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ARTICLE

# Finding a way to live with the past: ‘self-repair’, ‘informal repair’, and reparations in transitional justice

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**Abstract**

Reparations are widely regarded as a key element of dealing with the past in transitional justice. Over the past three decades, there has been a plethora of state practice, jurisprudence, and international norms requiring states and other responsible actors to redress victims’ harm. Yet in practice there remain significant deficiencies in delivering reparations on the ground to those affected. This article explores what victims and their civil society allies do to manage their suffering in the absence of or delay to reparations. Drawing upon fieldwork in seven societies transitioning from conflict, we suggest that victims find their own way to live with the past as they await reparations, through ‘self-repair’ measures or through ‘informal repair’ provided by non-governmental organizations. This alternative perspective aims to shed light on victims’ agency and resilience, as well as to critique notions of state dependence that a needs and rights discourse often encourages with victims. We also argue that victims’ self-repair strategies and informal pathways can complement more formal measures, and be conducive to victims making the most of state-based reparation programmes.

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## 1 | INTRODUCTION

We cannot now wait for government to come and give us support – we’ve started doing it ourselves as victims.<sup>1</sup>

Reparations cannot heal victims. As a key pillar of transitional justice, reparations hold out the promise of remedying the harm caused to victims through measures made by responsible actors.<sup>2</sup> Yet the literature on reparations overlooks victims’ agency in how they manage their harm and find ways to repair some of their suffering themselves. In the face of mass atrocities, reparations are often justified as measures to redress the harm caused, as part of a political project to rebuild civic trust and/or symbolic measures to restore relationships. This can appear idealistic, belying the realities of repairing the irreparable. Moreover, the vast majority of transitional societies fail to deliver effective reparations to victims, meaning that they have to rely on the support of civil society or themselves through ‘self-repair’ or ‘informal repair’. Drawing upon empirical research and the experience of victims in a number of post-conflict societies, this article develops the concepts of self-repair and informal self to fill in this gap in knowledge and experience between healing and remedying the past.

There is a growing literature in transitional justice that complicates the assumptions about victims’ agency and calls for a more participatory bottom-up approach to constructing justice and reparations.<sup>3</sup> Nevertheless, there remains strong critique of victims’ agency and voices being ‘picked out, appropriated and then re-presented to suit’ other transitional justice actors. Kendall and Nouwen argue that the imagery of victims is often used to legitimize justice interventions, with victims’ voices increasingly abstracted, depoliticized, and re-presented.<sup>4</sup> Much of this critique stems from Christie’s ‘ideal victim’, which emphasizes how we prioritize seeking justice for the weak, helpless person, rather than for the more complex ‘non-ideal victim’. Doing so overlooks individuals’ agency in self-identification and self-determination, which means that they do not always fit neatly into how social systems frame victimhood.<sup>5</sup> Schwöbel-Patel takes this argument further, describing how victims cast as weak and vulnerable thereby become dependent beneficiaries of the good acts of professional justice agents, who ‘not only invoke victimhood, but ... monopolize the expertise required for speaking for the victims, therefore depriving the victims of the agency to speak for themselves’.<sup>6</sup> The appropriation of victims’ suffering also plays into ‘maintaining the status quo’, which enables the deepening of ‘existing

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<sup>1</sup> Interview UG30, Gulu, July 2019.

<sup>2</sup> K. McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice’ (2007) 34 *J. of Law and Society* 411; P. Lundy and M. McGovern, ‘Whose Justice? Rethinking Transitional Justice from the Bottom Up’ (2008) 35 *J. of Law and Society* 265; S. Robins, ‘Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations’ (2017) 11 *Human Rights and International Legal Discourse* 41.

<sup>3</sup> K. McEvoy and K. McConnachie, ‘Victims and Transitional Justice: Voice, Agency and Blame’ (2013) 22 *Social and Legal Studies* 489, at 495.

<sup>4</sup> S. Kendall and S. Nouwen, ‘Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood’ (2013) 76 *Law and Contemporary Problems* 235.

<sup>5</sup> N. Christie, ‘Ideal Victim’ in *From Crime Policy to Victim Policy: Reorienting the Justice System*, ed. E. Fattah (1986) 17.

<sup>6</sup> C. Schwöbel-Patel, ‘The “Ideal” Victim of International Criminal Law’ (2018) 29 *The European J. of International Law* 703, at 714.

inequalities, further disenfranchising victims and empowering agents of humanitarianism.<sup>7</sup> Our discussion on self-repair taps into these broader concerns within the field, in particular on the power dynamics of victims being dependent on others for their repair, the practice of speaking for them, and the assumptions that only transitional justice mechanisms can help victims to reintegrate socially and move on with their lives.<sup>8</sup>

Human rights law has constructed the right to reparations as mainly an obligation of the state,<sup>9</sup> but despite the normative force of human rights, it often neglects how this is to be operationalized in practice in post-conflict societies. The state can take years or even decades to remedy victims' harm, which leaves them with the burden of coping or surviving with their suffering largely on their own. Much of the literature on reparations focuses on the state's delivery of such measures, with little attention paid to the implementation gap of international norms on reparations. Former United Nations (UN) Special Rapporteur Pablo de Greiff noted that this gap is of 'scandalous proportions'.<sup>10</sup> Olsen and colleagues found that only 15 out of 91 countries transitioning from authoritarianism to democratic rule implemented reparations.<sup>11</sup> In our own field research in seven countries, three of which have domestic reparation programmes, we found that, despite having large administrative schemes to provide reparative measures to victims, most fall short. For example, in Colombia fewer than 10 per cent of victims have received reparations, while in Guatemala only 16 per cent have benefitted from the reparation programme, which has existed since 2003. Likewise, the German restitution law saw over 55 per cent of eligible victims rejected and hundreds of thousands of others having to wait decades for redress.<sup>12</sup>

Much of the literature on reparations in transitional justice focuses on claims making, forms, and processes, but there is little written on the lived experience for victims who are left waiting for redress. To provide a more socio-legal analysis of the experience of repair beyond the normative basis of reparations and to unpack victim agency in practice, this article examines how victims who fall outside just measures are left waiting for or receive inadequate reparations to manage their harm. In particular, it coins the terms 'self-repair' of victims and 'informal repair' with non-responsible third parties, which are developed from our analysis and empirical research.<sup>13</sup> Self-repair is the process by which victims manage to live with their suffering (individually and/or collectively), whereas informal repair refers to the measures provided by civil society actors that

<sup>7</sup> C. Schwöbel-Patel, 'Spectacle in International Criminal Law: The Fundraising Image of Victimhood' (2016) 4 *London Rev. of International Law* 247, at 267, 272.

<sup>8</sup> L. E. Fletcher and H. M. Weinstein, 'Transitional Justice and the "Plight" of Victimhood' in *Research Handbook on Transitional Justice*, eds C. Lawther et al. (2017) 244, at 245.

<sup>9</sup> D. Shelton, *Remedies in International Human Rights Law* (2005) 14.

<sup>10</sup> P. de Greiff, *Report by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence* (2014) para. 6, at <<https://digitallibrary.un.org/record/782020?ln=en>>.

<sup>11</sup> T. D. Olsen et al., *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (2010) 69.

<sup>12</sup> C. Pross, *Paying for the Past: The Struggle over Reparations for Surviving Victims of the Nazi Terror*, trans. B. Cooper (1998) 79.

<sup>13</sup> We have developed the concepts of self-repair and informal repair from our empirical data and complemented them with research in the literature. Chinweizu did not define or theorize 'self-repair', but used the term alongside 'self-respect' in hailing reparations for the 'change [they] will bring about in our understanding of our history, of ourselves, and of our destiny; the chance [they] will bring about in our place in the world': Chinweizu, 'Reparations and a New Global Order: A Comparative Overview' (1993) Paper read at the second Plenary Session of the First Pan-African Conference on Reparations, Abuja, Nigeria. Fletcher and Weinstein speak of 'social repair' as reconciling community and society: L. E. Fletcher and H. M. Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation' (2002) 24 *Human Rights Q.* 573, at 578–579.

alleviate victims' suffering, such as counselling or memorialization. Self-repair and informal repair are distinguished from reparations, by virtue of not being provided by responsible actors and thus not carrying the official and legal weight of reparations. This article argues that transitional justice theory and practice needs to be more cognisant of self-repair and informal repair in the absence of an official transitional justice approach. Moreover, self-repair and informal mechanisms can be integrated into official reparation programmes to make them more effective and complement the benefits of their measures. We hope to encourage a broader understanding of how victims and affected communities cope and try to manage their trauma. Essentially, we want to move beyond the binary of the sick victim and the responsible repairing state, to consider what other actors and victims themselves do in exercising agency to informally repair some of their harm.

This article is based on fieldwork in seven post-conflict countries involving interviews conducted with over 250 individuals, including victims, ex-combatants, civil society actors, donors, and reparation programme staff.<sup>14</sup> The seven countries were chosen to capture societies moving on from conflict.<sup>15</sup> The fieldwork was framed within a detailed analysis of the existing literature from a range of disciplines, including law, medicine, political science, anthropology, history, and sociology. The fieldwork was contextualized through background research by local consultants in each country and a research instrument with thematic questions that was tailored to each jurisdiction. Purposive sampling was used to capture respondents who had experience and knowledge of reparation programmes, worked with victim groups, involvement in negotiations or drafting of reparation laws, professional seniority and expertise, ensuring gender equality and victims who had and had not received reparations, as well as the views of marginalized, rural, and Indigenous voices in each of the contexts. Moreover, interviews and explorations of understanding and experience of reparations were used to reflect the 'subjective meaning of interviewees' views and actions'.<sup>16</sup>

We take a socio-legal approach by using the empirical data to tease out some of the gaps between victim agency and international norms, which are often state-centric, top-down, elite-shaped reparations that barely engage with the social reality of how victims cope with their suffering.<sup>17</sup> Through this approach, we navigate a range of methodological, doctrinal, and ethical challenges of applying the broader literature of social science and empirical research to common issues that intersect with doctrinal law.<sup>18</sup> As such, we have sought to reconcile the tension between the legal

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<sup>14</sup> Of these individuals, 42 were in Colombia, 33 in Guatemala, 49 in Nepal, 38 in Northern Ireland, 47 in Peru, 46 in Uganda, and 14 in South Sudan. Some ex-combatants, civil society actors, and government officials who were interviewed were also victimized and so we have not explicitly categorized them into victim or non-victim groups. These interviews provide general sentiments rather than a representative sample.

