Interview Nepal 16.

highlighted how their organisation assisted in the implementation of reparations for families of victims of enforced disappearances by providing “technical support with regard to databases and the register of the disappeared”.<sup>62</sup>

At the same time transplanting a reparations programme in one context to another is problematic. Some workshop participants discussed the experience in Mexico, where the 2011 Colombian Victims’ Law, was transposed to become the 2013 Mexican Victims’ Law.<sup>63</sup> This is a very complex law and its requirements for reparation claims make it impossible for most victims to comply with and access. Victims have to either obtain an international or regional judgment or a judicial decision or prosecutor finding it is impossible to prosecute private actors.<sup>64</sup> Despite this CSOs have since 2016 demanded for a transitional justice approach to deal with impunity for tens of thousands of disappearances and over 150,000 extra-judicial killings, and a properly funded, more accessible reparation programme.

## 4. Implementation

In some contexts the State is unable or unwilling to provide reparations to victims and CSOs try through their limited funding and capacity to provide some informal repair to victims. CSOs can play a significant role in mobilising society and building political will to ensure reparations are delivered, whether through implementing truth commission’s recommendations on reparations,<sup>65</sup> the passage of bills through the legislature or judicial decisions.

62 Interview Guatemala 22.

63 New York workshop, December 2019.

64 See Mara Hernández, Andrea Guadarrama, and Cristián Correa, *Reflexiones sobre justicia transicional en México: paradojas y procesos posibles*, ICTJ 2020.

65 Onur Bakiner, *Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society*, IJTJ 8(1) (2014) 6-30, p7.

One Guatemalan CSO spoke of their practical role in relocating and burying the remains of those disappeared:

We have supported the transportation of people and food coverage of the days that the process of exhumation and psychosocial accompaniment lasts when we say it is required and there is availability to do so in the process of inhumations basically the contribution of the program in the history of this process has been purchase for example of coffins, food, say the economic contribution in terms of a religious act of what they can ask for and psychosocial accompaniment when for example there is no NGO that also covers the issue of psychosocial accompaniment.<sup>66</sup>

One interviewee from Colombia spoke of a more hands-on role one victim organisation had taken to resolving the issue of disappearance by seeking information directly from convicted members of the armed groups responsible:

94 women from this organisation went on these [prison] visits and each of them would bring a list of names and in some cases photos of the people who are disappeared amongst whom they would have a photo of their son or relative who was disappeared. So they were scared to leave the photos with them [the prisoners], but they showed them and the person in prison would say we are going to study these photos and these names and we’re going to think about where they are. This way they recovered [the remains of] 68 people. It was very difficult for them to personally go there and sort of face this person who might have killed and disappeared their loved one, but they needed to make this effort to show other people that is was possible.<sup>67</sup>

66 Interview Guatemala 16.

67 Interview Colombia 14.

## 5. Monitoring

Other interviewees pointed to their organisation playing a role in monitoring the delivery of programmes that they had helped co-design. An interviewee from Peru spoke of how their group had been involved in highlighting the issue of forced sterilisation, designing reparations policies for the victims of it and then monitoring how these policies were implemented:

Five years ago we formed the working group that follows up on reparations in the area of forced sterilizations, and our objective is to promote the reparation of women who were victims, also supporting the strengthening of themselves, in another sense we have been working with political incidence towards the state, First, to recognize this issue as a serious problem against women, second, to design policies, and third, to enforce them... but there is a problem with its implementation, so what we do is collect the demands of many women and institutions that work in provinces within the country, and then we ask for meetings here with public institutions that are involved. For example, the Minister of Justice, health, [and] women, to say what is happening that they can attend. We have already supported three meetings of women with the desire to articulate internationally and are increasingly articulated women.<sup>68</sup>

Accordingly, CSOs play an important role in ensuring transparency of the transitional justice process and holding governments to account to meet their international obligations in dealing with the past.

## 6. Other activities

CSOs provide an important space for victims, their families and allies to socialise, build bonds and engage in informal or self-repair that while not reparations, help to informally alleviate some of the consequences of violations.<sup>69</sup> CSOs carry out a range of reparative activities such as storytelling,<sup>70</sup> arts including quilts of remembrance,<sup>71</sup> gardening,<sup>72</sup> respite

68 Interview Peru 4.

69 See Sunneva Gilmore and Luke Moffett, Finding a way to live with the past: Self-repair, informalism and reparations in transitional justice, *Journal of Law and Society* 48(3) (2021) 455-480.

70 UG05, Gulu, July 2018.

71 WAVE, *Quilt of Remembrance*, (2014).

72 IR18, Belfast, March 2017.

breaks, dancing, memorial prayers, commemoration,<sup>73</sup> and body mapping to help victims narrate psychological issues or sexual violence.<sup>74</sup>



Memorial quilt of those killed during the Troubles made by family members, Northern Ireland

One Ugandan musician who works with victims and spoke about the role of songs in Acholi culture:

It actually helps to give hope to the hopeless, it actually speaks to the heart of those who have been afflicted by the incident, whatever happened at that time. ... It is also one way for memory, but above all it keeps that record and it acts like a counselling tool. You know music speaks in the heart deeply. At times you may have no option but to listen to that voice.<sup>75</sup>

73 UG11, Gulu, July 2018.

74 UG05, Gulu, July 2018. See S. Gunn, *Body Mapping for Advocacy: A Toolkit*, International Coalition of Sites of Conscience (2018).

75 UG08, Gulu, July 2018.



Museum for victims of the Lord's Resistance Army massacre of civilians in Lukodi, Uganda

In indigenous or tribal communities, the community itself can be important in providing support to victims within their own cosmovisions. Family or victim associations can play a critical part in helping victims to cope or self-repair through solidarity and sharing, as an avenue for 'social reconstruction of meaning and identity' after ambiguous loss caused by disappearances.<sup>76</sup> Organising themselves into a victim group can be a way for them to collectively self-repair and support each other. As one victim advocate said for their forty-five year search for the truth, the "campaign is our therapy".<sup>77</sup> Another victim campaigner said it would be a "slow death to do nothing, the struggle for justice kept us going."<sup>78</sup> Victims have also found strength in sharing their experience with other victims or have other victims accompany them to court proceedings or recovery of remains.<sup>79</sup>

For some victims being able to speak to a friend, family member or counsellor helped them to cope with their loss within a victim organisation. As one victim in Northern Ireland said, "I think the best thing anybody can do, and it's always been my saving grace, is talking. You know whenever you talk to people and

76 Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal', *International Journal of Transitional Justice*, 5(1)(2011), 75–98, at 93.

77 NI19, Dublin, June 2018.

78 Suleyman Guengueng at REDRESS roundtable, Victims of Hissein Habré: The struggle for reparations continues, Assembly of State Parties roundtable, New York, 7 December 2017.

79 COL23, Bogota, September 2018.

realise they're just the same as yourself."<sup>80</sup> Some victims in Uganda shared similar feelings, in that at times it was easier to "open up" to speak about common challenges with victims of similar violations, such as sexual violence.<sup>81</sup> Not everyone can have this social support and instead face further suffering and isolation.<sup>82</sup> Nonetheless, some victims find that they do not want their social life to be defined by their engagement with a victim group or CSO, but have their own life outside their victim identity.<sup>83</sup> Others have found that focusing on present and future challenges, such as working in a local community organisation, rather than dwelling in the past, is more beneficial.<sup>84</sup> CSOs can provide a number of support structures, activities and outlets for victims to normalise their everyday after gross violations of human rights.

More generally, there is a range of roles that CSOs play in reparations processes. Whether it is through organising victims movements, empowering and enabling platforms for victims, advocating for victims by ensuring certain harms are placed on the reparations agenda, using engagement with victims to guide the design of reparations programmes, helping the implementation of programmes by raising awareness of mechanisms and processes within victim constituencies or providing the necessary technical support and practical help on the ground for certain processes to take place, or supporting victims through strategic litigation when reparations processes are not properly implemented, CSOs are key stakeholders with a valuable contribution to make to reparations programmes. In many cases victims themselves form civil society groups to push for access to justice, truth and reparations, with these CSOs often being central to bottom-up transitional justice processes 'from below'.<sup>85</sup>

## 7. What unique contribution can CSOs bring to reparations?

There is significant added value in having CSOs involved in reparations processes, with CSOs being favourably placed to perform their various roles of advocacy, design, monitoring and implementation.

80 NI14, Lisburn, 2018.

81 UG05, Gulu, July 2018.

82 S. Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal', *International Journal of Transitional Justice*, 5(1)(2011), 75–98, p88-89.

83 Interview with IR07, March 2017.

84 NI14, Lisburn, 2018.

85 Impunity Watch/REDRESS, *Victims front and centre: Lessons on meaningful victim participation from Guatemala and Uganda* (The Hague: REDRESS, 2019), 36.

This is particularly true in contexts where the post-conflict state is weak and/or unable or unwilling to repair the harms suffered by victims. As one Guatemalan interviewee noted, CSOs in these contexts help to fill a vacuum:

What's going on in Guatemala? We have a very weak State with many shortcomings. And then organizations began to fill those gaps that the State has in order to be able to act in favour of those victims and that they have that activity, and that they have a voice.<sup>86</sup>

Without the involvement of CSOs the reparations issue might not make it onto the post-conflict agenda. Even if states are willing to address the matter, CSOs may be better at performing certain functions than the state.<sup>87</sup>

Perhaps the greatest advantage of having CSOs engage with reparations programmes is the strength and richness of the social capital that they often enjoy. This social capital has been built up by having communal and societal networks, established links, shared norms with and sufficient trust within the constituencies they work with and for.<sup>88</sup> Not only do civil society actors have greater grassroots credibility than government bodies, they often have greater local knowledge.<sup>89</sup> CSOs, in certain contexts at least, may be better placed – both physically and socially – to engage with victims on reparations issues. A Guatemalan observer suggested that they were able to engage with victims on reparations issues because “we have 25 years of doing this work and then already having that amount of time there is a certain trust already created with the organizations, with the families, because it is not an isolated effort, but there is continuity”.<sup>90</sup> Having direct access to and the trust of victims can obviously help CSOs in terms of advocating on behalf of victims and then feeding the views of victims back into design and implementation processes.

The social capital held by CSOs, as the following observation from Peru highlights, can also be vital in encouraging victims to engage with consultation processes overseen by external state bodies:

86 Interview Guatemala 15.

87 Paul Gready and Simon Robins, Rethinking civil society and transitional justice: Lessons from social movements and 'new' civil society, *International Journal of Human Rights*, (2017) 21 (7): 956 – 975.

88 Robert Putnam, 'The prosperous community: Social capital and public life', *The American Prospect*, (1999) 13: 35 – 42.

89 David Backer, 'Civil society and transitional justice: Possibilities, patterns and prospects', *Journal of Human Rights*, 2 (3) (2003): 297 – 313.

90 Interview Guatemala 15.

I wouldn't have been able to organize any public hearings if I didn't do it with the human rights organizers, because the human rights organizers are the ones who have contacts with the victims. ... If there had been no intervention from the beginning by the human rights bodies, we didn't get anything, then the CVR [truth commission] alone couldn't get anywhere, if it convened, it didn't have the contacts, which is if it went to a place to hold a workshop, it couldn't do it without a human rights body that organized them, that invited them. That is, the CVR could have convened but without the human rights bodies we organized there was no way to reach the victims.<sup>91</sup>

A similar point was made by a Colombian respondent who suggested that inasmuch as CSOs need resources from the state at the same time official bodies are reliant on local organisations to deliver on the ground in communities that were hard to reach:

We as a State could not enter the region because at that time the State did not have the strength to do so, so we got partners in the regions and those partners are all regional peace and development programmes. 98% of those partners in the regions are entities led by the Catholic Church, because in those regions the Catholic influence is 100% and we needed grassroots organizations to allow us to enter the region. Those programmes already had projects, grassroots organizations that allowed us to enter the regions. Likewise, we use the model of society, not of operator, but of society, that is to say that we enter the region at par. But we are the ones who manage everything: they are our partners in the region, but we manage. Within that process, being small entities that could not manage a large amount of resources for you, we within the same agreement took resources that we shared with them, administered by us, and as part of the counterpart provided by the State, we made contracts with them to be able to work with them, for their operation.<sup>92</sup>

It is also worth bearing in mind that CSO social value can take on heightened relevance and significance for some victim constituencies. This is particularly relevant for those victims within communities that were/are historically estranged from the State, and can place greater trust in CSOs, who can act as

91 Interview Peru 1.

92 Interview Colombia 37.

a counter-weight to the natural mistrust of State institutions. In this context, CSOs can make victims aware of particular processes and mechanisms and then subsequently encourage them to engage with these processes and mechanisms despite whatever misgivings victims might hold. CSOs can therefore position themselves to work in support of official mechanisms, with their role being to act as an intermediary between victims and such bodies.<sup>93</sup>

CSOs can also bring added value to the technical side of reparations processes. NGOs, particularly in Latin America, have long been involved in the practice of collecting and collating significant volumes of material relating to past abuses. This has involved compiling archives, engaging in local memory practices, and drawing up databases of victims etc. Their efforts have several potential direct uses in reparations programmes, whether that is by providing the necessary documentation in court cases where victims are pursuing retributive justice<sup>94</sup> or using their databases to feed into the increasing use of victim registries designed to record all those eligible for reparation programmes.<sup>95</sup>

CSOs, too, can help bridge the gap between the more complicated technical aspects of reparations processes and less complicated victim-facing aspects. CSOs can usefully translate what are often external, abstract and highly technical norms into local everyday reality for impacted communities.<sup>96</sup> One Ugandan interviewee highlighted the importance of norms translation from international criminal law to local experiences in their own work with victims:

I was lucky that one of the lawyers we engaged... he was based in Gulu near the victims and everyone in Gulu knows him as the mega-FM lawyer because he had so many talk shows regarding the ICC, explaining the work of the ICC. So for him to go down to the field, meet the victims and explain now the International Crimes Division, the Kwoyelo trial, everything to do with the Rome Statute, it was so much easier that way.

