

Reparations, Responsibility

 Victimhood in Transitional Societies

Belfast Guidelines on Reparations in Post-Conflict Societies

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Belfast Guidelines on Reparations in Post-Conflict Societies

Over the past thirty years a strong body of international norms and jurisprudence on the right to reparations for victims of gross violations of human rights and serious violations of international humanitarian law has emerged alongside international and domestic reparation programmes to deliver redress to victims. Despite these developments there remains a substantial implementation gap and time lag between violation and redress that exacerbates victims' circumstances and quality of life, and leaves affected communities vulnerable. Drawing on networks of expertise and empirical research in multiple countries, these Guidelines intend to outline good practices to inform the minds of victims, civil society organisations, donors, policymakers, and administrators on how to realise reparations. The aim is to dispel some of the complexity of how to translate human rights obligations on reparations into practice and underscore important principles to guide the delivery of redress.

Reparation processes and programmes are often not implemented due mainly to a lack of political will, victims being politically and economically marginalised, continuing insecurity or endemic human rights abuses. In some cases where reparation programmes are established, authorities often lack the financial means

and technical capacity to implement them effectively. Further, reparation programs can be misused by governments to avoid victims bringing further legal claims to national courts, regional or international human rights bodies, or to benefit those loyal to or who fought for the State. Reparation programs are sometimes conflated with development programmes, diminishing the right to remedy and appropriate measures for victims. Staff and institutional/cultural practices within reparation programmes can also suffer from bias or discrimination that cause secondary victimisation to those coming before it, resulting in further marginalisation.

While the financial cost of reparations is often invoked to explain why a programme has not been established or implemented, this can disguise a government's resistance to deal with the past or not value for money in spending the State's budget. The obligation to ensure victims have an adequate, effective and prompt remedy through reparations, is conditioned on the principle of proportionality, in that such violations should be remedied 'as far as possible' in a way that adequately redresses the harm caused to victims. Reparations cannot fully undo the harm caused by the violations resulting from armed conflict, but sufficient financial resources are needed to adequately remedy some of the continuing effects to enable victims to live a dignified quality of life. Reparations do involve a substantial financial commitment, but this can be budgeted over

several years, be supported by donors or use a range of innovative funding tools to offset some of the cost, such as repurposing sanctioned assets that belong to perpetrators, financial debt write-offs or international financial support in exchange for commitments to support victims, meeting other goals of rule of law, inclusion and poverty alleviation. Financial investment in reparations can see a return for a society by ensuring those left worse off by an armed conflict are able to rebuild their lives again, reducing tensions and the likelihood of future violence and the recurrence of violations. In this sense, effective reparations can contribute to strengthening the rule of law and the transition to more just societies.

These Guidelines are designed with a view to share good practice and lessons learned to State and non-State actors on the implementation of effective reparations in post-conflict situations, overcoming common challenges identified in extensive research and fieldwork conducted in a number of societies affected by armed conflict. The Guidelines are based on interviews with over 250 individuals across seven countries: Colombia, Guatemala, Nepal, Northern Ireland, Peru, South Sudan and Uganda). Respondents included victims, ex-fighters, government officials, policy makers, civil society, experts and donors. Three workshops were held in Bogota, Geneva and New York alongside an expert roundtable to extrapolate best practices and lessons learned. These Guidelines

reflect the findings of a four year project 'Reparations, Responsibility and Victimhood in Transitional Societies' funded by the United Kingdom Arts and Humanities Research Council.

These Guidelines recognise and build and complement on the foundations of the Universal Declaration of Human Rights, the Core International Human Rights Instruments, the Rome Statute of the International Criminal Court, the UN Convention for the Protection of All Persons from Enforced Disappearances, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Updated Set of Principles for the Protection and the promotion of Human Rights through Action to Combat Impunity, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, the Guidance Note of the United Nations Secretary-General on Reparations for Conflict-Related Sexual Violence, and the International Law Association's Declaration of International Law Principles on Reparation for Victims of Armed Conflict, as well as relevant regional human rights instruments.

These Guidelines on Reparations in Situations of Post-Conflict Societies should be read in light of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations, be consistent with international human rights law and without discrimination of any kind or on any ground, without exception.