<sup>15</sup> Specifically, these contexts fall within our factors of analysis – namely, (a) complex multi-actor conflicts at different stages of conflict transformation; (b) case studies at different stages of the reparations 'life cycle' (design, implementation, and follow-up); (c) jurisdictions from the main 'legal families' of common law/civil law, monist/dualist, and federalist/centralist; (d) countries obliged to make reparations by different international bodies; (e) research feasibility (for example, well-established contacts, identified local consultants, and a stable security context); and (f) a mixture of high-, middle-, and low-income countries (as defined by the World Bank), enabling analysis of feasibility against financial resources. The data from interviews were coded using a codebook based on some thematic issues from the project proposal and others that arose during the fieldwork.

<sup>16</sup> K. McEvoy, 'Cause Lawyers, Political Violence, and Professionalism in Conflict' (2019) 46 *J. of Law and Society* 529, at 534.

<sup>17</sup> R. Cotterrell, *The Sociology of Law* (1992, 2<sup>nd</sup> edn) 310.

<sup>18</sup> S. Nouwen, "'As You Set Out for Ithaka": Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict' (2014) 27 *Leiden J. of International Law* 227, at 230.

normative basis of reparations and the significant gap or ‘deficit’<sup>19</sup> in implementing them through extensive engagement with the lived everyday experience of victims and affected communities. In drawing upon our empirical comparative research, we do not want to suggest that our findings on self-repair and informal repair can be generalized; rather, we have considered the literature in relation to the data collected in our fieldwork to better reflect some of the realities of victims’ agency, dignity, and perseverance in the face of mass atrocities.

The article begins by unpacking some of the conceptual boundaries between self-repair, coping, and reparations. It then discusses the role of informal repair in supporting victims through the activities of civil society and international organizations. The following section examines the intersection of reparations and victim agency with self-repair. The next section explores the increasing discourse of victims’ responsibility in repairing their own harm and how this fits with self-repair. The article concludes by discussing the role of the state and reparations in the face of victims’ resilience and self-repair, returning to our starting point of what reparations are intended to achieve and their sustainability in a victim’s lifetime.

At the heart of our article is the aim of conveying the resilience and agency of victims and survivors to repair and cope with their harm in the absence of state action to provide assistance or reparations. We do not imply that those who are unable to do so are weak or cannot cope. Furthermore, some victims may cope in unrecognizable or hidden ways. Rather, we argue that self-repair and informal repair are key tools for understanding how victims manage the consequences of their suffering in ways that can help to deliver a successful reparation process but that are often overlooked. We believe that victims to some extent need to have a receptive mindset and conducive circumstances to make the most of any reparations that they do receive. Overall, we hope that this analysis will provide a ‘thicker’ understanding of victims’ experience of transitional justice (or its absence), and other sources of knowledge and repair beyond the state.<sup>20</sup>

## 2 | SELF-REPAIR AND COPING

In the aftermath of atrocities, victims can be isolated, silenced, or abandoned by society, communities, and even their own families.<sup>21</sup> This can mean that victims have to find their own individual pathway through their suffering. In reality, this involves picking up the pieces of such violence and meeting their day-to-day needs, recovering from injuries, or being hospitalized for long periods. They may pay little attention to themselves, but instead be focused on trying to support family members or dependents. Indeed, drawing upon Maslow’s hierarchy of needs, Mallinder highlights that victims may be concentrating on meeting their basic needs for survival and belonging in order to ensure stability, which may mean that not all of them will pursue self-actualization through justice, nor will the process be linear, with some progressing and regressing in achieving their needs over time.<sup>22</sup> Nevertheless, there is a rich literature on the role of victims’ agency and voice, the importance of their inclusion in processes to deal with the

<sup>19</sup> M. U. Walker, ‘Making Reparations Possible: Theorizing Reparative Justice’ in *Theorizing Transitional Justice*, eds C. Corradetti et al. (2015) 211, at 219.

<sup>20</sup> McEvoy, op. cit., n. 2.

<sup>21</sup> J. O’Connell, ‘Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?’ (2005) 46 *Harvard International Law J.* 295, at 310.

<sup>22</sup> A. H. Maslow, ‘A Theory of Human Motivation’ (1943) 50 *Psychology Rev.* 370; L. Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (2008) 361–365.

past, and the fact that transitional justice is very much carried by victims and their civil society allies.<sup>23</sup> Victims often come together to develop reparative pathways to support each other and provide solidarity.<sup>24</sup> At the same time, victims' voices can be captured by 'transitional justice entrepreneurs',<sup>25</sup> 'stolen' by lawyers,<sup>26</sup> and instrumentalized by political actors, and the voices of urban elites and high-profile victims can often be heard loudest.<sup>27</sup> This article aims to complement this literature in illustrating how victims can also sit outside transitional justice spaces and manage their suffering through self-repair or informal repair. In doing so, it complicates assumptions of healing or redress as only available through formal mechanisms, and also explores how self-repair and informal repair can contribute to more effective and appropriate reparations.

Focusing on self-repair and coping is intended to facilitate greater appreciation of victims' agency and suffering, as well as how best to complement any future reparation process. Self-repair refers to the processes and strategies that victims and affected communities develop to remedy their harm from political violence. Coping can be temporary, but with old age, changing financial or social circumstances, or worsening health and disability, such strategies may not be sustainable. Some coping strategies may be negative, such as alcohol abuse, drug abuse, or domestic violence. Self-repair implies that strategies are outcome oriented and extends to processes that are perceived as leading to any form of repair. While self-repair may not always be complete, it does represent at least a partial restoration of an individual's former life, function, or aspiration, whereas coping is not necessarily related to a reparative outcome and as such can act as a holding mechanism. These can both be distinguished from reparations, which are measures made by those responsible for acknowledging and remedying victims' harm. As discussed further below, these conceptual distinctions are important in order to ensure that self-repair or informal repair complement victims' right to reparations from the state and other responsible actors.

An overlap between coping and self-repair occurs when coping strategies lead to repair despite this not necessarily being their primary objective, and as such this repair may be associated with reduced satisfaction in resolving the harm. For example, a person may have preferred to avail of therapies to help with pain or reduced mobility, but instead have altered their routine to account for physical limitations or pain. Over time, there may be diminished returns with a coping mechanism and compartmentalization, such as over-intellectualizing a traumatic experience without engaging with it in an emotional way. Coping may also be employed at a stage at which repair is not desired or cannot be envisaged by the person given the nature of the violation.<sup>28</sup> Consequently, there may be a continuum of coping styles, with some forms eventually resembling repair when they appear to be efficient,<sup>29</sup> but sufficient repair is achieved when coping through continuous attempts to problem solve is no longer necessary.<sup>30</sup> As such, coping can be thought of as an organic

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<sup>23</sup> McEvoy and McConnachie, op. cit., n. 3; L. Moffett, 'Reparations in Transitional Justice: Justice or Political Compromise?' (2017) 11 *Human Rights and International Legal Discourse* 59.

<sup>24</sup> Fletcher and Weinstein, op. cit., n. 8, p. 248.

<sup>25</sup> T. Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims' (2010) 2 *J. of Human Rights Practice* 208.

<sup>26</sup> Christie, op. cit., n. 5.

<sup>27</sup> H. van der Merwe, 'Reparations through Different Lenses: The Culture, Rights and Politics of Healing and Empowerment after Mass Atrocities' in *Reparation for Victims of Crimes against Humanity*, ed. J. Wemmers (2014) 200, at 201.

<sup>28</sup> K. Stanislawski, 'The Coping Circumplex Model: An Integrative Model of the Structure of Coping with Stress' (2019) 10 *Frontiers in Psychology* 1, at 6–7.

<sup>29</sup> Id., p. 10.

<sup>30</sup> Id., p. 6.



way of surviving or marking time, whereas self-repair is one pathway that brings victims closer to recovery, though may not fully remedy their harm. Doing so more substantively often requires external support, such as public acknowledgement, compensation, uncovering the truth, or the recovery and identification of remains.

The goal of healing victims has received increasing attention in transitional justice to mitigate the long-term impact of harm through rehabilitation and more broadly in a society through reconciliation.<sup>31</sup> Coping after extreme traumatization caused by political violence has long been a concern of psychologists, who have been interested in not only the disorder caused by trauma, but also how to better understand and help those who have been through a similar experience but remained healthy.<sup>32</sup> While in psychological terms of coping there can be fixity<sup>33</sup> and dissociation<sup>34</sup> by victims, they can also experience post-traumatic growth within themselves. In other words, such growth and a person's ability to engage in challenges and derive positive meaning from their adversity does not rely on the absence of post-traumatic stress disorder (PTSD) or other mental health disorder following trauma.<sup>35</sup> In some countries, the state provides free services, such as health care and other social support, which can help victims, but often these are not specialized to effectively respond to their harm or sensitive to their specific needs.<sup>36</sup> The rest of this section teases out the substance of self-repair and coping further, by first examining its positive features in relation to the concept of resilience and then analysing its negative aspects in comparison to coping with mass violence.