93 Paul Gready & Simon Robins, 'Rethinking civil society and transitional justice: Lessons from social movements and 'new' civil society', *International Journal of Human Rights*, (2017) 21 (7): 956– 975.  
 94 Christoph Sperfeldt, 'Cambodian civil society and the Khmer Rouge tribunal', *International Journal of Transitional Justice*, (2012) 6: 149– 160.  
 95 Enzo Nussio, Angelika Rettberg and Juan Ugarriza, 'Victims, non-victims and their opinions on transitional justice: Findings from the Colombian case', *International Journal of Transitional Justice*, (2015) 9 (2): 336– 354.  
 96 Roger Duthie, *Building trust and capacity: Civil society and transitional justice from a development perspective* (New York: ICTJ, 2009), 9.



Museum to victims of the genocide, Rabinal, Guatemala

So we have another lady.... she's also been very, very helpful, she of course provides the gender balance. So you've got both a female and a male going out to the victims and interviewing them and making sure that they know they're being legally represented, giving them information about how they can participate and it has been very helpful in terms of the indictment because somewhere along the way during the pre-trial they realised that SGBV crimes had been committed against this victims, but they appeared nowhere in the indictment.<sup>97</sup>

In fact, in this case the norms translation process proved to be mutually beneficial; victims were informed of what the legal process was, how it would work and why it was taking place, while at the same time their lawyers were able to identify the omission of SGBV from the indictment.

By the same token, a Colombian interviewee spoke of how their organisation was involved in translating complex forensic science related to searches for the disappeared into consumable terms for victims' and their legal representatives:

The second thing that we do is guarantee... that both victims and human rights defenders have forensic sciences close by, so that they do not think of the world of forensic sciences as something that is far off, that is abstract and that they have heard of... And I think the capacity of the victims to understand a technical procedure that gets them from one point to another and have the certainty and the assurance when their questions are being resolved, that is in itself reparative.<sup>98</sup>

This case suggests that the advantage of having CSOs involved in reparations processes is that not only can they ensure that victims are informed about the existence of particular processes and mechanisms, but also about how these processes and mechanisms actually function in practice.

97 Interview Uganda 2.

98 Interview Colombia 20.

## What roles can donors play in reparations processes?

Donors can play many roles in reparations processes. This may be through providing technical assistance (i.e. funding expertise on reparation administration, data collection or storage); funding particular forms of reparation measures like specialist medical interventions (i.e. plastic surgery for burns victims); supporting particular processes, such as funding oversight or supporting CSOs in providing complementary services and community sensitisation; and making contributions to reparation trust funds. Donors can also free up funding for reparations through broader programmes of conditional debt cancellation, assisting in asset recovery, and pressuring other States or responsible actors to make reparations. Donors can be involved at different stages of a reparations process, whether directly in the funding of specific reparation measures, such as specialist medical rehabilitation, or more indirectly in supporting CSOs in their advocacy activities.

Although donors have an obvious role to play in funding reparations programmes, the extent and nature of this funding role remains open to interpretation. Because reparation in its strictest sense is premised on repairing harm by those responsible, an argument can be made that only those who have caused the injury should provide redress. This position suggests that while donors in the international community can certainly fund reparations programmes through providing technical assistance and helping with capacity building, they should nevertheless avoid the direct delivery of reparations such as compensation payments and restitution of land. This burden falls onto those who were responsible for causing harms to victims. From a practical perspective, the delivery of reparation measures like medical rehabilitation, compensation and even building memorials requires the authority, approval and legal compliance with local and national laws, as well as the capacity, office space and staff to deliver such measures that are better tasked for a State ministry, than an external donor.



Interviewees echoed this argument across the researched sites:

I don't think it's the responsibility of the international community to fund reparation. By definition, I think reparation is about, in a way, is between the State and its citizens, between perpetrators of violent attacks which resulted in victims making reparation. I think where the international community is prepared to provide support is more on the technical side. So, for example, the funding of and support of the agencies which are responsible for reparation funding, the demining, for example, there's a very substantial amount of international money which is going into that... There is support at that end but not kind of, if you like, you know, a grant to the Victims Unit to pay reparation and there won't be.<sup>99</sup>

There are aspects of reparations that development partners ideally shouldn't take over. Questions around compensation, it should be money that comes out of government money, because it means we're actually getting taxpayers money ... So there are aspects of reparations where development partners could contribute. But there are aspects where the State needs to take responsibility. I would have reservations to have a trust fund for victims at the national level for different reasons.<sup>100</sup>

99 Interview Colombia 1.

100 Interview Uganda 25.

I went to Europe with my hat, I was in Norway, I was in Sweden, I was in Belgium, in France, in England, in Spain, with my hat and I said to them: "Look, not a peso for reparation, but help us to set up the registry of victims, help us for technical capacity, help us to prepare psychologists expert in mourning, in trauma; help us to prepare specialists in conflict resolution, help us for the whole technical part; but I agree with you: not a peso for reparation for Norwegians, not a peso. Because if the Colombian elite doesn't pay for what they did, the crimes perpetrated...[then] the Colombian elite is going to wash their hands. No, the Colombian elite has to assume the costs of the crimes that were committed, so I believe that international cooperation should be technical support, but never reparation resources."<sup>101</sup>

For others, donor involvement in reparation processes should not displace the responsibility of the State to provide for victims:

We try to do our best but always to remind the government that it's their resources, it is their primary duty to guarantee the rights and also to repair, in the case where we are talking of damages of the society.<sup>102</sup>

One Ugandan interviewee went so far as to argue that in some cases even if donors can fund certain mechanisms and processes like truth recovery initiatives the practical success of them still depends on State buy-in:

I think the problem is not really whether donors are or can fund or support reparations, I think a bigger question is even if the donors or partners supported aspects of reparation to the satisfaction of the people, it still lies... the whole mandate of doing this still lies with a government. Now, it is not just about identifying people and we give them money...it's the whole aspect of it that donors or development partners can only do for instance, physical repair... we can support maybe some economic activities, but other aspects will not be addressed because the other aspects require the commitment of government, truth telling and all that.<sup>103</sup>

101 Interview Colombia 32.

102 Interview Colombia 16.

103 Interview Uganda 25.

## 1. Some challenges and risks of donor involvement

There is some scepticism around the role of donors in transitional justice processes. Some suggest that through donors the international community is using the appearance of improving democracy to introduce neoliberal market reform, rather than actually tackling the economic root causes of conflict and structural inequality.<sup>104</sup> On this basis, some have asked whether donors are merely funding time-limited interventions or if they are funding structural change necessary to prevent the recurrence of violence.<sup>105</sup> There is a danger that donor-led reparation projects, such as those before the Extraordinary Chamber in the Courts of Cambodia, become pet-projects of elites that do not substantially improve victims' situation or recognise their agency to shape reparations to their needs.<sup>106</sup>

The international community and foreign donors tend to prioritise the issue of 'justice' and a rule of law solution in the form of prosecution and punishment over and above other victim-centric solutions.<sup>107</sup> As a consequence of this, the bulk of international funding has traditionally been directed into rule of law and international criminal law projects rather than reparations programmes.<sup>108</sup> Accordingly, most donor funding has been diverted into rule of law and capacity building like building courts, training judges, formulating laws and implementing them. In Rwanda, for example, the Belgian Technical Co-operation provided funding for things as diverse as providing the legislature with cars, petrol and paper to computerising the Supreme Court to founding a judicial training centre.<sup>109</sup> However, one interviewee from Peru highlighted an instance where funding from international agencies had been put to more practical use for victims. Referring to ICRC funding that enabled the reburial of disappeared victims they revealed how:

104 Hannah Franzki and Maria Carolina Olarte Understanding the political economy of transitional justice: A critical theory perspective, in S. Buckley-Zistel et al. (eds) *Transitional Justice Theories* (Oxon: Routledge, 2014), 210 – 221.

105 Laurel Fletcher and Harvey Weinstein, 'How power dynamics influence the 'North-South' gap in transitional justice', *Berkley Journal of International Law*, (2018) 36 (2): 190 – 217.

106 See Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia', *Melbourne Journal of International Law* 21(1) (2020).

107 Patricia Lundy & Mark McGovern, 'Whose justice? Rethinking transitional justice from the bottom up', *Journal of Law & Society*, (2008) 35 (2): 265 – 292; REDRESS, *Not without us: Strengthening victim participation in transitional justice processes in Uganda* (London: REDRESS, 2020), 29.

108 Kieran McEvoy, 'Beyond legalism: Towards a thicker understanding of transitional justice', *Journal of Law and Society*, (2007) 34 (4): 411 – 440.

109 Barbara Oomen, 'Donor-driven justice and its discontents: The case of Rwanda', *Development & Change*, (2005) 36 (5): 887 – 910.



Photos of victims of Khmer Rouge S-21 torture site, Cambodia

Thanks to the Red Cross we got the cement, and the Mayor of Vilcashuamán donated 12,000 Soles, so we had money, and we also asked to the Minister of Justice, Marisol, she also supported us a lot, and the Red Cross... we have managed to build the cemetery, and put 78 tombs, it is built now.<sup>110</sup>

Through their funding role, donors can help CSOs to strengthen reparations programmes on the ground. This might see international funding injected into civil society rather than a weak State system that is unable and/or unwilling to address the needs of victims. For example, in Cambodia donor funding was directed into civil society rather than a limited state structure, thus enabling the NGO sector to expand into a strong and diverse sphere.<sup>111</sup> Likewise, in Bosnia foreign assistance led to a proliferation of NGOs working in various ways for, and to various degrees with, victims.<sup>112</sup>

Donors can go further in this process by refusing to engage with State reparation programmes that fail to meet victims' needs. One interviewee from Nepal, for example, argued that public criticism from CSOs, or at the very least their non-involvement in the process, could act as a deterrent for international donors: "The government has a big understanding that donors are not supporting them, because they are not doing the right thing... civil society, everybody backed off, donors even didn't dare to support this project".<sup>113</sup> This sentiment was echoed by one Guatemalan respondent who argued that international co-operation should not be limited to 'economic and physical support', but should also include 'moral support' through pressuring the State to meet the needs of victims through reparations programmes.<sup>114</sup> These observations suggest that CSOs have a role to play in ensuring that reparations programmes are fit for purpose by highlighting those that do not match this criterion, while donors also have a role to play in this by refusing to engage with programmes that evidently fall short on the ground. While the former can certainly highlight inadequacy, poor practice and shortcomings, it is ultimately up to the latter to take follow-on action by either divesting or withholding funding in the first place.

110 Interview Peru 14.

111 Christoph, Sperfeldt, 'Cambodian civil society and the Khmer Rouge tribunal', *International Journal of Transitional Justice*, (2012) 6: 149–160.

112 Michael Humphrey, 'Victims, civil society and transitional justice in Bosnia and Herzegovina', *Temida*, (2012) 15 (1): 59–76.