General Guidelines

1. Reparations for Post-Conflict Societies

a. Reparations are a means to remedy the harm caused to individuals, groups and communities by the atrocities committed during armed conflict and aim to secure peace by ensuring the violations of the past are not repeated. Reparations for violations committed during armed conflicts are a historical and contemporary practice across the world. Reparations are also a legal obligation of responsible actors to remedy the harms caused to victims by the violation of their human rights. Armed conflict includes both situations of international armed conflicts between States, as well as non-international armed conflicts within a State(s) and non-State armed groups. International humanitarian law recognised that Parties of international armed conflicts are liable for compensation for violations, but under customary law it extends such obligations to non-international armed conflicts. In addition, the application of human rights law in a situation of armed conflict ensures the rights of individuals and groups to an effective remedy

and access to justice. Given the gravity and serious consequences caused by gross violations of human rights, a range of complementary reparation measures (restitution, compensation, rehabilitation, measures of satisfaction, and guarantees of non-repetition – Principles 19-23, 2005 UN Basic Principles) will be needed to appropriately and effectively remedy victims' harm. Reparations for the consequences of armed conflict should be construed as broadly as possible to ensure a focus on remedying serious harm, such as that caused by collateral damage.

b. Armed conflict causes a range of widespread loss, long-lasting harms and mass suffering to individuals, communities, society and the environment. Civilians are often killed, maimed, injured, tortured, displaced, and suffer sexual and gender-based violence and other gross violations. These consequences of armed conflict cause physical and psychological harm and disrupt social connections and networks that would normally support victims and assist in recovery and development. Armed conflict also damages key civilian infrastructure that can exacerbate food shortages, clean water supplies, electricity and sewage that can have a devastating knock-on effect to education, housing, healthcare, nutrition and the transmission of diseases. The environment, land and natural resources can also be deeply affected by armed conflict including weapon contamination, pollution,

- loss of natural habitats and the poaching of protected species to name a few. Armed conflict can also see the destruction of cultural property and traditional practices of communities, peoples and indigenous groups that can have inter-generational loss of knowledge, identity and social connection.
- c. Reparations are intended to remedy the harm caused by gross violations of human rights and serious violations of international humanitarian law. Reparations are a necessary measure to counter impunity for international crimes, alongside States' obligations to investigate, prosecute or extradite those identified as responsible for such crimes. Reparations are not substitutes for trials or truth recovery mechanisms and vice versa, as accountability and access to justice are key forms of reparation. Victims accepting reparations does not discharge the State's obligation to investigate, prosecute and punish those responsible for gross violations neither it extinguishes victims' right to truth and justice. Given the gravity and scale of violations during war, reparations alongside trials, vetting and truth recovery mechanisms contribute to remedying the violations of the past and guarantee their non-repetition. Reparations often need to be complemented, not substituted, by development and assistance programmes to alleviate the damage caused to communities, infrastructure and the environment as a result of armed conflict.
- d. Reparation measures should primarily re-affirm victims' rights and dignity, equality, acknowledge their harm, relieve the consequences of wrongdoing and fulfil the State's obligations to prevent and remedy such violations. Reparations can contribute to broader societal transitional efforts such as reconciliation, civic trust, transformative justice and sustainable peace by ensuring that victims are treated in a dignified manner, as rights-holders and that redress contributes to tackling the roots causes of violence by guaranteeing their non-repetition.
- e. As far as possible a reparation process should be designed and operated considering the structural factors that caused violence and victimisation, to avoid their replication or compounding harm through the provision of redress. Victims, and other relevant actors, should take centre stage in reparation processes and be allowed to actively participate in their design, implementation, monitoring and evaluation. Ensuring the inclusion of the voices and agency of those most affected by war can shed light on structural factors of inequality, violence and victimisation that continue to affect them and on how to best address them. It will also help to ensure that victims experience reparations as a reparatory process in itself. Commissions of inquiry, archives, trials, truth recovery bodies' findings and other mechanisms could be useful to uncover such patterns.

Reparations should be connected to other programmes aimed at redressing historical grievances and marginalising structures to maximise the effects of reparations, such as addressing corruption and institutional reform.

2. Responsibility of the State

- a. States as signatories to international treaties, including human rights conventions, have obligations to ensure victims of gross violations of human rights have access to an effective remedy, whether a State or non-State actor commits the violation. A lack of political will does not detract from the international and domestic obligations to ensure a remedy for victims. For violations committed by State actors, reparations can be a means to not only meet its obligations, but a means to make amends for the past, gain the trust of victims, given them the place they owe in society and contribute to non-repetition.
- b. As part of its responsibility, a State should recognise the existence of an armed conflict, victims' rights, and its role in violations in any reparation programme.
- c. States can also be responsible for the violations committed by private or non-state actors whether in terms of complicity or due to failure to prevent the violations, protect against them and investigate them. While the obligation to make reparations and ensure an effective remedy is the responsibility of the State,

no matter who is responsible for the violation, private or non-state actors responsible for violations may be obliged to provide financial contributions to the State for reparations it has made to their victims.