## 2.1 | Resilience, coping, and self-repair

In the aftermath of violence, victims, ex-combatants, and others affected by it may have differing levels of resources that can shape how they engage with transitional justice processes and manage their harm. Fineman suggests that resilience can be accumulated throughout life by providing 'an individual with the means and ability to recover from harm, setbacks and the misfortunes that affect our lives'.<sup>37</sup> Resilience is dependent on the quality and quantity of resources (physical, human, social, ecological or environmental, and existential/spiritual) to which they have access.<sup>38</sup> Indeed, resilience can have subjective and objective dimensions, in that how an individual copes in the aftermath of violence can be more a matter of their mindset or life project than of structural factors or resources.<sup>39</sup> Conflict, displacement, and sectarian violence can have a disruptive effect on social bonds and networks, reducing victims' and communities' ability to be resilient and cope

<sup>31</sup> Fletcher and Weinstein, op. cit., n. 8, p. 245.

<sup>32</sup> R. J. Kleber, 'Epilogue' in *Beyond Trauma: Cultural and Societal Dynamics*, eds R. J. Kleber et al. (1995) 299, at 301.

<sup>33</sup> Y. Danieli, 'Foreword' in Kleber et al., id., p. vii.

<sup>34</sup> E. L. Kornfeld, 'The Development of Treatment Approaches for Victims of Human Rights Violations in Chile' in Kleber et al., id., p. 115, at p. 124.

<sup>35</sup> S. Joseph and P. A. Linley, 'Psychological Assessment of Growth Following Adversity: A Review' in *Trauma, Recovery, and Growth: Positive Psychological Perspectives on Posttraumatic Stress*, eds S. Joseph and P. A. Linley (2008) 21, at 21–22.

<sup>36</sup> See for instance S. Gilmore et al., *Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes* (2020).

<sup>37</sup> M. A. Fineman, 'Vulnerability and Inevitable Inequality' (2017) 4 *Oslo Law Rev.* 133, at 146.

<sup>38</sup> Id., pp. 147–148.

<sup>39</sup> J. Cabanyes Truffino, 'Resilience: An Approach to the Concept' (2010) 3 *Revista de Psiquiatria y Salud Mental* 145.



in the absence of or delay to a state response.<sup>40</sup> Moreover, long periods of conflict can reduce the resources of victims and affected communities, such as a person having their business destroyed and suffering the repercussions, which might include losing their home and their means of providing for their family.<sup>41</sup>

In terms of trauma, resilience is not about being invincible, but about how victims and affected communities adapt and develop in the face of adversity.<sup>42</sup> Resilience is an important factor for self-repair and victims' engagement with reparations, in that it can include both structural and subjective elements that provide 'an individual with the means and ability to recover from harm, setbacks and the misfortunes that affect our lives'.<sup>43</sup> As Clark highlights, resilience is not only at the individual level, but is also an ecological understanding of how individuals interact in their environment; it is not only a state, but also a process – or, as Frankl puts it, an 'art of living' – in the face of mass suffering.<sup>44</sup> In light of this, there are economic, social, and cultural factors that can facilitate or inhibit self-repair. This is apparent with wealthier victims of violence, who have the means to travel to obtain medical treatment or relocate to somewhere more peaceful. By contrast, if someone living in poverty loses a breadwinner or is seriously injured, this may have a devastating impact on their family's earning ability and their own mental health. They may view themselves as a 'burden' on their family, or hide their injuries and try to get on with life, only to suffer further health complications and disability in later life as a result. Many victims may just be struggling from day to day to cope with the physical and psychological trauma caused by political violence.<sup>45</sup>

There is also a gender dimension to resilience and coping, in that girls and women whose partners, children, or parents are killed or seriously injured take on additional caring responsibilities within the family as a way to work through their trauma, which is evidenced in some of the literature and in our interviews.<sup>46</sup> However, those responsible for looking after direct or primary victims can often suffer secondary traumatic stress from being worn down or overwhelmed by their efforts to cope with the changed socio-economic situation that an atrocity has brought about.<sup>47</sup> In the case of Northern Ireland, for instance, inadequate compensation and rehabilitation measures for seriously injured victims of the Troubles meant that family members altered their life plans to care for their relatives or loved ones. As men were often injured in gun or bomb attacks, wives, sisters, daughters, and mothers took on a life-long caring role at the expense of their own careers, dreams, and well-being.<sup>48</sup> This is not to say that such individuals would consider such a role a burden – they do it out of love and compassion; rather, it is a testament to the harm that families

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<sup>40</sup> A. M. Ibáñez and A. Moya, 'Vulnerability of Victims of Civil Conflicts: Empirical Evidence for the Displaced Population in Colombia' (2010) 38 *World Development* 647, at 647.

<sup>41</sup> *Id.*, pp. 647–648.

<sup>42</sup> Cabanyes Truffino, *op. cit.*, n. 39, p. 146.

<sup>43</sup> Fineman, *op. cit.*, n. 37, p. 146.

<sup>44</sup> J. N. Clark, 'De-Centring Trauma: Conflict-Related Sexual Violence and the Importance of Resilience Discourse' (2018) 22 *The International J. of Human Rights* 801, at 811; V. E. Frankl, *Man's Search for Meaning* (2004) 75.

<sup>45</sup> O'Connell, *op. cit.*, n. 21, p. 298.

<sup>46</sup> J. Boesten and P. Wilding, 'Transformative Gender Justice: Setting an Agenda' (2015) 51 *Women's Studies International Forum* 75. This was a sentiment shared by some interviewees, such as COL03, Bogotá, September 2018.

<sup>47</sup> C. R. Figley and R. J. Kleber, 'Beyond the "Victim": Secondary Traumatic Stress' in Kleber et al., *op. cit.*, n. 32, p. 75, at p. 93.

<sup>48</sup> M. Breen-Smyth, 'Injured and Disabled Casualties of the Northern Ireland Conflict: Issues in Immediate and Long-Term Treatment, Care and Support' (2013) 29 *Medicine, Conflict and Survival* 244, at 256.

have to absorb after atrocities, and to the subsequent resilience that they have to develop. Trying to make the most of the situation by coping with their lot can also be confusing and draining for victims, as they attempt to navigate access to services and support. This was reflected in our empirical research where one carer said of her husband, who was seriously injured in a bombing, that ‘we’ve sort of had to guide ourselves through the maze ... It has been difficult at times.’<sup>49</sup> Service provision by non-governmental organizations (NGOs) can help to alleviate these tensions for victims, support their self-repair pathway, and even informally repair some of their harm.

## 2.2 | Violence, negative coping, and seeking redress

Not all victims attempt to cope with their suffering in positive ways. Many of our respondents talked about a number of family members and friends committing suicide due to the trauma and consequences of conflict, exacerbated by the lack of any effective support from the state, relationship breakdown, and/or dependence on alcohol or drugs.<sup>50</sup> Many of these individuals did have family and community support but struggled to live with the trauma, and this had intergenerational consequences. This effort to move on and neglect the past is evident in Kiza and colleagues’ research into the victims of war. They found that the third most preferred option for reparative measures, behind compensation (42 per cent) and memorials (29 per cent), was deliberately forgetting what happened (24 per cent).<sup>51</sup> Forgetting the past can be a choice for victims, but may cause psychological problems later on for those traumatized. This was reflected in our research where one victim said that they were encouraged to

move on, but people say it’s not about forgetting. It’s just a way of saying ‘Can you manage it? Let it not shatter your life, let it not be the core of how you live your life, but just keep it on the side so you can try and move on.’<sup>52</sup>

As such, forgetting and moving on as means of coping do not repair what has happened; the past can surface at any moment.

Some victims also spoke of intergenerational silence in that they were not able to talk about the past within their family, despite pursuing campaigns for justice for their loved ones. One victim, whose father and brother were murdered, did not go into details with his children or grandchildren about their deaths, saying: ‘I just buried that all my life and I didn’t want them to be as angry as I would have been.’<sup>53</sup> Other victims dissociated their trauma from the broader conflict; as one victim advocate said, many victims whom she knows have dealt with it through silence: ‘[They] never discuss it, don’t talk about it. In fact, a number of the victims kept talking about their “accident”, [about] the day I had my “accident”.’<sup>54</sup> Victims can also choose to remain silent to exercise

<sup>49</sup> Interview NI08, Belfast, April 2018.

<sup>50</sup> S. O’Neill et al., *Towards a Better Future: The Trans-Generational Impact of the Troubles on Mental Health* (2015) 68–79, at <<https://www.cvsni.org/media/1171/towards-a-better-future-march-2015.pdf>>.

<sup>51</sup> E. Kiza et al., *Victims of War* (2006) 118–119.

<sup>52</sup> Interview UG21, Gulu, July 2018.

<sup>53</sup> Interview NI05, Belfast, March 2018.

<sup>54</sup> Interview NI19, Dublin, June 2018.

their agency, to remember the loss of a loved one in their day-to-day activities, or to memorialize.<sup>55</sup> One victim spoke about the ‘right to forget’ and not engage in transitional justice mechanisms.<sup>56</sup>

Coping mechanisms may vary over time, as the person processes their trauma and accommodates it within their life, either positively or negatively.<sup>57</sup> Dissociation can be interpreted as an organizational strategy by which people accommodate their experience. Self-repair is about finding resolution to part of their harm, whether through their own agency or with the support of others to publicly acknowledge and alleviate that harm. This is not to create a hierarchy of resolution, whereby those who forget and move on or remain silent are positioned at the bottom because of their lack of self-actualization, but rather to appreciate the different paths down which victims can go to get themselves to the position that they were in before the harm or wish to be in afterwards.