113 Interview Nepal 3.

114 Interview Guatemala 6.

It may also be the case that donors can help plug a funding gap where limited State resources might disadvantage certain victim constituencies. In Colombia, for example, one interviewee noted that donor assistance was vital in supporting projects for displaced persons that the government could not afford to fund:

The case I'm telling you about Swiss Cooperation is a case of conflict for the return of some families in alliance with the Land Restitution Unit, and it was a pilot, as there was no money in the Colombian State, so they became allies and Swiss Cooperation supported the return of these families economically and a little bit also in methodology and strategy, but it did so by supporting and strengthening the competence of the Restitution Unit. This was a very important pilot for second occupants...obviously those second occupants who had the right to be attended received him happily, they didn't care if the money came from Switzerland, Colombia or China. They felt taken care of, let's say.<sup>115</sup>

Or, as was noted by one Nepalese interviewee, donors might jointly contribute with others including the state towards funds that are used, in some part at least, to offer reparation to victims:

So basically, the support from the international community was through the Nepal Peace Trust Fund that was like supported by eight by like donors including the UK, Switzerland and other donors as well the total is here, and through that MPTF, the government there is like a fund, 25 percent was like donated by the Nepal Government and 75 percent from the donors. So, there was 23 million rupees and that was like spent for the IDPs to return, to let them return home and for the integration of the Maoist, their local election and pay for the disabled injured, conflict victims and some money was also spent on the reconstruction project as well.<sup>116</sup>

Some donors may be contributing to inequalities in a country, which has exacerbated violence or allowed those in power to maintain their regime. In Tunisia, the truth commission identified France, the IMF and the World Bank's policies of austerity and development contributed to the corrupt regime of the

115 Interview Colombia 29.

116 Interview Nepal 1.

Ben Ali regime and recommended they contribute to reparations.<sup>117</sup> Donor involvement in reparations needs to be considerate of the political, socio-economic and security situation on the ground. Reparations are politically contentious and directing attention to certain atrocities over others may cause resentment and a backlash. For instance, USAID funded a memorial in Kurdistan for those killed and injured during the chemical attack on Halabja that killed over 5,000 civilians and injured thousands more. In 2006 the memorial was attacked and destroyed over the local population's frustration that international dignitaries and donors were only visiting the memorial; seemingly more attention was being paid to the dead than the ongoing needs of the living in a destroyed town with no infrastructure.<sup>118</sup> Reparations in transitional justice contexts must happen when the institutions have transitioned, that is when there is change towards the rule of law. When donors support reparations in those contexts they support sustained stability in a country/region. On the contrary, donors that support transitional justice without having little signs of change (Nepal, Sri Lanka, Uganda) might be perceived as complicit with the status quo.

State ownership and sustainability as victims' expectations about reparations need to be appropriately informed, the expectations of donors should also be realistic about what can be achieved, how it can be achieved and when it can be achieved. This might necessitate donors being more flexible and imaginative in terms of how they measure and evaluate the impact of particular interventions on the ground.<sup>119</sup> One Colombian interviewee stated that international co-operation tended to generate 'a lot of expectations' about what particular programmes and mechanisms could deliver. This means that 'when you talk to people about that programme they sometimes say that they wanted and expected to have more'.<sup>120</sup> This mismatch between expectation and delivery exposes the gap between the 'ideal' of transitional justice as seen from afar by Global North based scholars, policy makers and funders, and transitional justice as 'reality' as experienced on the ground by practitioners and victims in the South.<sup>121</sup> Donor concerns about 'quick returns' and 'money well spent',

117 Ruben Carranza, Truth, Accountability, and Asset Recovery How Transitional Justice Can Fight Corruption, ICTJ 2020, p2.

118 See Amy Rubin, Memorial to Gas Attack Victims Spurs Controversy, PBS, September 2006; and Frazer Macdonald Hay, Everyday Sites Of Violence And Conflict Exploring Memories In Mosul And Tal Afar- Iraq, IOM, April 2019, 18-19.

119 Colleen Duggan, "'Show me your impact': Evaluating transitional justice in contested spaces', *Evaluation and Program Planning*, (2012) 35 (1): 199-205.

120 Interview Colombia 37.

121 Laurel Fletcher and Harvey Weinstein, 'How power dynamics influence the 'North-South' gap in transitional justice', *Berkley Journal of International Law*, (2018) 36 (2): 190-217.

then, may not tally with what the affected victims need or want.<sup>122</sup> In other cases it might lead to ‘donor fatigue’ when donors have been funding certain interventions in certain sites for a number of years.<sup>123</sup>

This is not helped by the fact that donors tend to favour rule of law initiatives that are not given to easy measurement in terms of value-for-money delivery. It is inherently difficult to show that tribunals and prosecutions provide ‘value for money’. These are naturally very expensive and protracted processes that ultimately only ever deal with a handful of perpetrators at a huge financial cost. Similarly, donors funding programmes that address structural problems with the rule of law (i.e. the independence of the judiciary, police reform and civilian oversight of the military) can profoundly shift a society towards non-recurrence. Again, however, these are often long-term and difficult to measure success. While international donors might endeavour to find some semblance of value for money in these processes, on the ground in the effected sites these processes are seen as a waste of money that could be better spent on providing reparations to victims.<sup>124</sup>

Interviewees suggested that events on the ground progressed at a much slower and indefinite pace than the ‘quick returns’ sought by donors:

When it comes to say deeper aspects of transitional justice, where you might not see the results in maybe even two or three years, you might not see. They don’t want that because you cannot check the box, you cannot check it. So that is also another challenge. That’s what I was saying that I think there’s a need to sort of have a forum where donors are educated about some of these issues.<sup>125</sup>

This was reflected in the WAVE Seriously Injured Victim campaign for a pension in Northern Ireland, which took over a decade of campaigning by victims, many of whom suffered injuries 40-50 years ago, to secure a reparation process 25 years on from the ceasefire. Indeed, one interviewee from Northern Ireland even cautioned against donors prematurely concluding that certain interventions in particular sites had been successful:

122 Ibid.

123 Somaly Kum, ‘How do donors shape transitional justice in Cambodia’, (2019) *Swiss Peace Cambodian Working Paper Series*.

124 Sara Kendall, ‘Donor’s justice: Recasting international criminal accountability’, *Leiden Journal of International Law*, (2011) 24: 585–606.

125 Interview Uganda 3.

I think people don’t understand how long it takes to get over a conflict and I think many, particularly the private donors, are thinking now that Northern Ireland is the finished article, done and dusted, I don’t know where maybe they got a wake-up call at the collapse of the political institutions here but it takes longer than...it’s certainly taken longer than I would have realised.<sup>126</sup>

A Ugandan interviewee similarly cautioned against donors prematurely disengaging from a particular site in the mistaken belief that the certain issues have been resolved or because they feel there are other more pressing issues to be addressed elsewhere:

The donors think that Northern Uganda has recovered. But again, when you come on ground there is a lot that is still pending, and needs donor support. So we’re actually thinking that maybe if this donor somewhere who can actually help, you know, facilitate this study, then we could actually give donors a report and say, look this is what is on ground. This is the status of the recovery since the war ended. So that is also something that I think donors need to understand. But there is a lack of understanding on the issues on ground, the recovery process and for that reason they have mostly pulled out from putting their money to Northern Uganda specific, especially on transitional justice... I think there’s a need to sort of have a forum where donors are educated about some of these issues... I think donors need to be... educated on transitional justice, because right now, if you put in a proposal to a donor, and you’re trying to say, OK I want to facilitate a reconciliation, a traditional reconciliation process. They wouldn’t buy it, they won’t buy it, because for them it’s about something that is giving red flags everywhere. OK refugee issues, so let’s run there. OK, now the issues in Syria, so let’s run there. So they look for hotspots.<sup>127</sup>

Far from repairing victims, the failure of donors to stay the course with more complicated reparations programmes for particular harms can lead to revictimisation. This includes exposing victims to stigmatisation in a post-conflict setting. This danger was highlighted by a Colombian interviewee who drew on the situation of victims of sexual violence who had taken part in one donor-funded initiative there:

126 Interview NI 11.

127 Interview Uganda 3.

So sometimes different donors are helping out in different aspects, so one of the aspects they've highlighted in terms of women is primarily this issue of sexual violence. But what tends to happen is that they create these projects, they bring money to the organisations and women do come forward and they start talking about the sexual violence that they have suffered. But once this fashion runs out, once the money runs out, once people are no longer interested these women are then left by themselves and exposed to society.<sup>128</sup>

It is vital that donors avoid the trap of seeking 'quick returns' and instead recognise that any reparations process is not only limited in terms of what it can and cannot deliver but might also require longer term engagement with CSOs, victims and the state. The timeframe needed for a successful reparation process should not be underestimated or denied; in some cases it may take decades for reparations programmes to deliver for victims after victims have made their initial demand for reparation.<sup>129</sup> Failure to adapt to this reality could ultimately see donors encouraging expectations that are not realistic on the ground.<sup>130</sup>

Although donors have an important role to play in making reparations programmes accountable and transparent, as discussed earlier, they should nonetheless avoid adopting an overly rigid stance based on the institutional way of 'seeing' the issue. Favouring the institutional way of 'seeing' accountability might not be suitable for every context. In some cases it could actually disadvantage certain groups working with victims. This will be particularly relevant where NGOs working on the ground in the Southern Cone become hamstrung by the Western bureaucracy of donors and funders that prioritises accountability and deliverability.<sup>131</sup>

128 Interview Colombia 3.

129 Sarah McIntosh, *Pursuing justice for mass atrocities: A handbook for victims groups* (Washington DC: US Holocaust Memorial Museum, 2021), 14.

130 Naomi Roht-Arriaza and Katharine Orlovsky, 'A complementary relationship: Reparations and development' in Pablo De Greiff & Roger Duthie (eds) *Transitional justice and development* (New York: Social Science Research Council 2009).

131 Laurel Fletcher and Harvey Weinstein, 'How power dynamics influence the 'North-South' gap in transitional justice', *Berkley Journal of International Law*, (2018) 36 (2): 190–217.

The veracity of this point can be seen in the following comments from one Colombian participant:

We had many problems, financial problems, with European rules: the European Union manual which is so strict. We had no way of trying to help and many organizations had to return money, resources. For pure invoice logistics... For a bill, because the number was wrong... The European guide did not allow us, then in the end we had to say: "well, if we gave them 10,000 dollars then give me back 5", and we drove them crazy. So many had to pay us back.<sup>132</sup>

Without trivialising the importance of transparency, the above comments suggest that victims could be denied resources not because there is any malicious wrongdoing or corruptive mismanagement but because those within victims' groups are not familiar with the minutiae of Western bureaucracy.

While this might have a particular relevance in non-Western sites, bureaucratic demands can also disadvantage victims in other contexts. For instance, satisfying red tape demands might mean that some groups have to spend more time filling in forms and keeping on top of paperwork than they do making an impact through doing the work they are actually funded to do.<sup>133</sup> This point was made by one interviewee from Northern Ireland who remarked that they have to 'spend two days a month filling in a monitoring form to say everyone that's come into the drop-in centre, what were they in for, what did they get out of it'.<sup>134</sup> While accountability and transparency are vital in ensuring that victims needs are properly met by schemes designated with this very task, at the same time they should not see CSOs being sidetracked into red tape bureaucracy at the expense of actually delivering everyday services to victims.

Donors should appreciate that reparation processes do not fit into 2-3 year funding plans, but usually last 20-30 years. This may require funding to be divided up into more fundable and auditable time periods and processes, such as start up funding around mobilisation for CSOs in the first two to three years, victim registration, programme implementation and then monitoring and follow-up.

132 Interview Colombia 37.

133 Laurel Fletcher and Harvey Weinstein, 'How power dynamics influence the 'North-South' gap in transitional justice', *Berkley Journal of International Law*, (2018) 36 (2): 190–217.

134 Interview NI 9.

Other donors have assisted in the operation of reparations, such as monitoring spending of interim relief in Nepal, supporting websites of CMAN in Peru, or EU PEACE funding supporting complementary therapies for victim groups.



Birds of Peace memorial, Medellín, Colombia

## 2. What opportunities are there for CSOs and donors to work together in reparations processes?

CSO and donor co-operation on reparations provides the scope for lessons to be learnt in terms of ‘what works’, and just as importantly what does not work, from other sites that have previously, or are currently, grappling with the issue. Donors can rely on CSOs to have greater contextual understanding and cultural sensitivity when supporting reparation processes and grassroots mobilisation.<sup>135</sup> The increased involvement of foreign-based actors in transitional justice interventions has internationalised ‘best practice’ through the exportation of expertise and the establishment of globalising transitional justice practices and policies.<sup>136</sup> There is now both an expanding field of transitional justice and international law based knowledge and a market-driven demand for teaching, training, knowledge transfer and best practice.<sup>137</sup>

135 Nicole Dicker, *Development Aid for Reparations in the Solomon Islands*, (2017), 203-228, p222.

136 Kora Andrieu, ‘Civilizing peacebuilding: Transitional justice, civil society and the liberal paradigm’, *Security & Dialogue*, 41 (5) (2010): 537 – 558; William Muck & Eric Wieblehaus-Brahm, ‘Patterns of transitional justice assistance among the international community’ *Sixth European Consortium for Political Research General Conference*, (2011).

137 Sara Kendall, ‘Donor’s justice: Recasting international criminal accountability’, *Leiden Journal of International Law*, (2011) 24: 585 – 606.