3. Non-State Armed Groups

- a. Non-state armed groups where they are sufficiently organised and control territory or exercise State-like functions have human rights obligations, including the obligation to ensure an effective remedy for victims within their area of control. At the end of hostilities armed groups should also contribute to reparations.
- b. Non-State armed groups can offer compensation, apologies, truth, information of the location of those missing or disappeared, restitution of property, and assurances that displaced persons can return to their community, whether or not they hold territory. They can also use reparation processes to offer guarantees of non-recurrence, thus contributing to broader societal goals of reconciliation, coexistence and sustainable peace. Reparations processes can provide a platform for dialogue between victims, society and ex-fighters that can highlight how ex-fighters suffered harms themselves, how and why they became involved in armed conflict, and their lasting physical, emotional and psychological consequences. The involvement of ex-fighters in reparations processes could in some situations help prevent their

stigmatisation, assist them to 'make sense' of their new post-conflict identity, and allow them to 'make good' with the victims and communities impacted by their violence. Engaging in reparations processes can also transform ex-fighters' relationships with other ex-fighters once deemed the 'enemy', with communities adversely impacted by their violence, and in some cases even with individual victims.

Such engagement does not relieve ex-fighters from accountability mechanisms for violations for which they are responsible.

- c. Ex-fighters can before, during or after hostilities be subject to violations. Their background and character cannot be used to deny their right to an effective remedy. Instead given their complex needs they may be better addressed through a demobilisation and reintegration programme that is sensitive to complex victims.
- d. Non-State armed groups should reimburse the State, as far as possible, for the cost of reparations resulting from violations they are responsible for, and should contribute to domestic reparation programmes. States can seize and liquidate the legal and illegal assets of armed groups for the purposes of reparations. To ensure they contribute to such processes, different types of incentives could be used as far as they are not against international law and victims are able to participate in any decision-making process concerning such incentives.

For example, in exchange for the restitution of property, apologies, the clarification of events, the identification and location of remains and engagement in community conflict-resolution, among others, perpetrators could be considered for mitigation of their criminal sentence or other benefits, as long as their punishment reflects the gravity of their crimes.

- e. Reparations are intended to remedy victims' harm and not to be punitive. Reparations can provide a pathway for responsible actors to take ownership of their wrongdoing and enable their social and moral reintegration in society in the long-term. Reparations are not commodities to be exchanged for other political priorities, but a right that needs to be ensured.

4. Other Responsible Non-State Actors

Other actors, such as religious or cultural institutions and businesses, who participate or are complicit in violations can also be responsible for reparations. States and non-State actors are responsible for delivering reparations to victims, based on their causal connection to the violations, the resultant harm for their acts and omissions during armed conflict. The obligations for ensuring victims' right to an effective remedy and delivery of reparations lies with the State, with corresponding or contributing efforts by non-state actors based on their responsibility in violations.

5. Victims

- a. Consistent with Principle 8 of the 2005 UN Basic Principles and Guidelines on a Right to a Remedy and Reparations victims are those persons, whether individually, collectively and/or as a legal entity, who have suffered harm as a direct result of gross violations of human rights and/or serious breaches of international humanitarian law. A victim's immediate family members and dependents can claim reparations for the harm suffered as a result of the violations. Reparations may also be awarded to 'persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.' What amounts to immediate family members will depend on the social and cultural context of the victim. Other members of the extended family might qualify as family if there is a close emotional bond between the direct victim of the violations and the other members of the family, if there is economic dependency from one on the other, or in any case if they have suffered harm as a result of the violations. A 'close emotional bond' can depend on the sociocultural context of a victim, but can reflect their proximity, dependence and living arrangements to those who were killed or suffered violations.
- b. Organisations, institutions and protected areas may also be recognised as victims given the harm social institutions (hospitals), cultural organisation (religious) and the environment can suffer during armed conflict. It may be appropriate...
- c. Children have their own right to reparations separate from their parents. Reparations for child victims of armed conflict should be attuned to the long term impact over formative years of their life and the likelihood of living for decades with their harm. Children born as a result of rape have their own right to reparations separate from their mothers, to reflect the specific harms suffered and the need for appropriate measures to redress them. To enable them to access reparations it is key that their right to identity is duly recognised and operationalised by States.
- d. For victims of collective harm, individual eligibility will be dependent on their identification with a group, community or people affected by violations. Victims still have an individual right to reparations, whether it is delivered individually or collectively, such measures should be determined to be appropriate and effective in remedying the harm caused in consultation with them.
- e. Harm is experienced by victims in different ways. States and other bodies should be aware of the impact violence has on individuals and groups, depending on the gender, sexual orientation, race, age, disability, ethnicity, socio-economic position, and any other characteristic or identity, as well as how such harm can inter-sect across multiple characteristics or forms of identity. Eligibility under a specific reparations program can then depend on the

type of violation, harm caused and the appropriate remedy, which may involve prioritising resources on those who are in a situation of vulnerability or that have suffered the gravest violations. The application process and determination can be an important process to consult with victims and enable them an effective avenue to participate to express their views and concerns on their harm and appropriate reparative measures.