Ultimately, the success of transitional justice depends on victims and civil society continuing to pursue accountability and memorialization of the past, which places a heavy burden on victims who maybe do not want to be defined by that one experience or find that such a struggle grinds down their dignity to no avail. Spouses, children, parents, family, and friends become advocates or agents for their own self-repair as they see it: from the child of a Peruvian journalist disappeared by state forces who became a journalist himself when he was older to uncover the fate of his father;<sup>58</sup> to the Nepalese girl who joined the Maoists when her parents were disappeared by state forces to seek justice at the end of a gun;<sup>59</sup> to the sister of a man killed in a massacre in Derry who became a tour guide and civic educator for subsequent generations.<sup>60</sup>

One victim, whose father was murdered when she was a young child and who was subsequently sexually abused, said:

I never had any interest in really anything to do with victims ... [M]y way of dealing with it, ultimately, was to intellectualize it ... and then that made it manageable for me. It depersonalized it. I don't think that I ever felt it as a personal attack, which I think has also helped me to move on at an emotional level but definitely, that was how I dealt with it ... [M]y way of trying to heal myself as I got older was, I think, very much trying to recreate an ideal family. ... [B]ut to me, definitely, looking back, that was me always wanting to have this family that I lost by my father being killed.<sup>61</sup>

While intellectualizing and creating an ideal family could be seen as coping in managing the consequences, by not quite finding a resolution it may not amount to self-repair. Such a struggle against the violence of the past may cause some victims to turn to criminality to support themselves,<sup>62</sup> or to violence to avenge lost loved ones, becoming combatants and even perpetrators themselves. One child soldier in Nepal, who joined the Maoist fighters out of revenge, spoke

<sup>55</sup> L. Dempster, *Transitional Justice and the 'Disappeared' of Northern Ireland* (2019) 34–36.

<sup>56</sup> Interview COL32, Bogotá, February 2019.

<sup>57</sup> Joseph and Linley, *op. cit.*, n. 35, p. 30.

<sup>58</sup> Interview P18, Lima, May 2019.

<sup>59</sup> Interview N11, Kathmandu, April 2018.

<sup>60</sup> Interview NI03, Derry, March 2018.

<sup>61</sup> Interview NI07, Belfast, April 2018.

<sup>62</sup> D. Mendeloff, ‘Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice’ (2009) 31 *Human Rights Q.* 592.

about how she did not view herself as a victim, as she wanted to ‘forget all those things and start a new life’.<sup>63</sup> Another combatant talked about becoming a fighter out of revenge or community protection after close friends and family were killed.<sup>64</sup> Indeed, many armed groups justify their activities on the basis of the historic or perceived collective victimization of communities or groups that they represent. This creates difficulties for reparation programmes at the end of hostilities, in that individuals who have been both victims of violence and perpetrators of violence against others can be excluded from benefitting from any redress.<sup>65</sup>

Attention paid to the physical, psychological, economic, cultural, and social harm caused by political violence is not limited to that suffered by victims and affected communities, but has also been explored in relation to ex-combatants. In her research on Loyalist ex-combatants in Northern Ireland, Lawther highlights the ‘complex interplay of negative emotions’ including avoidance techniques, despair, and alcohol and drug abuse which impacts upon the family and community support networks.<sup>66</sup> Similarly, former British service personnel who served in Northern Ireland also suffer from PTSD and alcohol and drug abuse, as well as silence and social isolation, which have been unaddressed by the state, but instead managed through the support of family and veteran organizations.<sup>67</sup> One police officer talked of numerous traumatic incidents that he witnessed, but said that speaking about such issues was taboo, due to the macho culture and officers’ fear of losing their jobs for being seen as weak or mentally unfit.<sup>68</sup> Some ex-combatants have been able to transmute their past involvement in violence and skills developed in prison into becoming mediators in restorative justice and conflict transformation activities in the community and society.<sup>69</sup> Indeed, the multifaceted identities that people have during violence means that a singular understanding of managing and remedying the harm beyond the formal structures of the state cannot on its own provide a thicker understanding of the place and effectiveness of reparations.

An individual or community may take action with the intention to repair; however, this may require various strategies and coherence between measures in order to attain a degree of repair. Repair may function in a negative way, such as revenge or violence, especially when there are limited forms of support available. As such, while there may be perceived positive outcomes for the affected person, there can be negative outcomes for other individuals, such as their victimizer. The malleability of transitional justice can allow it to mask power struggles, enabling different actors to promote it and instrumentalize it for their own ends, which can obscure effective remedies for victims and may leave them feeling dissatisfied.<sup>70</sup> While self-repair and coping can be seen as ways for affected communities to manage the consequences of mass atrocities, often they are insufficient and inadequate to bring about repair. Psychological counselling

<sup>63</sup> Interview N11, Kathmandu, April 2018.

<sup>64</sup> Interview N111, Belfast, October 2018.

<sup>65</sup> L. Moffett, ‘Reparations for “Guilty Victims”’: Navigating Complex Identities of Victim–Perpetrators in Reparation Mechanisms’ (2016) 10 *International J. of Transitional Justice* 146.

<sup>66</sup> C. Lawther, ‘The Truth about Loyalty: Emotions, Ex-Combatants and Transitioning from the Past’ (2017) 11 *International J. of Transitional Justice* 484, at 501–502.

<sup>67</sup> Forces in Mind Trust, *Call to Mind: Northern Ireland – Findings from the Review of Veterans’ and the Families’ Mental and Related Health Needs in Northern Ireland* (2017) 25, 53, at <<https://s31949.pcdn.co/wp-content/uploads/call-to-mind-northern-ireland-review-veterans-families-mental-health-needs.pdf>>.

<sup>68</sup> Interview NI06, Belfast, March 2018.

<sup>69</sup> Lawther, *op. cit.*, n. 66, p. 502.

<sup>70</sup> J. R. Rowen, ‘“We Don’t Believe in Transitional Justice”: Peace and the Politics of Legal Ideas in Colombia’ (2017) 42 *Law and Social Inquiry* 622, at 644.

and psychosocial support from a range of actors is often needed during and after conflict on a long-term basis, as well as other accompaniment from civil society in the form of informal repair. There is potential for further research beyond the scope of this article on the different coping mechanisms and self-repair that victims undertake during and after violations and how these impact upon their engagement with transitional justice. Now, however, we turn to discuss how informal repair and self-repair relate to each other conceptually.

### 3 | INFORMAL REPAIR AND SELF-REPAIR

Informal repair is distinct from reparations in referring to those community-based measures aimed at acknowledging or alleviating victims' or affected communities' suffering. Informal repair is an alternative, a complement, and even a reaction to legalism, which is often state-centric and human rights framed and prioritizes legal solutions to social problems rather than allowing people to mediate their own resolutions.<sup>71</sup> In a number of countries, victims and affected communities have developed their own processes to acknowledge, recover from, and memorialize the harm that they have suffered and to some extent shame the state for failing to act or challenge its approach to dealing with the past, such as annual memorial prayers at massacre sites, quilts of remembrance, or self-supporting victim groups. While such informal community-based approaches may fill some of the gaps left by a state unwilling or unable to deliver redress, they can also perpetuate local power dynamics and the exclusion of certain individuals or groups.<sup>72</sup> There is also an increasing move to formalize such traditional or community-based approaches into the state's narrative of the conflict, such as in Rwanda.<sup>73</sup> With this in mind, including informal repair in our understanding of reparations and how victims manage their suffering can also provide an insight into the deficiencies of administrative and judicial reparations in redressing certain harms, as well as helping to challenge norms around reparations and established transitional justice practices.

Self-repair is distinguished from informal repair due to the former coming from within those who suffer, whereas informal measures require external involvement and support that is not provided by the state. These distinctions are made in order to better discern the agency of victims and affected communities, the limitations of such measures, and the tensions between them and reparations. Self-repair can also be seen as a process by which victims can find their own resolution of the past through official and unofficial channels. As one victim said,

I have been building my own reparation process, as an individual, as a victim in Colombia because I think one important thing for me is to know what happened. I always wanted to know what happened, why. This is an answer that helps you to heal.<sup>74</sup>

<sup>71</sup> K. McEvoy, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice' in *Transitional Justice from Below*, eds K. McEvoy and L. McGregor (2008) 15, at 16.

<sup>72</sup> L. McGregor, 'International Law as a "Tiered Process": Transitional Justice at the Local, National and International Level' in McEvoy and McGregor, id., p. 47, at p. 61.

<sup>73</sup> P. Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (2010).

<sup>74</sup> Interview COL02, Bogotá, September 2018.

Self-repair and informal repair can also be means of demonstrating agency and not falling into the victim-dependent-survivor category that is often invoked to seek funding for such assistance activities.

The intersection of transitional justice and medicine in how harm is constructed as an aspect of personal identity can also shed light on how such labelling requires a person to continue to perpetuate their identity as a victim in order to benefit from justice or health measures. As one victim caseworker said, such processes require

people to stay sick, because if you recover – well then, you’re no longer eligible for services . . . [I]n a way, it’s like a perverse cycle where people will maintain a psychological injury, because to give it up they lose that victimhood and access to financial services and means as well.<sup>75</sup>

Accordingly, having a process that victims control or own can give them more flexibility and dignity in how they view themselves and shape outcomes to their needs, rather than being singularly framed as victims dependent on the state. As one victim found, ‘you need to really self-care and work out what you need to leave behind’.<sup>76</sup> Indeed, the discourse around the transformative impact of reparations neglects how victims transform themselves and their social situation on their own, rather than through reparative measures and laws. In reality, it is not that reparations in transitional societies are given to victims, but that victims themselves are often the ones with civil society allies advocating to transform society.