Interviewees across the sites spoke of how ‘best practice’ had been useful in informing their approaches to reparations. One Colombian interviewee said that EU funded projects that involved consultation with victims and local CSOs there had benefitted from the expertise of the international community:

The EU has been doing this for 20 years, more than 20 years. Some of the member states have been doing it for much longer than that. So, there is, if you like, there is a European body of knowledge, experience, network that we use to identify what we want to do.<sup>138</sup>

Likewise, an interviewee from Guatemala pointed to the ‘important role’ played by external actors, in this case noting that in their case it “is a struggle of everything, as much as of Guatemalans and non-Guatemalans, in this case there are Guatemalan and non-Guatemalan lawyers who advise the communities”.<sup>139</sup> In Nepal, donors were able to bring an international perspective to the wider transitional process:

The whole peace process had been seen from the donors’ side, from their own perspective. For example, UNDP has since, it’s Guatemala process, even at the time, the Nigeria process and World Bank was seeing from an Afghanistan process, someone seen the Sudan process. So, they tried to, not to enforce, but to introduce the best practices that they had seen.<sup>140</sup>

Yet, as one Colombian observer pointed out, the exchange of knowledge is a two-way process. Local CSOs have to point those with particular expertise and/or funds in the right direction of those victims, processes and mechanisms that could most benefit from it:

The EU or any of the donors don’t go out looking for or searching out what’s the best practice. Some of this is driven by application also. In turn, that then comes through the kind of network of civil society organisations, mainly churches that the EU and member states and embassies are in contact with. Some of it comes through government, , they identify where there are particular issues and particular needs.

138 Interview Colombia 1.

139 Interview Guatemala 2.

140 Interview Nepal 12.

Some of it is through our own, for example, sometimes if I'm visiting particular areas I see, a community organisation or church, whatever and they're telling you about a particular project and you say yeah, that's something we should maybe have.<sup>141</sup>

The need for knowledge exchange around 'best practice' to be two-way spoke to the concerns raised by other interviewees who felt that donors' over-emphasis on following 'best practice' seen elsewhere could lead to flawed 'one size fits all' approaches. This, it was argued, often overlooked important contextual and cultural differences between sites. In fact, one Ugandan interviewee informed us that they had deliberately departed from the Colombian model because it was ill-suited to their own context:

As an institution we've had to evolve, we previously had this approach where as you say, you get experiences. In Colombia we abandoned the toolbox a number of years ago. We gradually abandoned it when we realised it does not necessarily matter, it should be context that shapes it and that realisation has really shaped a lot of our work currently in various contexts, the minimum basic standards and good practices that can be adapted but priority is how do they fit with that respective context.<sup>142</sup>

An interviewee, speaking on the Northern Ireland context, also highlighted the importance of transitional justice policies recognising localised specificities that might not fit neatly with experiences elsewhere:

I think we're facing particular problems, not that are greater than elsewhere, but they are particular to the fact that we're a first world country with a highly legalised society and different access to power. So, we have access, for instance, to the Irish diaspora or people from here gave evidence at the US Congress last week. Well, there are much more serious human rights violations occurred in Guatemala, they don't have the same access to the US Congress.<sup>143</sup>

141 Interview Colombia 1.

142 Interview Uganda 1.

143 Interview NI 1.

It has been further argued that the exportation of 'best practice' from a Western site like Northern Ireland to other non-Western sites may in fact contribute to the maintenance of structural inequality and asymmetries of power under the guise of development, peacebuilding and conflict resolution.<sup>144</sup>

While donors and CSOs should be open to learning from other sites, they should not seek to impose processes or mechanisms that cut against localised norms, overlook the important specificities of localised context, or uncritically seek to replicate what has been done elsewhere. There is a real danger that donor funding and their framing of transitional justice can detrimentally shape the work of CSOs, by aiming to meet donor conceptions of justice instead of facilitating victim demands.<sup>145</sup> Efforts to meet donor standards of participation and ownership can mean that only certain CSOs are able to meet funding requirements, which can reflect the views of elites in urban areas, not rural victims, or can result in the CSO field becoming dependent on foreign aid and donors' changing priorities.<sup>146</sup>

A significant challenge is sustaining the support of donors over time, where transitional justice processes can take years or decades to be established, and reparations programmes may have ebbs and flows in their implementation given changing government funding. These changing priorities can mean that long-term engagement on reparations can be strained by new challenges or crises in other contexts. Where sustained support is not given over the necessary prolonged timeframe due to a change in priorities, withdrawal not only leaves victims' needs unaddressed but also exposes those on the ground who may be vulnerable to a backlash. Care needs to be taken that CSOs and donors do not impose their own view of what reparations should be for victims without victims being able to articulate what they believe would be appropriate. Finding this balance involves dialogue, not to manage victims' expectations, but to inform them of comparative practice, international standards and the potential to innovate.

Donors can also work along with CSOs to increase transparency and accountability via monitoring reparations processes. This includes vertical accountability between the donors and those they fund, and horizontal accountability between civil society stakeholders.<sup>147</sup>

144 Brendan Browne & Elaine Bradley, 'Promoting Northern Ireland's peacebuilding experience in Palestine-Israel: Normalising the status quo', *Third World Quarterly*, (2021) (advanced online access).

145 Eric Wiebelhaus-Brahm, 'After Shocks: Exploring the Relationships between Transitional Justice and Resilience in Post-Conflict Societies', ICTJ, *Justice Mosaics* (2017), 156.

146 Devendra Raj Panday, 'The Legacy of Nepal's Failed Development', in S. von Einsiedel, D. Malone and S. Pradhan (eds.), *Nepal in Transition: From People's War to Fragile Peace*, Cambridge 2012, 81-99, p82.

147 Colleen Duggan, "'Show me your impact!': Evaluating transitional justice in contested spaces', *Evaluation and Program Planning*, (2012) 35 (1): 199 - 205.

CSO and donor scrutiny of reparations programmes can bring transparency to the process, allowing any potential gaps in reparations to be identified and then followed up with a demand for them to be plugged. This represents an extension of their advocacy role; having campaigned for a reparations programme to be put in place CSOs can then switch function to monitor the effectiveness of that programme and whether or not it is fit for purpose. Although CSO concerns over reparations programmes may be fed back to policy makers in government, the reality remains, as one Peruvian interviewee informed, that overly sensitive states may reject criticism of their reparations programmes from CSOs as a politicised attack.<sup>148</sup>

However, monitoring of the process should not be limited to whether or not states are providing the necessary resources. Instead, it should also involve donor oversight of how resources are being used; whether that is those allocated to CSOs and victims' groups to meet victims' needs or those allocated to official mechanisms and processes. This can protect against the misuse of resources within affected constituencies, where localised power imbalances, gender dynamics etc might allow corruption and cronyism to seep into the process. This argument was made by one Peruvian interviewee who said that CSO engagement with reparations had to involve:

Monitoring and vigilance so that these programs are carried out as expected or at least as the state has committed. I believe that civil society work is important when it goes to the field and verifies both individual reparations and collective reparations have some problems:

148 Interview 16, Peru.



'Look, this community is having problems with its collective reparations, there is corruption in such a community or they have swindled such food to be individuals they have taken all the money', that usually happens. I think that surveillance should have follow-up monitoring so that it is fulfilled is a very important role as a civil society.<sup>149</sup>

Transparency in relation to how funding is actually spent on the ground is an important issue for donor agencies. CSOs have a number of stringent due diligence funding requirements, including reporting and auditing, which is not necessarily applied to funding for state agencies or delivery through private corporate actors providing services. One interviewee noted that their agency had a number of safeguards in place to maximise transparency from the stage of application right through to the post-funding evaluation process:

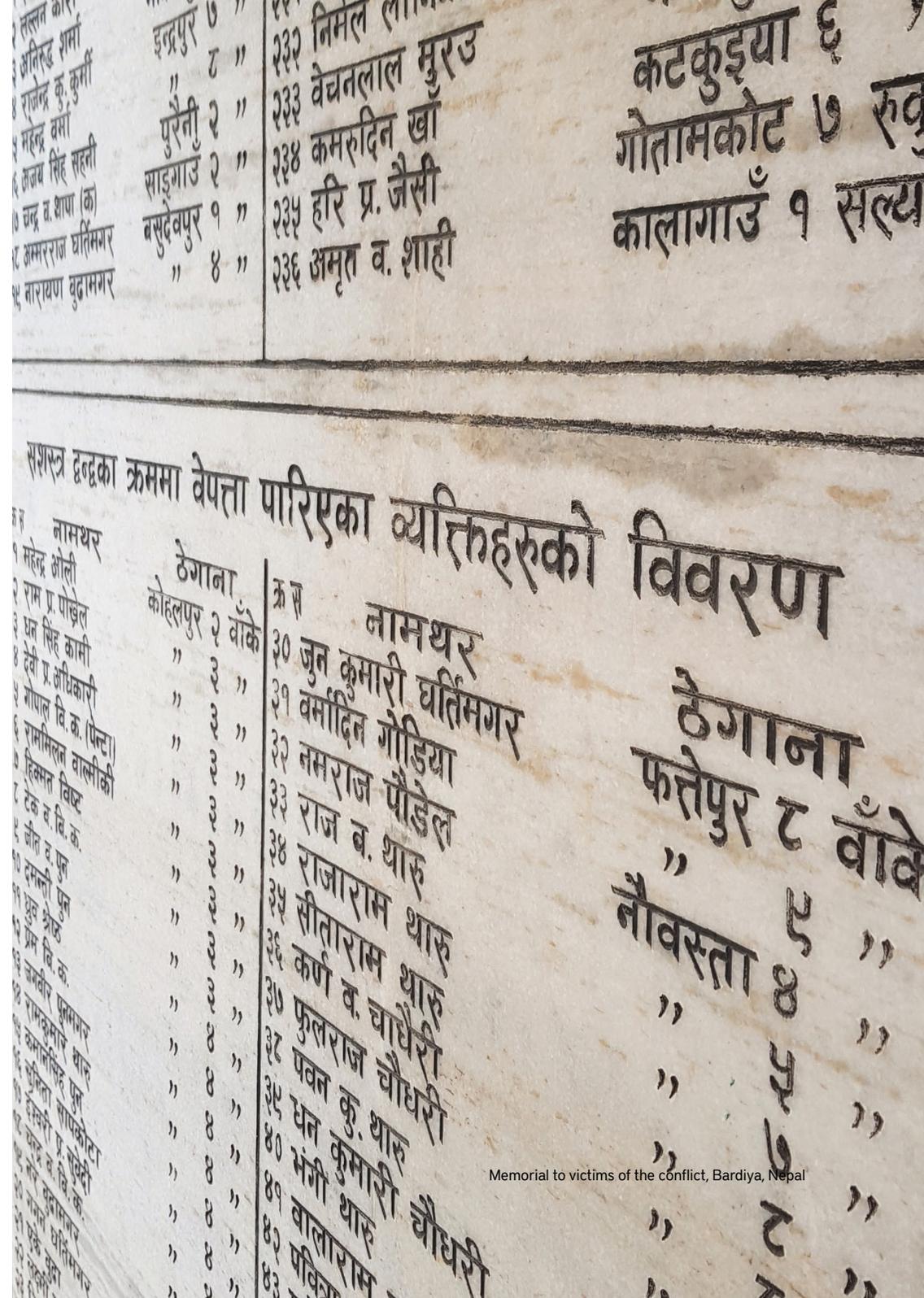
We have a dedicated unit in the European Union Delegation who assess projects, they're experienced, guidelines and rules of which any project to be funded by the European Union will have to be assessed. The embassies of member states do the same and then there's an approval process... then we have an auditing process and an evaluation process to make sure that the projects are doing what they say, and the money is properly applied, that there's full accountability and transparency.

While the interviewee acknowledged that this did not eliminate the risk of mismanagement of resources, this multi-layered process of scrutiny certainly narrowed the scope for mismanagement to occur:

Things do go wrong. Sometimes there are money issues, but there are systems in place to minimise that first of all, and then to audit it and evaluate what has been done and so on. They're quite robust but yes, from time to time there will, of course there will, be issues about mismanagement of money, but it's then dealt with quickly, as it has to be because this is European taxpayer's money and we have a responsibility to make sure that it is properly spent.<sup>150</sup>

149 Interview 23, Peru.

150 Interview 1, Colombia.



Memorial to victims of the conflict, Bardiya, Nepal

CSOs and donors can also work together to deconstruct and challenge hierarchies of victims. Granted, CSOs and donors can entrench and sustain hierarchies of victims by prioritising particular victims while neglecting others through the way they design, manage and deliver particular programmes.<sup>151</sup> There is also the fact that donors cannot, and will not, fund every process,<sup>152</sup> thus leading to a necessary degree of selectivity that can feed into hierarchisation. Certain harms, and as a natural consequence of this certain victims, may be deemed in greater need of immediate repair than others. This can give rise to the perception, rightly or wrongly, that certain victims are more important than others are. In some cases, this perception might be rooted in opposing ideological views of the conflict that reparations programmes are seeking to address.<sup>153</sup> Donors have been criticised as funding only secular, 'elite' and internationalised civil society actors, that prioritises technical knowledge, rather than local grassroots leadership and understanding, which can result in detached, ineffective or inappropriate measures being delivered to victims.<sup>154</sup>

At the same time, CSOs can bridge the ideological gap between victims' groups from opposing political constituencies by offering an outlet for consensual lobbying on issues that impact all victims. When and where a victim-centred coalition emerges to pursue common interests it becomes more difficult for victims' demands to be ignored or invisibilised. This increases the chances of transitional justice processes being designed and implemented in accordance with victims' needs.<sup>155</sup> This ability to transcend politicised divisions within the victims' constituency was alluded to by one observer from Nepal who noted how:

the UNDP played a role to bring those victims from both sides. And there is, I think internationally also in the comparative example also this is quite remarkable that the both side of victims are coming together. There are problems within it, that is always the story of what it always is because people from two different groups having two different ideological background but at the same time in the face value, that is one of the reasons the TRC and the CIDP at the moment are taking victims seriously because they are

151 Jelena Obradovic-Wochnik, 'Hidden politics and governmentality in transitional justice and peacebuilding: The problem of 'bringing the local back in'', *Journal of International Relations & Development*, (2020) 23: 117 – 138.