- f. Victims who suffer harm based on their shared identity, association with a group or type of collective harm suffered. It is up to victims to decide whether they want to identify themselves as part of a collective for the benefit of reparations or to individually receive them. The collective delivery of reparations does not obviate victims' right to individual reparations. Collective reparations must be implemented only in relation to those who have suffered violation of their rights, respond to the various harm of victims, and should be designed to be appropriate through the participation and ownership of victims of affected groups, peoples or communities. The decision making and participation process should respect existing governance structures of ethnic, indigenous and other groups. As far as possible collective reparations should reflect the collective's understanding of harm, identity, rights and reparations. Reparation programmes should be designed taking into account

alternative understandings of harms for those who experienced them, particularly indigenous peoples, tribal groups, afrodescendants, including being sensitive to their cosmovisions, collective rights and connection to their land.

- g. An individual's status as a victim is not obliterated by their past actions or character. This includes members of terrorist organisations or non-State armed groups, individual State actors involved in violations and members of corporations complicit in atrocities who themselves have been or become victims. The gravity of gross violations of human rights or serious violations of international humanitarian law require remedy. States might set up separate pathways to reparations for combatants and perpetrators who are also victims, to address their remedial and reintegration needs.
- h. Reparations should take a gender sensitive approach to their design and implementation to appropriately remedy the way in which conflict causes differentiated harm. Reparations should also be inclusive to LGBTIQ+ individuals and communities both in terms of understanding and responding to the particular harms, individual or collective, they may have suffered.

6. Victim Participation and Mobilisation

- a. Victims have a right to effective and meaningful participation through all the different stages of

a reparation programme from the design through to implementation, monitoring and evaluation. Participation should be transparent and regular to avoid misunderstandings and mistrust. Participation can take different forms from direct engagement, collective representation, correspondence and virtual or electronic queries. The State should aim to ensure that victims have ownership of reparation processes, which in turn can ensure more effective and appropriate measures of redress. If victims request, the co-creation of reparations should be facilitated whenever possible. A fine balance needs to be struck between victims exercising their agency, those who may not want to participate at all and a programme providing proportionate and appropriate reparation measures. This could be facilitated by the support of civil society networks that victims may trust more. Financial support to civil society and victim organisations, whether through State or donor-funded programmes can play an important part in allowing victims to mobilise and engage on reparation design and implementation.

b. Participation should take place bearing in mind gender, ethnicity, race, age, socio-economic situation, forms of victimisation, and other factors that would generate barriers for victims to actively engage in the design, implementation and monitoring of reparations. Participation should be designed in a way that is respectful of other views and traditions.

- c. Participation should be aimed at placing victims at the centre of the design, implementation, monitoring and evaluation of reparations. Reparations can be a victim-centred process by allowing victims to express their views, needs, expectations and harms. Consultation and participation should be ongoing and promote dialogue, and should be used as a means to inform victims' expectations and reaffirm their rights.
- d. Staff of a reparation programme and those supporting claimants should treat victims empathetically and ensure that the process is respectful, does not become an interrogation, but a verification process respectful with the victim's dignity and central role in the process. Training on victim's rights, dealing with trauma, active listening and data protection must be provided to anyone in contact with victims in a reparation process so as to minimise secondary victimisation.
- e. Victims coming together to mobilise around their right to an effective remedy for violations they have suffered are an important part of leveraging political will to see reparation programmes established. Victim organisations play an integral role in collectively strengthening victims' demands for redress as well as supporting their wellbeing. Not all victims need to be part of a victim organisation and consideration should be made to ensure effective access to redress for all victims, whether affiliated with an organisation or not.

- f. States should endeavour to carry out a wide consultation on developing a reparations policy with the affected communities and key stakeholders, including non-State actors responsible for the violations, to increase visibility of the issue and allow a broad range of input on its implementation. Specific mechanisms might need to be established to allow the effective participation of transnational victims, refugees or those who are internally displaced, such as representative panels or monitoring bodies. Consultation should be complemented with information programmes in relevant languages and audio-visual mediums to inform victims in a way they understand of their rights and comparative practices so that they are informed and can provide input into such consultations.
- g. Where appropriate to ensure participation, reparation programmes should have a territorial approach with dedicated regional outreach offices, locally staffed with people from a range of diverse backgrounds. Such local offices should act as contact points and to continue ongoing engagement and information to victims and affected communities. Where appropriate and possible, victims and trusted civil society organisations should be part of or involved in the delivery of reparations in administrative programmes.