For some victims, there can be no trust built with those responsible for reparations, whether the state or other actors. The mentality of some victims and affected communities is to find ways to recover and repair the past themselves. As one victim said,

It was never how somebody gave me money, or somebody gave me help. It wouldn’t have even occurred to us that we needed help; it was just ‘How do we rebuild?’ So, this is how me and my family are. It’s about self-dependence and building life and self-supportive and self-sufficient. That’s how we’ve always been.<sup>77</sup>

Some victims have privately remembered their loved one, whether through maintaining a burial site or a memorial at the place where they were killed. Others have found some solace in the memorialization of their loved one within a broad religious or social transformative narrative. In the absence of state action to provide reparations or justice, such informal repair or self-repair measures have played an important part in enabling victims to live with the past. In Guatemala, ‘beatification, or the declaration of martyrdom’ as recognition of the suffering of people from other institutions – in this case, the Catholic Church – has important reparative value in the face of state intransigence.<sup>78</sup> Similarly, in Nepal, many victims who were disappeared or killed by the state, including civilians and Maoists, were considered martyrs to provide meaning to their deaths as sacrifices for a better society. Memorialization with members of their communities and other

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<sup>75</sup> Interview IR08, Belfast, March 2017.

<sup>76</sup> Interview NI07, Belfast, April 2018.

<sup>77</sup> Interview NI12, London, April 2018.

<sup>78</sup> Interview G09, Guatemala City, May 2018.

victims has helped the families and friends of victims to repair their harm collectively and informally by continuing to acknowledge and remember their deceased loved ones.

Other victims have benefitted from different socializing activities with fellow victims and civil society actors, such as storytelling,<sup>79</sup> arts including quilts of remembrance,<sup>80</sup> gardening,<sup>81</sup> respite breaks, dancing, memorial prayers, commemoration,<sup>82</sup> and ‘body mapping’ to help victims to narrate psychological issues or sexual violence.<sup>83</sup> One Ugandan musician who works with victims and is a local representative spoke about the role of songs in the Acholi culture:

[I]t 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 a means of remembering, 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>84</sup>

Family and victim associations can play a critical part in helping victims to cope or self-repair through solidarity and sharing, as an avenue for the ‘social reconstruction of meaning and identity’ after ambiguous loss caused by disappearances.<sup>85</sup> Organizing themselves into a victim group can be a way for them to collectively self-repair and support each other. As one victim advocate said of their 45-year search for the truth, the ‘campaign is our therapy’.<sup>86</sup> Another victim campaigner said that it would be a ‘slow death to do nothing – the struggle for justice kept us going’.<sup>87</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>88</sup>

For some victims, being able to speak to a friend, family member, or counsellor about their suffering helped to repair the emotional loss. 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 realize they’re just the same as yourself.’<sup>89</sup> Some victims in Uganda shared similar feelings, explaining that at times it was easier to ‘open up’ about common challenges with victims of similar violations, such as sexual violence.<sup>90</sup> However, not everyone has such social support to hand; on the contrary, others suffer in isolation.<sup>91</sup> Furthermore, some victims find that they do not want their social life to be defined by their engagement with a victim group, but to

<sup>79</sup> Interview UG05, Gulu, July 2018.

<sup>80</sup> WAVE, *Quilt of Remembrance* (2014).

<sup>81</sup> Interview IR18, Belfast, March 2017.

<sup>82</sup> Interview UG11, Gulu, July 2018.

<sup>83</sup> Interview UG05, Gulu, July 2018. See S. Gunn, *Body Mapping for Advocacy: A Toolkit* (2018).

<sup>84</sup> Interview UG08, Gulu, July 2018.

<sup>85</sup> S. Robins, ‘Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal’ (2011) 5 *International J. of Transitional Justice* 75, at 93.

<sup>86</sup> Interview NI19, Dublin, June 2018.

<sup>87</sup> S. Guengueng at REDRESS roundtable, ‘Victims of Hissein Habré: The Struggle for Reparations Continues’, Assembly of State Parties roundtable, New York, 7 December 2017.

<sup>88</sup> Interview COL23, Bogotá, September 2018.

<sup>89</sup> Interview NI14, Lisburn, April 2018.

<sup>90</sup> Interview UG05, Gulu, July 2018.

<sup>91</sup> Robins, *op. cit.*, n. 85, pp. 88–89.



have their own life outside it.<sup>92</sup> Others have found focusing on present and future challenges, such as working in a local community organization, rather than dwelling in the past, to be more beneficial.<sup>93</sup>

The role of spirituality and religion in assisting repair through a community support network is well documented in the peacebuilding literature but has been on the margins of transitional justice.<sup>94</sup> Throughout our fieldwork, many victims have benefitted from spiritual support from a range of Indigenous, traditional, spiritual, and organized religions to help them to come to terms with their suffering, as well as economic and emotional support. One psychologist who works with victims of the conflict in northern Uganda spoke of the importance of memorial prayers on the anniversary of massacres as a means to ‘socialize’ and find a ‘personal way of connecting’ with other community members and victims, as well as to ‘cool down’ their hearts and find information about accessing services.<sup>95</sup> For some victims, religion or spirituality offered a ‘divine response’: ‘[since] they can’t resolve this issue by themselves, they simply move on by basically handing that over to spirituality, handing that over to God to deal with’.<sup>96</sup> The religious dimension through forgiveness in some faiths also provided a space for victims to let go of some of the negative feelings of the harm that they had suffered, as otherwise they would be ‘claiming or vindicating our rights for eternity’.<sup>97</sup>

Religion or spirituality can also be a form of informal repair, in that the victim is no longer socially isolated but instead has their suffering acknowledged by the community. Even though this recognition of suffering is not by a responsible actor, it helps to bring private experience of violence into public discourse.<sup>98</sup> Medical practitioners in Uganda who offered to pray with victims added a further level of care and compassion by acting in spiritual solidarity.<sup>99</sup> Informal repair can also include the traditional medicine or ‘home remedies’ that victims use to treat suffering, or massages to deal with chronic pain, due to the cost of professional care and the distance to hospitals.<sup>100</sup> This can fit into Indigenous or tribal groups’ cosmovision and their understanding of being connected to the land and nature, and the need to maintain equilibrium, with time not being linear but circular in their experience of suffering. Moreover, it also speaks to a more collective understanding of repairing harm and identity practiced by Indigenous groups, rather than simply focusing on the individual consequences. For instance, one Indigenous leader in Colombia spoke about the conflict contaminating the land and putting the territory ‘out of balance’. Beyond dealing with physical landmines or unexploded ordinance, the healing practices of the community were required to self-repair the land and their connection to it.<sup>101</sup> Such harm from conflict can also rupture the community’s and individuals’ cultural understanding between generations and some victims did not know how to process and alleviate the harm and ‘re-establish the balance’.<sup>102</sup> This

<sup>92</sup> Interview IR07, Belfast, March 2017.

<sup>93</sup> Interview NI14, Lisburn, April 2018.

<sup>94</sup> J. D. Brewer et al., ‘Religion and Peacemaking: A Conceptualization’ (2010) 44 *Sociology* 1019.

<sup>95</sup> Interview UG11, Gulu, July 2018.

<sup>96</sup> Interview COL03, Bogotá, September 2018.

<sup>97</sup> Interview COL14, Medellín, September 2018.

<sup>98</sup> S. Cohen, *States of Denial: Knowing about Atrocities and Suffering* (2001) 225.

<sup>99</sup> Interview UG31, Lira, July 2018. In Northern Ireland, this would be unlikely to happen, but it is not unheard of.

<sup>100</sup> Interview G01, Plan de Sánchez, May 2018; Interview N25, Nepal, April 2018.

<sup>101</sup> Interview COL09, Medellín, September 2018.

<sup>102</sup> Id.

corresponds to similar traditional spiritual cleansing practices of people and land, where blood has been spilled.<sup>103</sup>

Social and cultural rituals help to situate the rupture in the past and to reconstitute the social and spiritual order, as well as bringing the community closer to the victim in supporting them in their loss. In Uganda, one practitioner spoke about challenging the cultural stigma of children born of war being called ‘killers’ in their community, because their fathers were Lord’s Resistance Army (LRA) commanders, by using traditional cleansing ceremonies to break the ‘contaminations’ in the lineage.<sup>104</sup> One clan chief (*rwot*) and families who have had their children abducted by the LRA have created a memorial hut where they can gather with each other, carry out ceremonies such as calling back the missing person while winnowing the millet, and provide counselling. The hut also houses a museum of objects to remember their loved ones along with their names.<sup>105</sup> Such efforts represent an informal adoption of traditional connections with spirituality, memorialization, and social gathering to build solidarity, especially given the spiritual and psychological trauma caused by not knowing the fate of their loved ones or by having to bury their remains. We should not be too hasty to view traditional practices as immune from critical analysis; they can be ineffective and reproduce gender dynamics and underlying drivers of violence, or suffer the same instrumentalization of political interests by elites as in transitional justice. Nevertheless, they provide an important alternative vision of repair to which reparation processes should be attuned.

While communities can build memorials and organize commemorative ceremonies or informal truth recovery, such efforts may be limited by funding timelines that make them temporary and community or grassroots based rather than an ongoing national or societal memorialization of the past. They fill some of the emotional, temporal, and material gaps left by state reparation processes. If we consider reparations as measures to acknowledge and remedy the harm caused to a victim by an actor responsible for a violation, it seems somewhat inappropriate for a local NGO to make an apology or offer compensation. Traditional justice practices that mediate disputes can provide some acknowledgement of wrongdoing but not full reparations as stipulated under human rights law. For victims, this observance of international norms on reparations may mean little for their daily reality of living with suffering, but ultimately the resources and bureaucracy of the state need to be deployed to deliver reparations in transitional societies, given the political and mass nature of such violations and the symbolic and moral value-laden weight in making amends for the past and preventing its repetition. At the same time, the process of claiming reparations and benefitting from such measures can also contribute to self-repair as a self-reflexive development. As one victim said, the provision of compensation gives victims ‘confidence and inner healing, that whatever happened has happened and will hopefully not happen again.’<sup>106</sup>

Informal repair also risks abuse whether through camouflaging state inactivity or lack of political will, state capture of civil society, or inadequate procedural protections for victims. The work of civil society and international organizations in meeting some of the needs of victims but not others creates a clear schism between those who are lucky enough to benefit and those who are not. In Guatemala, for instance, despite numerous cases and civil society demands for a national disappeared commission that includes a country-wide DNA database and funded forensic

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<sup>103</sup> Interview UG21, Kampala, July 2018.