152 Jude Howell and Jenny Pearce, *Civil society and development: A critical exploration*, (Lynne Rienner, 2001).

153 Kevin Hearty, 'Victims of human rights abuses in transitional justice: Hierarchies, perpetrators and the struggle for peace', *International Journal of Human Rights*, 22 (7), 888 – 909.

154 Vasuki Nesiah, *Transitional Justice Practice: Looking Back, Moving Forward*, Impunity Watch (2016), p44.

155 Sarah McIntosh, *Pursuing justice for mass atrocities: A handbook for victims groups* (Washington DC: US Holocaust Memorial Museum, 2021), 67.

not a diverse group or different group talking about different things, they are saying that we want the same thing for all the victims.<sup>156</sup>

Even what are deemed to be exclusivist victims' groups have proven able and willing to use symbolic reparation and memorialisation to help victims across the board find common ground. For example, one interviewee from Northern Ireland who frankly conceded that 'the vast majority of people' that contact their organisation are victims of state violence 'from the Nationalist/Republican community' spoke of how a memorial quilt initiative enabled the group to reach out to those harmed through Irish republican political violence too. This initiative cut against politicised victimhood by bringing together victims from various backgrounds on the simple grounds of commemorating their loved ones:

Our big kind of memorial quilt which is every victim's family is offered the opportunity to design a quilt which gradually joins all the other ones, and I think we currently have 11 panels with 90 on each panel, so there's approaching a third of the victims of the conflict now have a panel, and there are people killed by the IRA, by the UVF, by the State. By everybody. So, that's been quite an important thing.<sup>157</sup>

Whether it is mobilising victims to campaign on the issues relevant to all victims or bringing victims harmed by various actors together for shared grassroots memorialisation, CSOs can helpfully challenge and deconstruct hierarchies of victimhood. However, CSOs and donors alone cannot be responsible for political change on their own or provide reparations to the entire victim population.<sup>158</sup>

CSOs and donors can also ensure that new material hierarchies of victimhood do not emerge from reparations programmes. Or, at the very least, they may have to tackle the perception of material hierarchies through reparations provisions. On the one hand, this might reflect the more general difficulty that prioritising victims in post-conflict societies where many in society are similarly materially deprived and in need of assistance can lead to friction and feelings of resentment towards victims.<sup>159</sup>

156 Interview 5, Nepal.

157 Interview 1, Northern Ireland.

158 Martina Fischer, *Civil Society in Conflict Transformation: Strengths and Limitations*, n Austin, B., Fischer, M. and Giessmann, H.J., eds. 'Advancing Conflict Transformation: The Berghof Handbook II', Barbara Budrich Publishers (2011), p304.

159 Simon Robins, *Families of the missing: A test for contemporary approaches to transitional justice* (London: Routledge, 2013), 167.

On the other hand, it may involve having to liaise with victims and to inform them of how reparation programmes work, which can in part help to assuage concerns that some victims are being offered more than others.

The tension caused by perceptions that some victims were being given more than others was highlighted by one Guatemalan interviewee who stated:

I also tell you that this reparation is very complicated because we have to give a lot of prior psychological attention because in this case there was a little struggle between the victims themselves because sometimes people did not understand, we had to explain them very well, for example, in this group there were 3 brothers who had lost their father and 3 brothers, so obviously they had a greater share. So people wanted everyone to get everything, but it couldn't be like that. So they did have problems because of that and within the recommendations that from lessons learned I believe that psychological attention is very important, even in the area of reparations, because if that is not possible, money is always a problem.<sup>160</sup>

The need to frankly engage with victims on this issue was also alluded to by one interviewee from Colombia who argued:

They've done a lot of work to sort of shape people's views of reparation and what they mean. So, for instance... the competition amongst, for instance, displaced victims and victims who have suffered the loss of family members. So, displaced person who lost their housing, if they were working on a farm they lost their animals, they would feel it was a great problem for them that they had to go into the city and lose their way of life and start begging in the street for money. The same, for instance, for a child who lost their parents and they couldn't study anymore, the life plan they had in mind just didn't pan out the way that they thought so they lost those opportunities. So, those differences, this organisation, what they have worked towards is to make people understand that of course it's not the same for you to lose your father when you are young as it is when you lose your father when they are an adult. So, there will be those differences in the amount of money that you are being given simply in the way that that has impacted you.<sup>161</sup>

160 Interview Guatemala 11.

161 Interview 15, Colombia.

Tension over reparations, however, not only exists between perceived inequalities between those victimised through different harms but can also exist between victims harmed through similar acts:

Now the problem is that since this issue of sexual violence was highlighted, sometimes you see fractures within the same organisation where some victims received two minimum salaries because this happened to them, the laws understands women in this sense and other women don't receive that. So then there is this lack of balance between what different women are offered and that also has negative effects on the organisation.<sup>162</sup>

This role in soothing tensions over perceived disparities in reparations might be more usefully seen as an extension of CSOs' role in managing victim expectations. In this case, making them aware of why some harms or victims are receiving particular payments and services while others are not.

### 3. What are the disadvantages of increasing donor involvement in reparations processes and civil society organisations?

An associated risk of donor involvement in funding aspects of reparations programmes is that these donors can exert influence over the design, implementation, and measurement of reparations processes. This poses the danger of adhering to donor interests, rather than victims, which detracts from the very purpose of reparations.<sup>163</sup> The ability of donors to exercise such influence was highlighted by one respondent from Nepal who spoke of how:

Basically, they invite donors and NGO representatives to the initial phase and they get the feedback from them. And to implement the project in the interest of the donor, whether they made the objective of the donor or not, if the concept note has like some kind of objective that doesn't comply with the donor's interest then they give feedback that maybe we can implement this project in this way, that way and then they collect the feedback and maybe setting on that way. Donors also have a role on the setting of the project to an extent.<sup>164</sup>

162 Interview 2, Colombia.

163 Naomi Róht-Arriaza and Katharine Orlovsky, 'A complementary relationship: Reparations and development' in Pablo De Greiff & Roger Duthie (eds) *Transitional justice and development* (New York: Social Science Research Council 2009).

164 Interview 13, Nepal.

While this may not present an issue where and when donor, CSO and victim interests align, it becomes problematic when, as is often the case,<sup>165</sup> the views of foreign-based donors and that of CSOs and victims on the ground are disconnected. Where tension between these parties emerges, donors have the advantage given that they are in the position to choose whether or not to fund particular interventions. This allows them to influence not only how certain programmes are designed and implemented, but also how they are evaluated and measured.<sup>166</sup> What transpires from this is often a variant of ‘donors’ justice’ that reflects the interests and agendas of external third-party funders rather than the interests and agendas of the victims in whose name these TJ processes are usually carried out.<sup>167</sup>

The prioritising of accountability interventions over other victim-centric measures is again an instructive example. The vast expenditure on pursuing justice through criminal trials and international courts is seen as an abstract ‘luxury’ by victims who continue to live in deprivation because social justice, as opposed to criminal justice, is not being pursued by these processes.<sup>168</sup> This has particular applicability in non-Western societies where non-recurrence has considerably less currency among victims that are continuing to struggle to etch out a meaningful existence.<sup>169</sup> Instead of international donors accepting the perspective of CSOs on the ground who point to the lack of practical assistance for victims, they continue to channel funding into building courts, training judges and rebuilding the legal system.<sup>170</sup> This is despite the fact that one might logically ask what value a successful prosecution is likely to have for victims in the absence of any material assistance to alleviate their injuries, homelessness, and impoverishment.<sup>171</sup>

In Cambodia, for example, the vast majority of international funding for the ECCC went into the criminal justice process.

165 Colleen Duggan, ‘“Show me your impact”: Evaluating transitional justice in contested spaces’, *Evaluation and Program Planning*, (2012) 35 (1): 199–205.

166 Laurel Fletcher & Harvey Weinstein, ‘How power dynamics influence the ‘North-South’ gap in transitional justice’, *Berkley Journal of International Law*, (2018) 36 (2): 190–217.

167 Sara Kendall, ‘Donor’s justice: Recasting international criminal accountability’, *Leiden Journal of International Law*, (2011) 24: 585–606.

168 Rama Mani, ‘Dilemmas of expanding transitional justice, or forging the nexus between transitional justice and development’, *International Journal of Transitional Justice*, (2008) 2: 253–265.

169 Laurel Fletcher & Harvey Weinstein, ‘How power dynamics influence the ‘North-South’ gap in transitional justice’, *Berkley Journal of International Law*, (2018) 36 (2): 190–217.

170 Jelena Subotic, ‘The transformation of international transitional justice advocacy’, *International Journal of Transitional Justice*, (2012) 6: 106–125.

171 Marlies Glasius, ‘We ourselves, we are part of the functioning’: The ICC, victims, and civil society in the Central African Republic’, *African Affairs*, (2008) 108 (430): 49–67.

Only a very limited amount was earmarked for victim participation or reparations.<sup>172</sup> A similar situation arose in Timor Leste, where civil society groups that had initially campaigned for justice for violations of human rights have now begun to campaign for reparations. This is because prosecutions do not actually meet the material and practical needs of impoverished victims there.<sup>173</sup> But the problem is not exclusive to non-Western sites. One Northern Ireland observer made the following criticism of the Saville Inquiry into the Bloody Sunday massacre of 13 civil rights marchers by British soldiers:

If you examine the detail of the longevity of the inquiry and where most of the money was spent, you will find it was spent on State lawyers inhibiting the progress of the inquiry which is lost on people because all people talk about is it took 5 years, they spent £200 million. Where did most of the money go? It went to the British State.<sup>174</sup>

There is a danger, as one Nepalese interviewee argued, that donors become more concerned with funding transitional justice processes that ‘tick, tick, tick [boxes]’ than they do with funding those that actually meet the needs of victims on the ground.<sup>175</sup>

On the other hand, if destitute, marginalised or dispossessed victims are offered reparation payments for harms suffered they may mistake these limited payments for being development measures aimed at alleviating or reducing poverty rather than compensatory payment for human rights abuse suffered. Payments might then be viewed as humanitarian assistance that is detached from any notion of corrective justice.<sup>176</sup> For one Ugandan respondent this flew in the face of the fact that “you cannot conflate development with reparations because development accrue from the government’s responsibility to provide services to all members of society, whereas reparations accrue from the harm suffered.”<sup>177</sup>

172 Christoph Sperfeldt, ‘Cambodian civil society and the Khmer Rouge tribunal’, *International Journal of Transitional Justice*, (2012) 6: 149–160.

173 Renee Jeffrey, Lia Kent & Joanne Wallis, ‘Reconceiving the roles of religious civil society organisations in transitional justice: Evidence from the Solomon Islands, Timor Leste and Bougainville’, *International Journal of Transitional Justice*, (2017) 11: 378–399.

174 Interview 16, Northern Ireland.

175 Interview 3, Nepal.

176 Lisa Laplante, ‘Negotiating reparation rights: The participatory and symbolic quotients’, *Buffalo Human Rights Law Review*, 19 (2013): 217–250.