7. Role of Civil Society, International Community and Donors

- a. Civil society organisations play a fundamental role in the implementation of reparations, whether by visibilising victims' demands, advancing claims, providing support and safe spaces, and giving access to advocacy networks, through technical and legal expertise in litigation, and even delivering services. While the obligation to provide reparation belongs to the State and those that perpetrated violations, civil society is essential for any reparation effort to be adequate, prompt and effective. Civil society mobilisation on reparations often work alongside victims, inform them of their rights and provide comparative experience. Learning from other experiences is important to assess how reparations can be done, even if practices cannot be replicated in every context. Civil society advocacy and victim participation play an integral part in contextualising reparations and making them effective and appropriate for post-conflict societies.
- b. The international community and the United Nations and regional organisations, as applicable, should include the right to reparations in negotiations and discussions on conflict-resolution, peace and security, as well as ensure that international and regional mechanisms can guarantee strive to realize victims' rights to an effective remedy.

- c. In funding civil society and victims' organisations, donors need to recognise that advocacy and activism around the design, implementation, monitoring and evaluation of reparation programs might take many years, even decades, and long-term support should be considered. Funding for activities and programmes by civil society should be considered by donors as key part of peacebuilding and conflict-transformation.
- d. Efforts to redress the past carried out by civil society and victims themselves can be vital in supporting and complementing reparations, and triggering State action, for example through commemoration, documentation and dignification projects. Yet, civil society initiatives cannot by themselves replace the implementation of reparations delivered by those who are responsible for the violations.
- e. Other non-responsible actors in society, such as religious actors, community leaders, and businesses, can play a key role in supporting reparations and non-repetition efforts.

Interim Reparations

- a. All victims of gross human rights violations or serious breaches of humanitarian law have a right to prompt reparation regardless of where they live or the context or circumstances that surround their victimisation. This means that even during armed conflict and in fragile States, reparations should be made available to

victims even if they need to take the shape of interim reparations due to insecurity, lack of institutional capacity and limited financial resources. The provision of interim reparation measures is intended to mitigate victims' urgent needs caused by harms suffered, rather than amount to a full discharge of the obligation to repair.

- b. During hostilities the State and in certain circumstances non-State armed groups have primary obligations under international humanitarian law to alleviate the suffering of civilians and hors de combat, including those in detention, and provide aid and medical assistance, search for, collection and evacuation of the wounded, sick, and shipwrecked, and the return of the remains and personal effects of the dead. Reparations are distinct from these duties as they are to fulfil secondary obligations to remedy breaches of primary obligations of State and non-State actors.
- c. Humanitarian assistance and development are important rights in times of armed conflict and peace so as to mitigate the worst effects of warfare and to ensure the basic necessities to live a dignified life. Assistance and development often aim to benefit a whole society or populations affected by conflict. Reparations intend to remedy the harm suffered by victims based on the violation of their rights.

Reparations can be established for the life of the victim, whereas assistance or development programmes often follow fixed time plans reflecting donor funding or oversight of expenditure.

Making Amends

During armed conflict, belligerents may provide amends to civilians affected by combat operations, but these often do not discharge the obligation to make effective reparations in post-conflict societies. Amends refer to ex-gratia (without fault) payments to civilians for the loss or suffering caused by military operations. Amends do not amount to reparations, but should be guided by the principles of victim participation, access, non-discrimination and go beyond compensation to alleviate the short-term consequences of violence. Victims should not be required to sign waivers to release those responsible from future legal obligations in exchange for such amends. If they are required to sign them, such waivers do not take away their right to truth, justice and reparation. Making amends can serve to vindicate victims' rights as well as reduce animosity and community tensions where they are carried out adequately.

Reparations as Part of Comprehensive Transitional Justice

Reparation mechanisms should be established in coordination with and complementary to other transitional justice mechanisms at the national level and,

if applicable, at the transnational or international level. This is not to suggest a toolkit or sequential approach; reparations are politically contentious and technically complex, with each context needing to find its own path to redress the past as long as it takes place within the international standards. Truth recovery, accountability, vetting, institutional reform and reparations are complementary and overlapping mechanisms to provide a comprehensive response to redress the past and prevent the continuation of violations. Reparations should be delivered alongside other peacebuilding and conflict transformation programmes, such as the disarmament, demobilisation and reintegration of fighters, this is to minimise tension that might arise over ex-fighters benefiting from support before civilian victims. These processes may need to be connected to asset recovery bodies or corruption commissions. Regional reparation offices set up throughout the country could be a key way to ensure access and visibility of a reparation programme to historically marginalised and victimised communities.