<sup>104</sup> Id.

<sup>105</sup> Interview UG16, Kitgum, July 2018.

<sup>106</sup> Interview SS5, Juba, March 2019.

recovery team, all recovery of remains of those disappeared during the war and the genocide is carried out by NGOs such as the *Fundación de Antropología Forense de Guatemala* and the *Centro de Análisis Forense y Ciencias Aplicadas*, with the support of the International Committee of the Red Cross.<sup>107</sup> While civil society can support an informal non-political space to attend to some of the needs of victims, it cannot redress the past and carry out institutional reform in the more symbolic or comprehensive way that necessarily requires the state.<sup>108</sup> The Guatemalan government's failure to establish a national disappeared commission has meant that it is the responsibility of victims and civil society organizations to strive for repair; as one actor responsible for identification and exhumation termed it, this is a 'citizen's struggle'.<sup>109</sup> While transitional justice can be a site of struggle through which those wronged can seek legal redress,<sup>110</sup> such munificence can misrepresent the responsibility of the state in victimization and frame victims as 'supplicants begging favors'.<sup>111</sup> In the case of Guatemala, this has seen the national reparation programme (PNR) cynically put up plaques bearing its name on the mausoleums of victims who have been recovered by these non-state actors, which degrades the obligation of the state and makes it just a branding exercise.

#### 4 | REPARATIONS, AGENCY, AND SELF-REPAIR

Reparations can provide a range of measures to assist victims in coping and allow them to choose how to manage their harm, such as through medical rehabilitation, restitution of land, and compensation via monthly pensions. The human rights movement and jurisprudence of regional courts, in particular the Inter-American Court of Human Rights, have played an important part in framing transitional justice in a rights discourse.<sup>112</sup> This has seen increasing advocacy around the right to justice, truth, and reparations that concentrates on the relationship between individuals and groups as rights holders to claim against the state as a duty holder for failing to fulfil its domestic and international obligations to provide reparations. Such a rights-based discourse is helpful in making claims against the state to implement its obligations through domestic courts and international bodies. However, such a discourse inevitably legally flattens the complexity of victims' suffering into juridical categories, and inequitably benefits those who have the resources and capacity to maintain pressure and articulate demands from the state. The limitations of legalism have been well rehearsed in transitional justice, but it continues to pervade our understanding of how people affected by mass atrocities cope with their harm or self-repair.

Further insights can be found in trauma studies literature, which highlights the impact of political violence in rupturing social relationships, which reparations often fail to redress.<sup>113</sup> Some victims may be unwilling or unable to make legal claims due to the attention that it will bring or

<sup>107</sup> D. Martínez and L. Gómez, *A Promise to Be Fulfilled: Reparations for Victims of the Armed Conflict in Guatemala* (2019) 12, 29.

<sup>108</sup> M. Fischer, 'Civil Society in Conflict Transformation: Strengths and Limitations' in *Advancing Conflict Transformation*, eds B. Austin et al. (2011) 304.

<sup>109</sup> Interview G15, Guatemala City, May 2018.

<sup>110</sup> K. McEvoy, 'Law, Struggle, and Political Transformation in Northern Ireland' (2000) 27 *J. of Law and Society* 542.

<sup>111</sup> Pross, *op. cit.*, n. 12, p. 175.

<sup>112</sup> A. J. Carrillo, 'Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past' in *The Handbook of Reparations*, ed. P. de Greiff (2006) 504.

<sup>113</sup> J. Herman, *Trauma and Recovery* (2001) 61; T. J. Bowyer, *Beyond Suffering and Reparation* (2019) 165.

rifts in family relations, or because they do not have the resources or knowledge. Indeed, there is increasing attention paid in the literature to ‘reluctant’ victims – that is, those who do not see themselves as victims or wish to be publicly identified as such, given the possible repercussions for family, social, economic, and private life.<sup>114</sup> Other victims may feel that no matter how the political order has shifted in terms of governance, they can never trust the state and grow deeply disenchanted and defiant, even supportive of dissident armed groups in their anti-state beliefs. Victims of mass violence can lose their ‘trust in the world’, in that ‘they cannot initially act and be active, as autonomous agents in the public sphere’ and are left feeling disorientated, alone, and frustrated.<sup>115</sup> Informal repair and self-repair can play an important part for such victims in finding a way to live with their suffering. This also indicates the importance of ensuring that reparations are accessible to victims by working to remove some of the social barriers that inhibit them from coming forward to claim benefits.

While attention paid to victims’ limited capacity to engage in transitional justice can change over time, there has been increasing research around the representation and instrumentalization of victims’ voices as ‘speaking for’ them.<sup>116</sup> Mechanisms set up under the rubric of doing ‘justice for victims’ can exclude victims through their use of legalese.<sup>117</sup> There can also be structural reasons that allow some victims to self-repair and better articulate their demands, improving their engagement and traction in transitional justice processes, such as those from middle-class, urban backgrounds or those who are ‘celebrity victims’.<sup>118</sup> Indeed, Fletcher and Weinstein warn that while transitional justice can empower some victims in focusing attention on their plight and justice as a moral response in their name, it also risks disempowering them and ‘stripping away the self-efficacy’ of those who have suffered.<sup>119</sup> Instead, a victim-centred approach needs to more effectively challenge the underlying assumptions, better support resilience, ensure the participation of victims in the design and process of transitional justice mechanisms, and take into account the complex reality of victimhood and victims’ ability to self-repair, whether individually or collectively.<sup>120</sup>

The right to reparations mainly focuses on the individual rather than on collective or community aspects of the harm. In Colombia, members of trade unions, human rights organizations, and Indigenous groups all spoke about how the killing of leaders of their organizations impacted their ability to evolve as groups and engage in social activism. This was framed in how violence tears the social fabric more broadly. Indeed, Martin-Baro suggests that dealing with the past should not be limited to individuals but requires ‘socio-political therapy’ for society.<sup>121</sup> Focusing on the effects of violence on individuals risks neglecting the social and cultural experience of harm and

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<sup>114</sup> F. Mégret, ‘The Strange Case of the Victim Who Did Not Want Justice’ (2018) 12 *International J. of Transitional Justice* 444.

<sup>115</sup> K. Andrieu, ‘Political Liberalism after Mass Violence: John Rawls and a “Theory” of Transitional Justice’ in *Transitional Justice Theories*, eds S. Buckley-Zistel et al. (2014) 85, at 100.

<sup>116</sup> McEvoy and McConnachie, op. cit., n. 3, p. 499.

<sup>117</sup> P. Dixon and C. Tenove, ‘International Criminal Justice as a Transnational Field: Rules, Authority and Victims’ (2013) 7 *International J. of Transitional Justice* (2013) 393, at 412.

<sup>118</sup> van der Merwe, op. cit., n. 27, p. 201.

<sup>119</sup> Fletcher and Weinstein, op. cit., n. 8.

<sup>120</sup> Id.

<sup>121</sup> I. Martin-Baro, ‘Reparations: Attention Must Be Paid’ in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. N. J. Kritz (1995) 569–571.

its impact on collective identity and cohesion.<sup>122</sup> Indeed, recognizing the collective self-repair of victim groups in organizing themselves is a critical part of advancing the agenda on transitional justice. As one Colombian civil society actor said,

there's a huge difference between the victim ... and the organized victim, meaning a victim who's part of an organization that has been sort of socialized into special discourse, into relationship with donors, with state agencies – those who are more visible in the public debate as the second group. This other group, it's much larger, and they are basically getting back to life. ... [T]here's a story of resilience that should be told as well, but which is not politically convenient for those who will insist on victims' need to get their reparations.<sup>123</sup>

Transitional justice mechanisms come years and even decades, if at all, after violations occur. When they are established, they are often not aimed at enabling victims to cope but rather at determining criminal liability, truth, acknowledgement, or symbolic measures to repair victims' harm.<sup>124</sup> Reparations can contribute to repairing such harm and alleviate some of the consequences, but not necessarily to coping or self-repair. By this, we mean how victims reorganize, rebuild, and repair themselves in the aftermath of their harm, to manage their needs and to reconcile themselves with their new existence and life path. Victims and civil society organizations are acutely aware of this; as two community psychologists told us, instead of framing victims as 'victims' dependent on the state,

[w]e try to talk about 'affected people', about 'participants', because the idea of a victim being disabled is still prevalent, and precisely something that we work on a lot at the community level is the agency of people. That is to say, the resources, the capacity, the decision making, freedom. Therefore, the word 'victim' is more subject to a passive role than an active role. On the other hand, what we also learn a lot from our approach is heterogeneity. Each person is affected differently because they are a certain age, in a certain context, with certain variables and sometimes when we talk about victims, we tend to homogenize.

... The relatives who are looking for their missing persons, their loved ones – it's not that they stayed in the role of 'I'm going to wait for someone to come and look for me'. ... [T]hey themselves organized themselves, they themselves looked for resources to be able to continue a search that takes more than 32 years sometimes.<sup>125</sup>

Formal programmes identify the relevant harms and the corresponding forms of reparations. However, it may be more helpful to consider prioritizing certain reparations that enable victims to continue with their own reparative process with respect to the harms that the state struggles to repair or care for. The recognition element of reparations has led some to argue that such

<sup>122</sup> A. Pradier et al., 'Between Transitional Justice and Politics: Reparations in South Africa' (2018) 25 *South African J. of International Affairs* 301, at 305.

<sup>123</sup> Interview COL25, Bogotá, September 2018.

<sup>124</sup> O'Connell, op. cit., n. 21, p. 331.