177 Interview Uganda 1.

The fact remains that either way victims are not having their direct needs met. This can negatively affect how victims view other donor-funded TJ processes. For example, donor engagement with the funding of DDR processes is (mis) construed as 'blood money' that favours victimisers over victims.<sup>178</sup> This point can be best understood through the following protest of one victim activist in Northern Ireland:

The republicans, the loyalists, prisoners can take as long as they want because they're getting money. Whenever you hear that and you know... they're getting hundreds of thousands of pounds and we can't understand. But it's a two-track system. Whenever I go to all of these... meetings with the Victims Forum, all the meetings at government level, at official level, I never see [them]... I look around for all these paramilitary leaders and there's none of them there because they've a parallel system running and they're getting hundreds and hundreds [of thousands of pounds].<sup>179</sup>

This can even taint views of other TJ processes on the ground whereby victims do not see money being spent on non-recurrence, but rather only see money not being spent on their everyday needs. As one interviewee from Nepal pointed out in relation to the reparative potential of security sector reform there:

We did reparation when we talk about institutional reform, maybe reform, get some bad cops out [laughs], but maybe, if you're gonna say that maybe it will be a little bit polluted or something, but somewhere institutional, if we provide a lot of effort in institutional reform that's gonna, I think buy donors largest interest, of course. I know some of the donors have put a huge amount in police reform, they're very upset they didn't succeed and they really don't want to even hear a single training on police [laughs]. Just for example, all these frustrations are there, but if there is a political will of institutional reform as part of reparation guidelines... that means you are somehow supporting the impunity issues, from tomorrow the police are not gonna disappear people, learning how you gonna do institutional reform?<sup>180</sup>

178 Naomi Roht-Arriaza and Katharine Orlovsky, 'A complementary relationship: Reparations and development' in Pablo De Greiff & Roger Duthie (eds) *Transitional justice and development* (New York: Social Science Research Council 2009).

179 Interview 9, Northern Ireland.

180 Interview 3, Nepal.

Within this context, international donors should perhaps be a little more willing to see the potential that even modest reparations can have in helping to provide social justice to victims in a way that makes a positive everyday impact in their lives.<sup>181</sup>

If, and when, donors become increasingly involved in reparations processes there is a risk that the asymmetry of power on their part could fundamentally change how CSOs approach the issue. The main danger here is that the donors' institutional way of 'seeing' reparations programmes in terms of interests, expectations and evaluation becomes the dominant metric through which CSOs come to operate. This, in turn, can adversely impact how CSOs seek to implement reparations in their everyday work. In the worst cases it might see increasingly professionalised CSOs gradually becoming detached from the needs of their grassroots constituents as they seek to win favour with donors.<sup>182</sup>

Ultimately, CSOs are dependent on donor funding and are, moreover, in constant competition with other CSOs for this limited funding. This reality means that CSOs have to build relationships with funders,<sup>183</sup> which can unhelpfully lead to a situation whereby they find themselves deviating from actually speaking on behalf of victims and survivors to simply echoing whatever donor agendas demand.<sup>184</sup> In the worst cases, CSOs might even deform into a 'professionalised elite' that are invited to roundtables and workshops. As a result they can become increasingly unresponsive to victims' needs, meaning that they may only represent and serve those they work with or conference with at these events.<sup>185</sup>

There is the additional risk, too, that local CSOs might manage funding through a system of governance which better suits the donor agenda than it does the actual interests or needs of those the programme is designed to meet.<sup>186</sup>

181 Rama Mani, 'Dilemmas of expanding transitional justice, or forging the nexus between *transitional justice and development*', *International Journal of Transitional Justice*, (2008) 2: 253– 265.

182 Jelena Subotic, 'The transformation of international transitional justice advocacy', *International Journal of Transitional Justice*, (2012) 6: 106– 125.

183 Michael Humphrey, 'Victims, civil society and transitional justice in Bosnia and Herzegovina', *Temida*, (2012) 15 (1): 59– 76.

184 Christoph Sperfeldt, 'Cambodian civil society and the Khmer Rouge tribunal', *International Journal of Transitional Justice*, (2012) 6: 149– 160.

185 Patricia Lundy and Mark McGovern, 'Whose justice? Rethinking transitional justice from the bottom up', *Journal of Law and Society*, (2008) 35 (2): 265– 292.

186 Jelena Obradovic-Wochnik, 'Hidden politics and governmentality in transitional justice and peacebuilding: The problem of 'bringing the local back in'', *Journal of International Relations & Development*, (2020) 23: 117– 138.187 Anna Macdonald, 'Somehow this

This could mean that reparations programmes end up serving donor agendas and interests more than they do victims' needs. This was apparent in Uganda where CSOs felt constrained in delivering TJ by donor agendas, meaning that in the 'chase' to secure funding many had been co-opted into the donor agenda by orientating their priorities towards this, rather than a victim-survivor agenda.<sup>187</sup> This can have the further unhelpful consequence of CSOs recalibrating their aims and objectives to suit donor criteria in a bid to 'get ahead' in the competition to secure grants.<sup>188</sup> In some cases this might mean CSOs playing to donor preferences for 'best practice' by simply replicating, on paper at least, what previously successful proposals have done. It might even see CSOs increasingly parroting 'development buzzwords' like resilience, vulnerability etc. in order to satisfy international donors.<sup>189</sup>

Interview data from across the sites highlighted the degree of replication by CSOs keen to secure funding and how this often led to a broader failure to meet victims' needs:

We made recommendations and one of the recommendations was the need to coordinate amongst the NGOs. Not only amongst the donors but also the NGOs because there is a lot of duplicated efforts, so people were doing the same work... we recommended that even from the donors, they need to sit around and come up with clear strategies... perhaps if we were coordinated and organised we'd go far in terms of transitional justice but we are not organised, we are competing, we find we have the same money to do the same activity, we meet the same people.<sup>190</sup>

I was a civil society for a long time and one survives a little of those calls, as a civil society, then presents projects to survive, but many times one does not even clarify to the development worker what they are looking for to be done, It was done 8 years ago because you want to be financed, so you tell them that it has never been done, and since the projects must be presented as "in Colombia it doesn't exist", they must always be presented from the problem, that there is nothing. And I remember that I used to say "but why is

it necessary to say that there is nothing", and it was because if the project is not financed, you have to raise a problem. Not a half a problem. Then I feel that sometimes the development worker lacks perspective, analysis of the situation in perspective, why that which she is proposing before has not worked, why now it is going to work.<sup>191</sup>

However, as interview data from Colombia suggests, donors seem to be aware of this duplication. One interviewee highlighted how projects were being replicated without any critical evaluation of whether or not they actually worked in the first instance: 'I've been seeing projects and initiatives that sometimes duplicate, repeat and don't have enough assessment of whether they've worked or not'.<sup>192</sup> Another spoke quite candidly about funding projects that were very similar to those that had already been funded in the past:

A lot of what we're funding is not that dissimilar to the kind of peace laboratories that were funded in the past, to the rural development projects, agriculture projects, food projects, local community projects that were funded by the European Union in the past. And if you look at the member states, a lot of what they're doing is in many ways, a continuation of what had already been done but the focus now is that it is about, you know, supporting the implementation of the peace agreement, making it sustainable, making it work, integrating that funding, that financial support with the political and diplomatic work that we're doing to support it.<sup>193</sup>

Perhaps this problem of duplication can be best understood as the corollary of encouraging CSOs and donors to work together more closely on reparations issues; donors exert greater influence on CSO practice as CSOs become more familiar with what donors will fund and cut their cloth to fit accordingly. The danger, then, is that CSOs will devise programmes with a view to securing funding rather than meeting victims' needs. This approach may then lead to successfully securing funding displacing meeting victims' needs as the primary objective. CSOs would therefore set out to meet the priority criteria set by donors in their funding calls or to fit what has proven to successfully obtain funding in the past rather than what is likely to benefit victims moving forward.

187 Anna Macdonald, 'Somehow this whole process became so artificial': Exploring the transitional justice implementation gap in Uganda', *International Journal of Transitional Justice*, (2019) 13: 225-248.

188 Michael Humphrey, 'Victims, civil society and transitional justice in Bosnia and Herzegovina', *Temida*, (2012) 15 (1): 59-76.

189 Eric Wiebelhaus-Brahm, 'International courts and tribunals and international criminal courts and tribunals: Symposium on resilience and the impact of hybrid courts', *Leiden Journal of International Law*, (2020) 33: 1015-1028.

190 Interview 22, Uganda.

191 Interview 30, Colombia.

192 Interview 30, Colombia.

193 Interview 1, Colombia.

This is apparent with the SDGs and focus on discrimination, and in the past the prioritisation of victims of sexual violence given celebrity endorsements and high-profile events that result in little benefit for victims and simplified the nature of violence, such as the UK hosted the global conference of Preventing Sexual Violence in Conflict Initiative in 2014.<sup>194</sup>

If the existing mechanisms and processes deemed to be 'best practice' by donors do not actually meet victims' needs then a mutually reinforcing vicious circle will be set in motion. There is a danger that CSOs and donors will lose sight of the fact that reparations programmes are meant to respond to the on the ground needs of victims. Rather than adopting a prescriptive approach premised on following 'best practice' and 'what works', interviewees have instead spoken of engaging meaningfully with victims to ensure that any subsequent mechanism or process is geared towards meeting their everyday needs:

None of our engagements are conceived by us, all the projects that we do are derived from actions of research and engagements at committee level. There is not any project that we have fought in a room here and said 'okay, let us imagine'....it's been based on 'we've come to this community, we've listened to them, we've done these interviews, this is now making sense'.<sup>195</sup>

We had a set of workshops back in November, and so we did the follow up and out of these workshops we did, we were like two days' workshop with the victims for them to understand a bit of the concept of reparations and also to understand better their demands. Then we wrote a briefing paper which I can also share with you that came out of those discussions. We start again our part that is more talking to the police about policy and trying for people to understand it better. And try to you know advance a little bit that side of things. So we did a follow up now where we translated that and showed them all the findings that we had. And now we met up with local governments'.<sup>196</sup>

194 See Paul Kirby, Ending sexual violence in conflict: the Preventing Sexual Violence Initiative and its critics, *International Affairs* 91(3) (2015) 457-472.

195 Interview 10, Uganda.

196 Interview 7, Nepal.

## Victims engagement on Reparations with Civil Society Organisations and Donors

### 1. What do victims want?

It is vital that CSOs leverage their social capital and trust with affected communities to engage in meaningful and genuine consultation with victims about reparations. Ideally, CSOs will go beyond simple consultation to create the space for victims to organise themselves and to meaningfully participate in discussions around reparations. Participation here can, and should, involve participation inside and outside of formal mechanisms, such as court proceedings.<sup>197</sup> This would frame victim participation as less of a mechanical exercise and more in line with upholding the rights and dignity of victims.<sup>198</sup> Constructive consultation with and meaningful participation by victim constituencies involves identifying victims' needs that reparations processes must meet, exploring how different aspects of reparations might meet these needs, and then frankly discussing the limitations of reparations processes so that victim expectations can be managed. All of this is contingent on CSOs engaging directly with victims. Without direct engagement there remains a risk that reparations processes will not meet the everyday needs of victims nor will they match up to their expectations.

The potential for such a mismatch reflects how the aims of transitional justice processes and mechanisms as devised and defined by the international community, national elites, and donors are often disconnected from, and irrelevant to, victims on the ground.<sup>199</sup> The danger of excluding the views of victims at an early stage of the design process is that once reparations processes start rolling out it is difficult to adjust them to meet victims' needs.<sup>200</sup>

197 Impunity Watch/ REDRESS, *Victims front and centre: Lessons on meaningful victim participation from Guatemala and Uganda* (The Hague: REDRESS, 2019), 10.

198 Impunity Watch/ REDRESS, *Victims front and centre: Lessons on meaningful victim participation from Guatemala and Uganda* (The Hague: REDRESS, 2019), 9.

199 Simon Robins, 'Challenging the therapeutic ethic: A victim-centred evaluation of transitional justice process in Timor Leste', *International Journal of Transitional Justice*, 6 (1) (2012): 83-105.

200 Sarah McIntosh, *Pursuing justice for mass atrocities: A handbook for victims groups* (Washington DC: US Holocaust Memorial Museum, 2021), 14.

Victims should therefore be actively involved in the negotiation, design and implementation of reparations processes so that these processes can meet their needs.<sup>201</sup> CSOs, then, should encourage victims to outline their needs rather than seeking to tell them what their needs are.<sup>202</sup> One Colombian interviewee spoke of a more consultative approach based on active listening that their organisation had taken:

Everybody comes with his little manual and ‘this is what we can do for you’ and the community is not stupid so they pick and choose because at least they get something... now the main way we are inviting people to work is through community based, so it’s more going and sitting with the community and determining with them what their priority is and not what we can offer or not but what is their priority and then based on that, seeing what coping mechanism they already have in place, if we can suggest something or not and then starting from there, but it’s a completely different way of entering.<sup>203</sup>

Likewise, a Peruvian interviewee suggested that consulting victims like this allowed CSOs to understand more precisely what it actually was that victims needed from the reparation process in everyday terms:

That’s one of the issues... to consult, where they want and what they want, because it’s complex. They tell me “I want to raise animals”, but we don’t know if they want a farm, or some animals, a special site, or a store. That’s why it’s a process, and now we’re going to go with the CMAN and the repair registry, to consult them, along with APRODEH who are the lawyers, because that’s important... because you’re not going to give her a university course and you don’t know if the lady has finished elementary school. I would say badly as a leader “I want such for that person”, without knowing their conditions, so that’s why we ask them.<sup>204</sup>

201 Impunity Watch/ REDRESS, *Victims front and centre: Lessons on meaningful victim participation from Guatemala and Uganda* (The Hague: REDRESS, 2019), 71.