Governments can and should address the legacies of armed conflict in their national development plans, but should not endeavor to replace reparations with development or vice-versa.

Administrative Framework

General Considerations

- a. A reparation programme should be guided by simplicity to ensure accessibility and expediting awards to victims. More complex procedures or burdensome evidential requirements exclude more victims and increase operational costs. In the aftermath of armed conflict where there is mass victimisation, reparations should be delivered through an effective system to administer in a cost-effective and victim-centred way measures which are prompt, adequate and effective for a large universe of victims.
- b. For international armed conflicts a reparation programme can take a number of forms including an inter-State body, claims commission, arbitration or reparation body established within each State to administer the reparations made by the responsible State. This should not be an exchange of the costs of armed conflict between States, but should result in reparations being delivered to victims. States have an obligation to deliver redress to their victims.
- c. In non-international armed conflict a reparation programme can be established by the State during the conflict or after the cessation of hostilities, whether through an administrative programme or victims' claims before courts or judicial and semi-judicial bodies.

The existence of an administrative reparation programme does not preclude the right of victims to seek reparation through courts. However, if a victim obtains adequate, prompt and effective reparation through a domestic reparation programme, and pursues litigation before a court, the judicial award may need to take into account what a victim has already received for harm caused by the same violation. Reparation programmes should be created for as long as they need to complete their mandate and have sufficient authority to withstand political changes.

- d. Reparations can be awarded to victims through courts, national or international, administrative programmes or/ and traditional forums. While efforts should be made to minimise disparities or a hierarchy between different systems and to ensure complementarity across different remedies, victims have the right to access all available remedies to obtain adequate reparations. This is particularly relevant in relation to federal States where reparations are provided to victims. In such political contexts States have an obligation to ensure that the right to reparation is provided in a manner that does not distinguish between the location of the victims, and always bearing in mind the right to equality and non-discrimination. For traditional forums used to support reparations, procedural guarantees will need to be included to avoid marginalisation of certain groups, in particular women.

- e. While States have the primary obligation to provide reparations to victims, if they fail to do so through effective domestic remedies, whether judicial or non-judicial, other bodies, such as supranational human rights bodies, could gain jurisdiction to adjudicate on such issues. In doing so, supranational mechanisms should avail themselves of all relevant information to decide how best to address reparation claims, including by considering victims' testimonies, expert views, and in-site visits, among others. Supranational bodies might also offer the parties a space for settlement or dialogue so that an adequate road-map for reparations can be designed and implemented. Account of existing processes at the national level could be taken, where appropriate, so that international decisions maximise the impact of any reparations for victims.
- f. Reparation programmes should be established on a legislative basis or presidential decree. Such lawnormative framework should set out the purpose, the beneficiaries, the forms of reparation, the requirements that must be met, the duration of the programme, as well as those responsible for its implementation. The creation of any administrative reparation programme should be based on the most accurate mapping of violations and victimizations and an adequate quantification of the cost of such a programme during its lifetime, as well as where the

resources to fund the programme would come from. An administrative programme should aim to assess and implement reparations as soon as possible and be prepared to provide life-long support to victims, where applicable. For these programmes to be able to deliver on their mandates, they need to be bestowed with the necessary powers within the State hierarchy. Oversight mechanisms should exist to monitor the work and impact of domestic reparation programmes.

- g. Victims should have access to support services to assist them in applying for reparations and should have access to psychosocial support through the process. Victims can be supported in the application process by civil society organisations, whether funded by the State or donors, so as to allow sufficient coverage of access to affected populations. Any financial or other cost for applying for reparations should be mitigated by the State, such as filling in forms, providing medical evidence or travelling to urban centres, by developing a process that is accessible, easily understood and victim-sensitive.
- h. Violence against civilians often reflects intersecting discrimination of individuals and groups based on gender, age, race, ethnicity, religion, nationality, and other factors, that exacerbates their suffering and leaves them vulnerable to further harms. Reparations should be designed to account for intersecting discrimination in how affected individuals and groups

can face barriers in accessing, participating and benefiting from such measures.