<sup>125</sup> Interview P16, Lima, May 2019.

measures can and should be aimed at ‘restoring’ victims’ dignity and self-worth,<sup>126</sup> or that they are necessary because ‘to get on with life individually and to be able to function properly in the new society, each victim needs a renewed self-confidence.’<sup>127</sup> However, this implies that victims’ dignity, self-worth, and confidence are things that the state has to confer through reparations; otherwise, victims would be lacking without such official processes to ‘make them whole’. This plays into the notion of the passive, vulnerable victim awaiting state validation. This is not to detract from the importance of reparation measures in vindicating victims’ suffering, but rather to appreciate that victims do not necessarily lose their self-worth or dignity, can retain agency, and can be confident in their demands and self. One victim who had suffered multiple violations found the label of victim as ‘disempowering’ in that

it didn’t reflect what I thought of myself ... as somebody who had had something really incredibly negative happen and was able to use that trauma to build resilience and to really grasp life. I have always had an ethos as a result of my father being killed. I’ve always felt that life is fragile and if you have things you want to do, you do them now. ... It has led me to risk-taking things, but it has been a great driving force.<sup>128</sup>

For many victims, reparations are a necessity to ‘regain a sense of control over their destinies’.<sup>129</sup> As one Colombian victim said, ‘we are not seeking charity, we are not seeking humanitarian attention, we are not seeking any favour, but we are seeking that our dignity be recognized and taken care of by the whole society’.<sup>130</sup> Nevertheless, the implementation of reparations needs to recognize and better support victims’ agency in their own self-repair and engagement with informal repair.

For states dealing with mass atrocities that have affected millions of individuals, the demands of human rights organizations to ensure that victims receive ‘full and effective reparation’ may seem unrealistic in the face of all of the urgent competing social demands.<sup>131</sup> International declarations on reparations do not provide any sort of guidance on the implementation of such measures.<sup>132</sup> We do not want to dilute the right to reparations as a legal concept and as a form of justice and accountability. Instead, our purpose is to appreciate the reality of victims’ everyday experience in managing their harm over time. Moreover, providing reparations in the immediate aftermath of mass atrocities may be counter-productive if victims do not feel comfortable in coming forward about their harm or their harm has not fully manifested. Reparations can be a means of claims making, but they can be a Western and top-down perspective framed in a particular way by civil society.<sup>133</sup> In repairing categories of violations and quantifying harm as a cost, reparations

<sup>126</sup> E. Verdeja, ‘A Normative Theory of Reparations in Transitional Democracies’ (2006) 37 *Metaphilosophy* 449, at 451.

<sup>127</sup> S. Vandeginste, ‘Reparation’ in *Reconciliation after Violent Conflict: A Handbook*, eds D. Bloomfield et al. (2003) 145, at 147.

<sup>128</sup> Interview NI07, Belfast, April 2018.

<sup>129</sup> Fletcher and Weinstein, *op. cit.*, n. 8, p. 630.

<sup>130</sup> Interview COL14, Medellín, September 2018.

<sup>131</sup> 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 2005, Principle 18.

<sup>132</sup> Pradier et al., *op. cit.*, n. 122.

<sup>133</sup> C. Sperfeltd, ‘Practices of Reparations in International Criminal Justice’ (2018) PhD thesis, The Australian National University, at 134.



programmes can neglect victims' suffering as a human experience, which can have a 'deadening effect' on them.<sup>134</sup> However, victims also have agency; they can, along with civil society allies, use the language of reparations and rights discourse to shape such measures to their needs. Nevertheless, reparations can never undo the harm, but can facilitate a victim's own journey towards living with the reality of the past. Informal repair and self-repair can play a key role here.

The creation of strong, resilient victims is not simply the goal, as coping mechanisms can sometimes work only temporarily. Self-repair is about finding ways for victims to reconcile themselves with their past suffering. This may work for some victims and survivors or only for a limited time without external support, but the weight of age, disability, further traumatizing events, and psychological trauma can pull them down. It is a general problem of transitional justice that there are often no short-term measures or long-term strategies to mitigate victims' harm. Nevertheless, when reparations are implemented, they have to be evaluated in terms of the extent to which they sustain the lives of the victims, which may involve dependence on the state.

## 5 | STATE DEPENDENCE, RESILIENCE, AND SELF-REPAIR

By dominating the field and insisting that dealing with the past is the *only* way to address mass violence, transitional justice risks obstructing or discouraging victims from owning or making sense of their own recovery and narrative of the past. This is not to undermine the vital role that reparations and other transitional justice mechanisms play, but rather to better understand victims' agency in dealing with the past and how this can fit with these mechanisms to maximize possible redress. It is also to recognize the need for realism and honesty with respect to the potential of reparations, in that they cannot be expected to remedy all of the diverse ways in which harm has impacted upon victims' lives and health. Instead, reparations can provide official acknowledgement of the harm caused, and remedial measures and services to help to live with its consequences.

Greater understanding of the role of victims' agency, resilience, and ability to self-repair can be used to inform appropriate reparations so that the two can complement each other better. One victim viewed agency, resilience, and self-repair as 'bound together, confused, and overlapped' with reparations, and not necessarily as an alternative to them.<sup>135</sup> Victims practise self-care as a response to state inaction, because they have to 'move on', but this does not mean that the state is relieved of its obligations.<sup>136</sup> Some victims self-medicate or seek prescription medication such as sedatives, anti-depressants, and tranquillizers due to a lack of adequate mental health services, which can lead to substance abuse.<sup>137</sup> Where the state is willing and able to help victims, it may not fully appreciate their understanding of harm, their sense of recovery, or, in the case of Indigenous people, their cosmivision.<sup>138</sup> Even when the state does provide reparations, these may be delayed or only partial. For example, one of the survivors of the Plan de Sánchez massacre in Guatemala related how, despite succeeding in their case at the Inter-American Court of Human Rights, which

<sup>134</sup> Bowyer, op. cit., n. 113, p. 148.

<sup>135</sup> Interview COL04, Bogotá, September 2018.

<sup>136</sup> Id.

<sup>137</sup> Commission for Victims and Survivors, *Troubled Consequences: A Report on the Mental Health Impact of the Civil Conflict in Northern Ireland* (2011) 66–67, at <<https://www.cvsni.org/media/1435/troubled-consequences-october-2011.pdf>>.

<sup>138</sup> Interview COL09, Medellín, September 2018.



ordered a healthcare clinic to be set up in the village among other reparation measures, it was not supplied with medicines, and so he grew his own local plants around the clinic using his Indigenous knowledge to meet some of the community's needs.<sup>139</sup>

Vulnerability and suffering can be effectively instrumentalized by victims to morally motivate and shame society into redressing their harm,<sup>140</sup> but they can also be used by the state to normalize service provision to victims as dependents. Seeing victims as powerless and vulnerable neglects their ability to exercise 'agency, resistance and defiance'.<sup>141</sup> At the same time, the responsiveness of the state to vulnerable individuals and groups may risk creating social dependence on government institutions in the long term, rather than finding ways to build community and individual resilience.<sup>142</sup> Reparations are sometimes simply thought of as an one-off compensation award to victims, and some programmes are designed in this way. The lack of responsiveness of the state can make victims with serious injuries feel like 'beggars', in particular as their health often becomes worse over time.<sup>143</sup> Twice over the past 15 years had one Nepalese victim been provided with a prosthetic lower leg by the state, but through wear and tear it was no longer functional and he was having to use parts of the old one to make the more recent one functional, which was supposed to last him the rest of his life.<sup>144</sup>

While dependence is often stigmatized in conservative political discourses, it is 'inherent in the human condition'.<sup>145</sup> Nevertheless, there is a clear duty on the part of the state to be not only responsive but also active in working to minimize dependence.<sup>146</sup> Independence is achieved by providing basic resources to a person, enabling them to make choices unconstrained by inequalities.<sup>147</sup> However, Counter has suggested that the use of socioeconomic packages for victims of landmines in Colombia sought to make them self-sufficient and also *self-responsible* for their long-term recovery.<sup>148</sup> Indeed, the acceptance of compensation may be perceived as relieving the state of all liability or '[letting them] off the hook'.<sup>149</sup> There needs to be a clear distinction between development and assistance on the one hand and reparations on the other.<sup>150</sup> Moving to an active state involves the government providing worth to unvalued or undervalued things, such as caregiving.<sup>151</sup> Transitional justice mechanisms should take into account victims' capacities and

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<sup>139</sup> Interview G01, Plan de Sánchez, May 2018.

<sup>140</sup> V. M. Meredith, 'Victim Identity and Respect for Human Dignity: A Terminological Analysis' (2009) 91 *International Rev. of the Red Cross* 259, at 261–262.

<sup>141</sup> E. Rooney and F. Ní Aoláin, 'Transitional Justice from the Margins: Intersections of Identities, Power and Human Rights' (2018) 12 *International J. of Transitional Justice* 1, at 3; C. Lindsey, *Women Facing War* (2015) 28–30.

<sup>142</sup> Fineman, *op. cit.*, n. 37, p. 134.

<sup>143</sup> L. Moffett et al., *Response to NIO Legacy Consultation: Injured Victims* (2018).

<sup>144</sup> Interview N21, Guluriya, April 2018.

<sup>145</sup> M. Fineman, 'Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency' (2000) 8 *American University J. of Gender Social Policy and Law* 13, at 18.

<sup>146</sup> *Id.*, p. 26.

<sup>147</sup> *Id.*, pp. 25–26.

<sup>148</sup> M. Counter, 'Producing Victimhood: Landmines, Reparations, and Law in Colombia' (2018) 50 *Antipode* 122.

<sup>149</sup> *Id.*, p. 130.

<sup>150</sup> P. Dixon, 'Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo' (2016) 10 *International J. of Transitional Justice* 88, at 106.