202 Emily Haslam, ‘Subjects and objects: International Criminal Law and the institutionalisation of civil society’, *International Journal of Transitional Justice*, (2011) 5: 221 – 240.

203 Interview 21, Colombia.

204 Interview 16, Peru.

Collective reparation project, Peru



Collective reparation project for victims of the conflict, Peru



The benefit of adopting an approach premised on victim participation, according to a Ugandan respondent, was that it helped to focus discussion around the victims' perspective that could then feed back into the design of reparations processes and mechanisms:

In all these areas we had focus group discussions and in every area we made three groups, mixed with men and women... we had a questionnaire that we developed and one of the issues we were looking at is what do victims think about reparations, what reparation form could work for them, what do they want, what do they see is more pressing to them and all that. So, our focus and research was around those areas.<sup>205</sup>



205 Interview 22, Uganda.

By engaging with victims like this, CSOs can bring victims into the design of reparation programmes rather than leaving the entire process to be determined by transitional justice experts. The consultative approach provides the scope for victims to articulate how reparations programmes can best meet their needs rather than have them be told by experts how pre-determined processes will meet their needs. This can prevent the 'silencing' of ordinary victims in preference of transitional justice experts.<sup>206</sup>

At the same time, though, it must be acknowledged that victim constituencies are not homogenous, nor are the interests, needs and agendas within them. Victims might organise themselves into organisations that compete with each other. Victim organisations will have to make choices on what path they wish to take in advancing their reparations claims; whether to frame it in legal terms or to take a more moral and political call for redress.<sup>207</sup> Making these choices can often result in some victims within an organisation disagreeing or being left out of the claim.

## 2. What is the value for victims in working with CSO and donors on reparations?

Building networks with civil society and donors can be an important part in supporting victim associations and reparation movements. This is not to advocate a simplistic process of CSOs acting as passive messengers carrying instructions from victims on the ground to those designing and implementing reparations programmes. While listening to victims on the ground explaining their needs is vitally important, CSOs also have an important activist role to play in the process by opening up a fuller discussion on reparations within victim constituencies. This involves exploring more thoroughly with victims what reparation might actually entail but also critically examining the likely limitations of reparations processes with them too.

Consultation between CSOs and victims, then, should involve explaining to victims what reparations are, why they are entitled to them in law and how they can obtain them. This might further involve giving details on the different symbolic and material components of reparation, the needs these components might satisfy cumulatively, but also which needs individual components will

206 Ismael Muvingi, 'Donor-driven transitional justice and peacebuilding', *Journal of Peacebuilding and Development*, (2016) 11 (1): 10–25.

207 Workshop participant.

meet, and then signposting victims towards the relevant mechanism and helping them to understand the process of engaging with it. Before victims can benefit from any reparations process they need to be informed what they are entitled to under it, why they are entitled to this, and how they can obtain reparation.

For some, this educative process is in itself reparative. One Colombian observer opined:

The link between educational training and reparations is fundamental and a necessary one to make because if you are not a subject that is aware of your rights it's very difficult to ask for those rights and have them implemented. So, this is where it starts, it's with an awareness of your rights, it's very difficult for you to be empowered if you do not have knowledge of what you can ask from the State and what the State should be doing. So, this kind of knowledge needs to be very vigorous and quite detailed insofar as asking for reparations requires a certain kind of pedagogical training and what are your rights, why did victimisation occur and what are the mechanisms through which reparation can take place.<sup>208</sup>

A similar view was forwarded by one Ugandan interviewee, although for them while informing victims of their rights was an important part of the reparations process it was still for the victims to decide whether or not they wanted to pursue certain avenues:

After conflict actually victims do not know their rights, it's ripped off them however much educated they are. So, reparations should start from that point of saying hey, wait a minute, do you know that you have a right to be... do you know that you have a right to truth. And it is for them to tell you if they want truth or not.<sup>209</sup>

By this logic, CSOs should inform victims of their rights without seeking to decide whether victims themselves might pursue (or not) those same rights.

At the same time, the process of informing victims of their rights should also involve giving them a better understanding of what reparations actually are. This

208 Interview 10, Colombia.

209 Interview 10, Uganda.

is particularly relevant in contexts where there is little grasp of the concept beyond that (mis)conflated with financial compensation. The need for this was highlighted by one Nepalese respondent who stated:

Most of the families in the remote areas, if you talk about the reparations they will only think about the compensation, a financial matter. But they don't know about the whole reparation package which includes the different components... they don't understand the wider one that also insists the prosecution, that is also to the non-repetition of the conflict.<sup>210</sup>

The consultation process therefore represents an opportunity to maximise victims' understanding of reparations by introducing them to a concept that goes beyond monetary compensation. This allows victims to see the many forms that reparation comes in and the many processes that can deliver it; justice through prosecutions, rehabilitation through therapy and treatment, truth through truth-recovery, and compensation through funded schemes and programmes. There is a particular need to broaden the understanding of reparation in non-Western contexts where concepts like non-recurrence might not translate into local customs or norms.

Once victims have been informed of their right to reparation and have then had what form of reparation is available to them explained, CSOs can then help victims to navigate the process of engaging with official mechanisms and processes. This might mean explaining to victims the particular role that a certain mechanism plays before then elaborating on how its work can meet their needs. This is particularly beneficial in contexts like Colombia where reparations are tied up in a complex system of transitional justice that spans many different mechanisms. As one interviewee from there informed us:

What we do there are processes of organizational strengthening with those subjects in terms of having a greater understanding of the scope of Law 1448 and of the collective reparation program, having a greater knowledge of the Peace Agreement, there is the issue of reparation in those agreements, what is the relationship between collective reparation and clarification of the truth, what is the relationship between reparation and restorative justice, trying to ensure that their claims, although they are framed very much in the fulfilment of reparation plans, the idea is that they also think about how they can articulate this in the territorial work that the Truth Commission, for example, is going to do.<sup>211</sup>

210 Interview 29, Nepal.

211 Interview 28, Colombia.

Notwithstanding the importance of the above two stages of the consultation process, it also represents an opportunity to inform the expectation of victims. Given that 'overselling' on what it can deliver and when is the pitfall that any transitional justice mechanism should avoid,<sup>212</sup> it should also be made clear to victims what particular mechanisms and processes can (and cannot) deliver, when they are likely to be able to do so, and why they can (or cannot) deliver this much within a given timeframe.

This might involve tempering the expectations of victims in terms of the level of financial compensation they will receive. Or it could mean giving them a more realistic expectation of the improvement that it will bring in their everyday lives. This was highlighted by one Peruvian interviewee who informed that:

Look, the majority of victims are very poor people, then their expectations of what they are going to receive, sometimes they feel overwhelmed by what they are going to receive, for example, with the 10 thousand soles of the PIR repair, they say 10 thousand soles, but then when they see that it is 5 thousand for the widow, 5 thousand for the children, then they feel that it is nothing, then when they know that they are going to receive a judicial reparation that surpasses that, they say good "even if it is payment of my debts, payment of my credit card, payment of my land, or I buy my motorbike, that it is going to help them", then it is not that they expect that their life is going to change completely, but that it is going to help them, then, one explains to them, and at least in my experience, they have been satisfied with the amounts.<sup>213</sup>

Likewise, it may be necessary to provide victims with a more accurate picture of how lengthy the reparations process is likely to be. This involves acknowledging the lag between initially engaging with particular processes and mechanisms and then having something substantive to show for that engagement. Frank discussions around this issue can prevent victims mistakenly believing that reparations quickly follow on from their engagement with official bodies. This danger was flagged up to us by a Ugandan interviewee who recalled:

212 Kieran McEvoy, 'Beyond legalism: Towards a thicker understanding of transitional justice', *Journal of Law & Society*, (2007) 34 (4): 411 – 440.

213 Interview 12, Peru.

When we went to [names places] the victims still say “look, when the ICC came in they made us sign forms”, so now the victims thought by signing those forms they’re going to be considered for reparations. And that was done I think in 2007/8 but the court never went back... They came with their forms thinking ‘finally, we have something’. So, you see those challenges. They think they are getting reparations; they even take their names and they feel “finally; something is coming up”. Their expectations were raised and that really did not come very well... The victims came with forms with their photos and said that these forms were collected, and money had been collected from them to register... So for us, what we decided to do with all our research was we decided to do a disclaimer from the start: “we are not promising to come back and bring you resources”, no we are not. Because if you engage them without telling them they think also another person has come so finally, they have some leeway of getting some.<sup>214</sup>

Managing expectations might even involve ruling out certain approaches taken elsewhere due to underlying contextual differences. This may be particularly important when the internationalisation of ‘best practice’ has created unrealistic expectations based on what is happening elsewhere:

My recommendation is... start thinking about asking them what they want, and ask yourself what you can do... start asking yourself as NGOs, and as civil community, ask ourselves what we can do with that, I can do that, I cannot do that, ok I can do that, sometimes it is start planning, is important, and in the case of Colombia, it is this policy about reparations, incredible, that’s good, but we are not Colombia, we don’t have resources, we don’t have a unit in the state, in Colombia you have a unit of reparations and restitution, there is no way that we are going to have a huge unit, so you can do what you can do.<sup>215</sup>

Without this basic understanding of how reparation processes work in practice, victims on the ground might harbour unrealistic expectations that cannot, and will not, be met.<sup>216</sup>

This is not, however, to advocate a top-down approach of victims simply accepting the status quo.

214 Interview 5, Uganda.

215 Interview 15, Peru.

216 Rama Mani, ‘Dilemmas of expanding transitional justice, or forging the nexus between transitional justice and development’, *International Journal of Transitional Justice*, (2008) 2: 253–265.

While it is important that victims are aware of the inherent limitations of any reparations process, CSOs can nonetheless channel the request of victims to have rectifiable inadequacies in reparations processes addressed. These rectifiable inadequacies should be seen as distinct from temporal, contextual and physical factors that place natural limitations on reparations processes; while the former can be resolved through greater commitment towards victims from the state the latter are more difficult to overcome. There is, for instance, a difference in failing to locate the body of a disappeared victim because the state refuses to establish and equip a mechanism to adequately perform that task and the failure to locate that same body by a well-equipped and supported mechanism that is working against the passage of time and an inhabitable terrain. While managing victim expectations should not entail CSOs getting victims to accept the continued violation of their rights (as in the first scenario), it would nonetheless involve giving them an understanding that realising their rights may not be possible as quickly as they would like (as in the second scenario).

### 3. How might victims receive the involvement of CSOs? (positive and negative experiences from case studies)

Examples were cited of victims across the sites taking a negative view of CSO involvement in the reparation process. This seemed to happen when and where the consultation process had not taken on board the views of victims or managed their expectations. That is, CSOs did not actively listen to victims telling them what they needed, nor did they reactively discuss the feasibility of what they were requesting.

For example, one victim from Northern Ireland recounted a heated confrontation they had with a victims’ group over a perceived lack of practical assistance in their everyday life:

I said to them ‘all these [workshops] you’re holding and you’ve got residential accommodation here, but what’s the help you’re giving victims on a day to day basis because everything I’m asking for you say you can’t do this, you can’t do that, you’re a charity, so where is my ongoing day to day practical help?’... then I met the Victims and Survivor Service and the Commission for Victims and Survivors and I was highlighting that I need ongoing, practical day to day help which I don’t have.<sup>217</sup>

217 Interview 12, Northern Ireland.



Memorial to those victims have been recovered and reburied, Nebaj, Guatemala

It may be the case, then, that victims feel CSOs have grown detached from their grassroots constituents.<sup>218</sup>

Similarly, one Peruvian respondent noted the grievances felt by some victims who felt short changed because 'people read about millions, we've got millions in the newspaper... [and] if it's a community which has got nothing from a project, well 'we read about these millions in the newspapers, but we're not seeing any of it here''.<sup>219</sup> Again, this demonstrates the importance of having an informed victim constituency with realistic expectations.



218 Jelena Subotic, 'The transformation of international transitional justice advocacy', *International Journal of Transitional Justice*, (2012) 6: 106– 125.