- i. Particular measures should be taken to ensure that those in situation of vulnerability can access prompt reparations to mitigate the deterioration of their situation, such as those forcibly displaced or those that suffered serious injury. In this context, special attention must be given to children, including child soldiers and children born out of rape, the elderly and persons with disabilities, and victims of sexual and gender-based violence among others. Prioritisation to access certain forms of reparation might be a necessary and legitimate tool provided that it is reasonable, justifiable and necessary.
- j. A State's concern over reparations benefiting or ending up in the hands of rebel groups, is not a ground to deny or withhold the right to reparation.
- k. A communication strategy could be developed on how, when and how often victims will be communicated with. Such strategy must be underpinned by principles of effective and regular communication with victims to keep them informed of developments, and to treat them in a respectful and dignified way. A reparation programme should provide a range of formats to inform victims of their right and possibility to apply to the programme through the media, state gazette and social media, or other

culturally appropriate means. It is important to address the victims' queries through a number of responsive systems, including telephone, email, secure messaging and post. Public visibility and communication of developments can be assisted through a website to regularly inform victims, signpost to other support services, as well as a section answering commonly asked questions.

Administrative Regulations

The regulations of reparation programmes should be publicly available in the relevant languages of victims, and guided by these following provisions:

- ▶ Staff appointed to the administrative programme should be trained to be victim-centred and trauma-sensitive in their work.
- ▶ A reparation programme should avoid causing secondary victimisation to those before it by taking a do no harm approach to its operation.
- ▶ There should be internal complaint mechanisms to address complaints from victims in a prompt and effective way, with recourse to an independent body or commission for inadequately addressed complaints or misconduct. Victims can take recourse to appeal through the courts where internal appeals processes of the administrative reparation programme have been exhausted.

- ▶ Heads or directors of a reparation programme must have the experience and high moral authority likely to command the respect and confidence of victims and must be able and willing to exercise their functions in an independent, impartial and sensitive manner. They should not have any financial or other conflict of interest in the performance of their functions.
- ▶ Administrative programmes should have a governance board that can monitor, advise and analyse the work and impact of the programme. Such body must include diverse victim representatives and civil society organisations, as well as other relevant stakeholders.
- ▶ The programme should set out a victim-centred approach in exercising its mandate, by defining for example how victims will participate through the process and establishing key permanent bodies for victim participation.
- ▶ Eligibility of which individuals, groups and dependents can apply should be clearly detailed.
- ▶ Information should be provided on how victims can apply and the eligibility criteria that victims must meet to be beneficiaries of reparations. Such criteria facilitate access to reparation in a prompt and effective manner and remove any unnecessary burdens from victims.

- ▶ Sworn statements from victims and witnesses may be used to collaborate victim's claims, but this may create difficulties for clandestinely committed violations such as sexual violence, disappearances and torture. Death certificates may be available for those killed, but they should not be required in relation to those missing or disappeared. To facilitate the broadest benefit for those who suffer the most, States implementing reparations should take into account the evidential presumptions, reverse burdens of proof or lower evidential thresholds that apply in relation to certain violations (for example in relation to those tortured or disappeared and last seen in custody of the State) and for vulnerable victims (for example victims of sexual and gender-based violence and children born of war).
- ▶ A registry of victims should be set up to account for all individual and collective victims that classify as victims. Such registry should have and respect regulations on data and privacy protection.
- ▶ A victim application form usual include certain details including victim's name, date and place of birth, gender, correspondence address, names of their parents (if known), number of identity document (passport, driving licence, national ID, or provide with a new one for those without), type of violation/harm suffered, date and place of incident(s), details and/ or narrative of violations, any corroborating evidence or witnesses, any dependents or carers, and space

to indicate what appropriate reparations they would want to receive given the scope of the programme. For those victims who do not have in their possession or have never been issued with personal identification documents, a process should be developed to provide them with relevant documentation for free. This is often a barrier to accessing a remedy for children born as a result of rape, indigenous and tribal groups and those displaced or stateless persons. In any case, the lack of an identification document should per se not be used to deny access to reparations.

- ▶ The forms of reparations and benefits that victims could receive through a reparation programme should be made clear to them for transparency and to inform their expectations.
- ▶ The assessment process of claims can be split into different categories or stages in order to expedite claims, in line with the obligation to ensure prompt reparations. This can include categorising smaller claims as having a lighter touch review than larger claims, involving victim or civil society organisations to administer certain reparation measures when appropriate, or an initial sifting processes needed to facilitate subsequent determination assessments can code applications, such as a traffic light system (green – meets eligibility criteria and has sufficient evidence, amber – meets eligibility criteria, but needs more evidence, red – does not meet eligibility

criteria). These or other tools to process claims should be guided by the right to prompt, appropriate and adequate reparations, and proportionate with the rights of victims.