219 Interview 1, Peru.

Examples were also cited of victims having a more positive experience of CSO engagement. For instance, one Colombian observer argued that CSOs there had played an integral role in drawing individual victims into a collective victim's constituency with similar experiences and needs:

One can't understate the role of victims organisations because what they have done or NGOs that are working with victims is that they have now realised through their engagement with organisations that they're not alone, that there are other people in their situation and also these organisations contribute to their recuperation because they are working on those feelings of guilt that people have, they are working on making them understand that they can move on from this and they become political subjects to a degree once they do engage with these organisations.<sup>220</sup>



In Guatemala, it was said that CSOs had been centrally involved in allowing particular victim constituencies to emerge from obscurity. In particular, CSOs had allowed previously silenced indigenous women to articulate their experiences of invisibilised gender-based sexual harms:

The grandmothers from these different communities, representing thousands of women from their departments, gave their testimony of the sexual violence they experienced during the armed conflict, and that's where it's known that these rapes had really been ... invisible in everything that was said about the internal armed conflict in Guatemala, because there was really very little written about sexual violence. ... the fact that the indigenous women spoke for the first time was like that which gives us the skin like a hen to say "well, yes, this is what happened". And that the women who survived those violations of those rights and that what they are looking for is justice.<sup>221</sup>

Another interviewee, speaking in the Northern Ireland context, said that one particular NGO had provided 'invaluable' services to their elderly parents. This included helping them to socialise with other victims in a similar situation, taking them to counselling sessions and helping them with more immediate everyday needs like doing the shopping.<sup>222</sup>

Appearing as unresponsive to victims' needs or failing to inform their expectations can create negative perceptions of CSOs. At the same time CSOs have been credited by victims with creating a sense of social solidarity among and with other victims, providing them with a platform to be seen and heard, and making a substantial difference in their everyday lives.<sup>223</sup>

221 Interview 7, Guatemala.

222 Interview 17, Northern Ireland.

223 See Sunneva Gilmore and Luke Moffett, 'Finding a way to live with the past: 'self-repair', 'informal repair', and reparations in transitional justice', *Journal of Law and Society* 48(3) (2021): 455-480.

## Policy Advice for CSOs and Donors

CSOs and donors will need to assess the value and challenges of engaging on reparations. Reparations are often politically contested, and by managing the socio-economic causes of the conflict they can overlook the role of elites and governance problems that perpetuate the violence.<sup>224</sup> In transitioning from humanitarian assistance during conflict to support during peace, CSOs and donors may have to reconsider the provision of aid to areas still governed by non-state armed groups or to organisations with close ties to such groups. To access these areas armed groups may demand that fees be paid. Access to vulnerable and affected communities can be inhibited or at least complicated by aid agencies have to provide 'donations' to groups such as the Maoists in Nepal.<sup>225</sup> Yet only supporting State controlled areas or communities supportive of the government might continue to marginalise large parts of the country. This could reinforce inequalities and discriminatory practices, such as the exclusion of women or castes.<sup>226</sup>

Key conversations to hold prior to engaging with reparations processes including:

- a. Is there available information on what the term "reparation" means to victims in relevant country and context? If the information is not available, does the organisation have the capacity to conduct that work to make that determination? Does the term "reparations" as understood by victims in a specific context align (in whole or part) with those of the CSO or donor (its vision and mission)? Does the term for "reparation" exist in the national context and/or language? If not, is there a comparable term that might be usefully drawn upon to frame the issue in a culturally appropriate way for victims in a given site?
- b. Does the organisation have a history of making reparations or engaging in the provision of services equivalent to reparations? Can that history be drawn on now?

224 Jörg Frieden, 'A Donor's Perspective on Aid and Conflict', in S. von Einsiedel, D. Malone and S. Pradhan (eds.), *Nepal in Transition: From People's War to Fragile Peace*, Cambridge 2012, 100-113, p101.

225 Frieden *ibid.* p103.

226 Frieden *ibid.* p109.

- c. Does the ethos of the organisation lend itself to a particular style of engagement with victimised communities/making repair?
- d. What are the strengths/skills of the organisation? Does it have the capacity to engage on reparations and with victims in the long-term (>5 years)? How can those skills be drawn upon when making reparations?

CSOs may need to make the case to donors for the long-term funding of reparations programmes. Often the appetite to assist with accountability and rule of law projects does not extend to redress. There may be a key window to raise such issues before donors' interests move elsewhere. There is also a substantive gap between donor funding for criminal trials and support to reparation programmes; the International Criminal Court annually receives over €145 million whereas reparations contributions barely amount to €4 million. It may be useful to frame support for reparations within the Sustainable Development Goals; SDG 16 on peaceful and inclusive societies, SDG 5 on gender inclusivity, and SDG 10 on inequality. This would be most appropriate where reparations can modestly contribute to alleviating the harms experienced by those marginalised communities most acutely affected by violence.

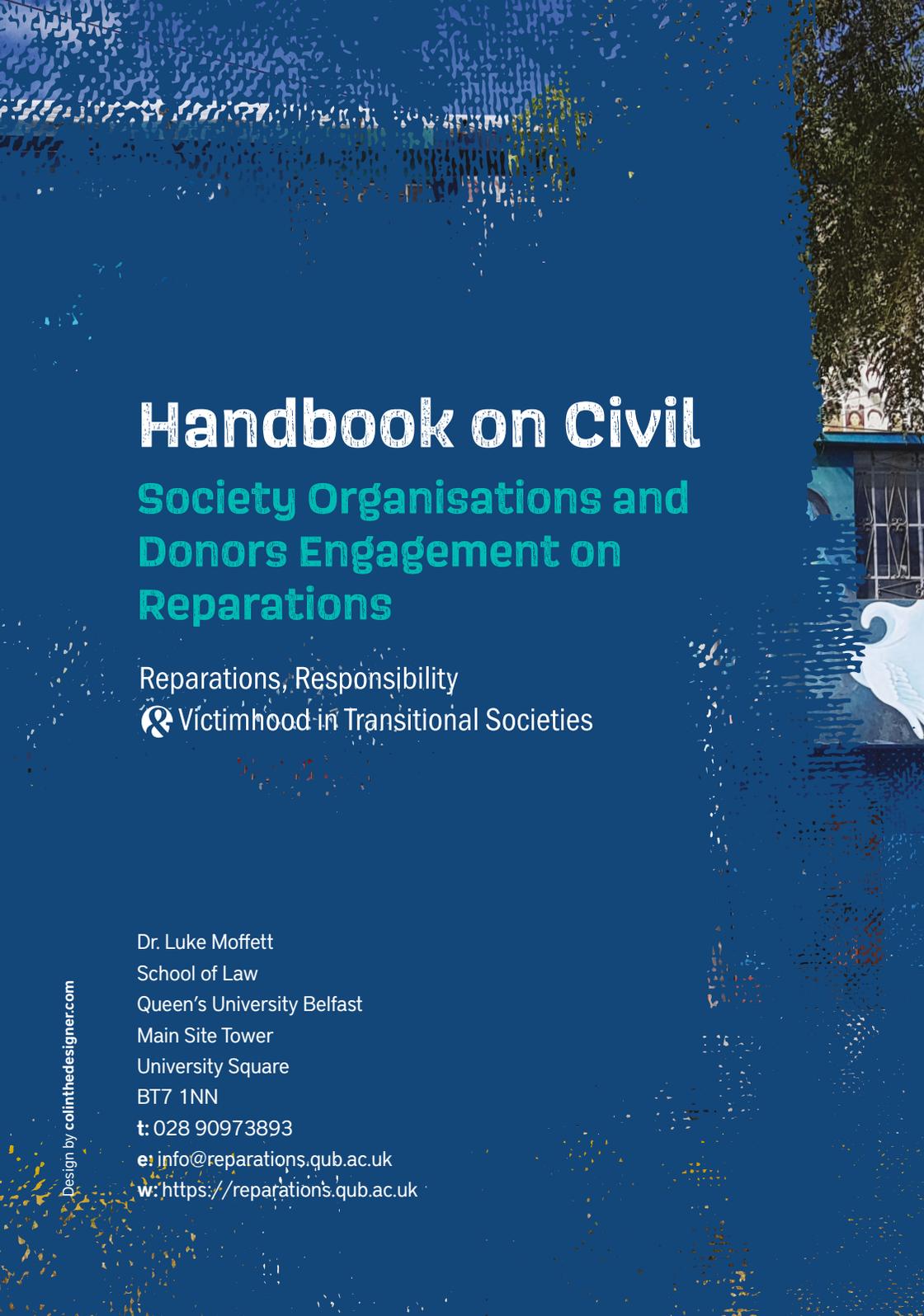
## Advice to civil society organisations

- Consider what is feasible, realistic and in keeping with the ethos and capacity of the organisation when making reparations. Reparation programmes involve political determinations on who deserves redress over others, which can include state forces or even those responsible for victimising others. Attention should be paid to those victims often marginalised and silenced from participating in reparation design, such as women, children, elderly, disabled, minorities and those in exile, who can have diverse and pressing needs for redress.
- Engaging with victims and providing them space to articulate what reparations should look like and can change over time is essential in informing the appropriate forms of reparations. This may require knowledge exchange and sensitisation campaigns to make victims aware of their rights, the practices in other countries and creative thinking on what is appropriate for a victim and victimised groups.
- Engagement in reparations programmes is likely to raise difficult questions and emotions for victimised communities and ex-combatants. Appropriate practical, emotional and psychological support will be needed.
- Reparations need to be viewed as holistic measures. Not fulfilling promises can be worse than promising less.
- If advocating for reparations, is the organisation in a position to support reparations made by a non-state armed group or the State?
- Does the organisation have the capacity to take on this work and see it through to its conclusion (and what does "conclusion" mean)? This can range from supporting a State reparation programme with the dissemination of application forms or outreach on information on the programme to service provision and even distribution of funds. These different roles require sufficiently skilled staff, training, financial compliance and oversight, as well as geographical reach that can be transnational or international to assist victims in other countries. Is it possible to network/collaborate with other CSOs to strengthen your cause? This process may take time and considerable consultation. How does your organisation measure the achievement of its goals and policies, if at all? Does your organisation have the capacity for oversight necessary to capture the high level of payments, particularly if there are interim payments made in the immediate post-conflict context?
- If support victim participation, consider what this means in practice – what are the risks and advantages of incorporating a participatory approach, is this solely through legal representation or does it include accompaniment to meetings with officials and/or social engagements or protests to raise awareness of their needs? What are the advantages: more meaningful process or higher chances of success? What are the risks: e.g. elite capture; gender inequality in engagement; security risks and exposure to retaliation; and competition amongst victims.
- Consultation: Different constituencies within the same victimised population will have different needs and views on adequate reparations. Specific consideration may be required around (but not limited to):

- ▶ urban/rural divide
  - ▶ Age – including elderly and children
  - ▶ Gender
  - ▶ Nature of harm
  - ▶ Internally displaced people
  - ▶ Indigenous communities
  - ▶ Class
  - ▶ Generations of harm
- Civil society organisations should aim to inform victims’ expectations rather than manage them. Engagement on reparations should be a means to sensitise victims to their rights, comparative practice and how measures can be co-designed for advocacy purposes. Be realistic about what you can do, what others will receive and the likely outcomes.
  - Engagement with victims on reparations to be realistic about the likely timeframe of delivery and the modest nature of reparation measures in remedying their harm. Many, if not most, reparation processes are medium to long term processes, and this should be acknowledged, rather than disguised, from the outset. Interim payments may help to buy goodwill among victims in the immediate term while longer processes run their course. Compensation through administrative reparation programmes may be easier to evidence than pursuing a court case.
  - There are also a number of challenges for CSOs in supporting reparations and their engagement with victims can be strained, limited or cease due to austerity, natural disasters or deterioration of the security context. CSOs become more bureaucratic and technocratic to appeal to donor language and standards. There is also a risk of CSOs becoming service providers in transition, which can result moving away from state responsibility to more assistance or charity provision. CSOs can also be put in danger through the delivery of reparations in fragile post-conflict situations, where they may be targeted.
  - Risk management is needed regarding the possibility that involvement in reparation schemes/advocacy for may put CSOs at risk of political and social opposition movements, this includes challenges to the safety of staff members; for donors there may be risk to one’s international reputation.
  - Civil society organisations should be involved in the evaluation and monitoring of the implementation of reparations so as to ensure the effectiveness of their delivery.

## Advice to donors

- Reparations are unlikely to be a ‘one off’ time bound event. Be prepared for longer term engagement with the affected community or individual – e.g. maintenance of new buildings, return to do further work on de-mining, process of community-based truth recovery will occur at a pace set by the individual and levels of engagement are likely to vary over a period of time.
- Be prepared for scrutiny and push back by individuals, communities, other NGOs, state organisations, academics and international observers.
- The ‘return’ on engagement in a process of reparations is likely to be slow and uneven for donors. Expectations need to be informed and not led by data or checked box exercises. Investment in transitional justice can contribute to violence reduction and support of reparations helps to alleviate poverty of those who have taken the brunt of the burden of violence.
- For reparations to be seen as legitimate, a guarantee of non-repetition is required. CSOs should seek assurances from those providing reparations.
- Strong efforts should be made to link reparations with other peace-building, state-building and civil society actions beyond transitional justice menu. Reparations can complement these other measures, but as distinct measures to remedy victims’ harm cannot be substituted by them.



# Handbook on Civil Society Organisations and Donors Engagement on Reparations

Reparations, Responsibility  
Victimhood in Transitional Societies

Dr. Luke Moffett  
School of Law  
Queen's University Belfast  
Main Site Tower  
University Square  
BT7 1NN  
t: 028 90973893  
e: [info@reparations.qub.ac.uk](mailto:info@reparations.qub.ac.uk)  
w: <https://reparations.qub.ac.uk>