- ▶ The principles guiding the decision-making process of how claims are assessed and determined should be set up in the regulations. These should include, at the very least, the principles of dignity, victim-centred approach, non-discrimination, promptness, effectiveness, do no harm, intersectionality and accessibility.
- ▶ Outcomes of decisions should be promptly provided to claimants in writing and in a language they understand, providing the reasons of the decision, whether or not they are eligible, what they are entitled to and where appropriate the appeals process. Letters to victims for successful applications should, where appropriate, acknowledge the individual or collective as a victim, for which incidents, what measures they are entitled to and follow-up information on next steps. These letters are a key form of acknowledgment and recognition.
- ▶ Annual reporting and accounting of activities of the reparations programme should be made publicly available, including: disclosure of all funds received and breakdown of expenditure; reparations implemented so far; how victims have been

communicated with, involved in consultation(s) and participation in the programme; demographic and geographic breakdown on beneficiaries; and other relevant information to assess the effective implementation of the reparations mandate of such mechanism.

Scope of Eligibility in Administrative Reparation Programmes

- a. Reparations should be available to all victims of gross violations of human rights and serious breaches of international humanitarian law. The scope of an administrative programme on who is eligible for reparations might be determined based on its temporal parameters during which the violations took place, types of violations, and jurisdictional and territorial scope.
- b. Eligibility requirements should be proportionate and effective in responding to the situation of victims, the gravity of the violation and the need to ensure an effective remedy. Eligibility requirements must be revised over time to ensure that they remain adequate for the context where they apply and effective to provide reparation to all victims.
- c. Administrative reparation programmes can provide a more expedite process for victims through lower evidential thresholds that reduce the burden of proof on victims to prove and substantiate their claims.

This can include accepting claims within an accepted matrix of facts or patterns of violence, collaboration with State held records, newspaper reports and findings of a truth commission, commission of inquiry or historical clarification commission. The State should presume, in good faith, that victims' claims are true and the burden is on the State to prove that such is not the case. Other presumptions of harm may be appropriate for certain violations (for examples in relation to those last seen in custody of the State) and in relation to vulnerable groups of victims to ease their evidential burden, such as victims of sexual violence, those born because of rape and those seriously injured.

- d. The situation of specific victims should be considered when requiring certain evidentiary documents. For example, children born out of war, survivor of conflict related sexual violence, internally displaced persons, refugees and stateless persons might not have identification documents. Non-invasive assessments, such as medical or disability review, should be only carried out with the consent of the victim, free of charge and only where there is not sufficient information already in government or civil society records and in a way that respects the dignity of victims.

Victim application and registration

- a. Data on victimisation should be collected through a victim registry to help corroborate victims' claims through information in government records and in the public domain. The registry should include individual victims, collective victims as well as all relevant violations for which victims suffered harm. Confidentiality is the right of a victim, not the State. All records should be kept in accordance with the rights of victims to data protection.
- b. Simple and victim friendly application forms, in paper and/or online, should be designed for victims to complete with their personal identification and relevant information on their loss, injury or harm. Application forms should be available in languages used by victims along with accessible versions and in braille.
- c. Application forms and other data collected from other relevant bodies and agencies should be consolidated in a national registry. Such data should be held confidentially, with clear disclosure obligations on how such data should be handled and for what purposes, and to what extent it can be accessed by victims and organisations working on reparations.
- d. There may be a need to extend the registration period to allow victims who had not heard of or been initially ineligible for the scheme to register. The need to extend the registration period is particularly important

in relation to vulnerable victims who face barriers, like stigma, marginalisation, displacement or ongoing security issues, to speak about their suffering to others or to register for reparations at a later stage.

Independent Monitoring

An independent body should monitor the implementation of reparation programmes whether through a panel, forum or commission with representation from involved government agencies, victims and civil society. Such monitoring should report on a regular basis, have an independent mandate, powers to make requests, conduct research and give advice to government officials on improving the reparation programme. All reports should be publicly accessible. The work of such a body could include existing State oversight mechanisms, such as ombudsman, human rights commission or legislative committee.

Funding, Risk Management and Financial Safeguards

- a. States should establish a dedicated budget line over a number of years to sustainably fund reparations for all victims within a reparation programme. Complex reparation programmes are implemented often for more than a decade and therefore, budgetary planning should be considered under this assumption.

- b. Administrative reparation programmes should not be excessively expensive, bureaucratic systems that have little impact on realising victims' right to reparations. Operational costs should be minimised to ensure that resources are maximised for victims. Those who provide funding to a reparation programme are also responsible for monitoring expenditure and ensuring due diligence and impact. Such budgeting should be publicly available and audited, falling under financial oversight with regular reporting of expenditure.
- c. Funding from other sources can be used to supplement or off-set State budgeted reparation programmes, or use for specific ear-marked projects designated in consultation with affected victims. Assets seized and liquidated for the purposes of a reparation programme should be promptly and efficiently disposed for the use for victims.

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
w: <https://reparations.qub.ac.uk>