<sup>151</sup> Fineman, *op. cit.*, n. 145, p. 26.

the ‘existence of valid vulnerabilities without locking victims into their powerlessness’.<sup>152</sup> In other words, transitional justice mechanisms should also shift victims away from vulnerability and long-term dependence on the state. This requires coordination with social services to maximize benefits and may not be possible for all victims.

In terms of transitional justice, achieving this shift involves selling a long-term view to states and donors through a range of short- and medium-term measures to reflect the different stages that each victim may be at. As one South Sudanese victim said,

We cope at different levels. I have been raped, my sister here has been raped. For her to come out of that situation to accept it may take time, but I live very easily with people – I speak it out and let it go more quickly. ... The issue of mental, psychosocial support is a long-term process.<sup>153</sup>

In Chile, Argentina, and Germany, pension schemes have been established for victims of disappearances, torture, and genocide. Such pensions, while long-term financial commitments, do offer victims financial security to shape their own future beyond their suffering.<sup>154</sup> In Northern Ireland, seriously injured victims of the Troubles campaigned for a pension to acknowledge their harm and provide them with financial security in old age, in the face of increasing austerity measures that were cutting social support. As one seriously injured victim said, campaigning for the pension was part of securing their financial outlook, which would allow them to be ‘self-sufficient’: ‘[We are] frightened of the future the way we are, because we can’t afford to live. If they take away the help we’re getting or reduce it in any way or form, I don’t know how we’re going to cope.’<sup>155</sup> As such, financial awards and rehabilitative measures can provide the tools for victims to navigate their own self-repair journey beyond these formal reparation measures. As one victim caseworker said, ‘most victims I know could take care of their own needs’ and do not want to ‘queue up at [a local victim support organization’s] doors for services’, but have to be ‘badged as a victim in order to get support. There’s something about helping victims on a path to recovery [that means] that they aren’t just stuck in that notion of victimhood.’<sup>156</sup> Perhaps the measure of success in such an approach is victims being emancipated from their victimhood.

The state needs to appreciate that some victims may be dependent on long-term services while others want to be independent and self-sufficient. Ideally, the role of the state should be to facilitate the provision of remedies to victims, including acknowledgement of their harm and wrongdoing by responsible actors, as well as the delivery of appropriate services. At the same time, victims need to be in a position to make the most of the reparations that they receive. This can be through complementary support from civil society or services provided within reparation programmes, such as financial advice, technical support in gathering data or evidence, and psychological support.

We spoke to numerous victims who had received compensation but found that it had to be spent on basic necessities such as medication, physiotherapy, school materials for children, and rent, rather than ensuring that they had some financial security into their old age. Some victimized

<sup>152</sup> Andrieu, *op. cit.*, n. 115, p. 101.

<sup>153</sup> Interview SS5, Juba, March 2019.

<sup>154</sup> E. Lira, ‘The Reparations Policy for Human Rights Violations in Chile’ in de Greiff, *op. cit.*, n. 112, p. 55, at p. 85.

<sup>155</sup> Interview P02, Lima, May 2019; Interview IR07, Belfast, March 2017.

<sup>156</sup> Interview IR08, Belfast, March 2017.

communities in Peru had no opportunity for a ‘second chance’ of a collective reparation award when the first was unsuccessful, due to crops failing or animals dying because insufficient data were collected in the technical report to demonstrate the suitability of such farming activities.<sup>157</sup> These issues reflect the in-built assumption of reparation programmes and those who create them that once victims receive measures, they are repaired or remedied – in other words, no longer a concern. However, how resilient or capable do victims need to be, and how many of their needs should be met by the state? We do not evaluate the success or the longevity of reparation measures, but rather have blind faith that they will repair or heal victims.<sup>158</sup> Compensation through reparation programmes and court orders often tries to reflect the quantification of economic, physical, and moral harm caused by violations, but this is often not enough in mass claims to solely support a victim for the rest of their life, unless they live frugally and are careful financial planners. On the other hand, we have to respect the agency of victims, who as human beings will have good days and bad days even after they receive reparations.

With this in mind, it is important to appreciate that there are also limits to self-repair. In the aftermath of mass atrocities, impunity can prevail, leaving victims to face ‘moral vulnerability’.<sup>159</sup> For some victims, self-repair risks being a way to internalize and cloister their suffering, keeping the broader pattern of victimization hidden and undermining transitional justice. When wrongs are committed against individuals and communities, the failure of the state to provide redress, instead allowing impunity, can compound victims’ marginalization in society and diminish their trust in the state. Reparations by the state can play an important role in remedying this moral vulnerability by giving proper attention to the harm caused to victims and requiring those responsible to publicly make good the wrong.<sup>160</sup> De Greiff connects moral vulnerability or impunity with the development literature and poverty, in that victimization diminishes agency and victims’ ability to aspire to better circumstances by adapting their expectations to what is feasible in the face of an impassive or abusive state.<sup>161</sup> Such moral and social pressures may prevent victims from engaging in their own self-repair process and from accessing more informal repair through civil society. In such cases, there is a clear role for civil society organizations in the aftermath of violence, where the state is unable or unwilling to provide reparations to victims, to offer a means by which victims who are vulnerable are ‘empowered’, through a sustained effort to ensure their inclusion and access to informal repair and other transitional justice processes.<sup>162</sup>

## 6 | CONCLUSION

Transitional justice is not simply manna from above; it can modestly contribute to addressing some of victims’ harm, but it may also undermine the ‘authentic meaning of suffering’ that they

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<sup>157</sup> Interview P04, Ayacucho, May 2019; Interview P05, Ayacucho, May 2019.

<sup>158</sup> Fletcher and Weinstein, op. cit., n. 8, p. 245.

<sup>159</sup> M. Urban Walker, ‘Moral Vulnerability and the Task of Reparations’ in *Vulnerability: New Essays in Ethics and Feminist Philosophy*, eds C. Mackenzie et al. (2014) 110, at 112.

<sup>160</sup> Id., p. 118.

<sup>161</sup> UN, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence* (2013) A/68/345, paras 22–24, at <<https://undocs.org/en/A/68/345>>.

<sup>162</sup> C. Sandoval-Villalba, ‘Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition’ in *Justice Mosaics*, eds R. Duthie and P. Seils (2017) 166, at 189.

experience.<sup>163</sup> This is the true power of understanding the distinctions of personal and group experiences of violence and their relationship with reparations. However, reparations in transitional processes can give way to self-repair strategies when official reparation measures do not provide ‘full’ repair. Some victims who have obtained no redress may exercise their agency by putting moral or social pressure on demobilized combatants who have received benefits as an informal way to punish and ostracize them, risking social disruption and potential communal violence.<sup>164</sup> As such, appreciating the role of self-repair and informal repair can be a means of resistance or defiance against the state’s transitional discourse. Moreover, self-repair and informal repair help to complicate the picture of dealing with the past and the unavoidable gaps of formal transitional justice, which cannot provide ‘full’ reparation. Thus, while transitional justice has been cognisant of victims’ voices in shaping the field and discourses around it, we also have to appreciate their agency beyond the formal structures of redress to better understand their role in managing and mitigating the impact of harm over time, and how self-repair can be supported by NGOs and complement formal reparation processes.

There is also a risk in relying solely on informal repair where there is state capture or social control of civil society organizations as service providers of the state; in this context, such organizations’ need to secure future funding for their work may jeopardize their independence in advocating for victims’ rights. This complements the critical insights in the transitional justice literature on victimhood, which seeks to go beyond the instrumentalizing of victims’ suffering to exposing the power dynamics and assumptions that such mechanisms can by themselves deliver justice or healing.<sup>165</sup> Self-repair and informal repair help to establish a more participatory action model in ‘creating space’ where victims can speak for themselves and develop their own empowerment to seek the change that they want in the world, along with the support of civil society allies.<sup>166</sup> Thus, self-repair and informal repair fit well within the continuing development and understanding of the practice and effective implementation of transitional justice from a bottom-up perspective. At the same time, however, we do not want to paint a rosy picture of victims being their own saviours and thereby ignore the complexities of their lived experience. Victims and society need transitional justice to counter impunity and prevent the repetition of violence. The common sentiment of many victims to whom we spoke was that transitional justice was necessary to redress their harm, with self-repair and informal repair often a default solution to enable living with the past.

Developing the concept of self-repair and informal repair from our empirical research across seven countries for victims who experienced mass atrocities, we suggest a commonality of experience shared by those affected trying to piece their lives back together, but also find that there are unique, diverse, and personal experiences of suffering. Victims and affected communities can attach different meanings to suffering and follow different avenues to recovery, with harm shaping their relationships with each other and their worldview.<sup>167</sup> In our fieldwork, we found that there was a diversity of understandings and expectations of reparations, which were often

<sup>163</sup> Bowyer, *op. cit.*, n. 113, p. 13.

<sup>164</sup> G. Akello, ‘Reintegration of Amnestied LRA Ex-Combatants and Survivors’ Resistance Acts in Acholiland, Northern Uganda’ (2019) 13 *International J. of Transitional Justice* 249, at 266.

<sup>165</sup> A more participatory approach also needs to be carefully managed to avoid entrenching and reproducing power dynamics and dominance by local elites: Lundy and McGovern, *op. cit.*, n. 2, pp. 283–284.

<sup>166</sup> Fletcher and Weinstein, *op. cit.*, n. 8, p. 265; P. Gready and S. Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 *International J. of Transitional Justice* 339, at 360.

<sup>167</sup> van der Merwe, *op. cit.*, n. 27, pp. 201–202.

tempered by the reality of living with the everyday consequences and the need to co-exist with the past to survive. Strategies of self-repair and informal repair took different forms depending on the victim (internal factors) and the circumstances in which they found themselves with respect to the political, social, cultural, and economic context. Self-repair and informal repair thus provide analytical insight in encouraging greater attention to the experience of victims and affected communities in instances when reparations are inadequate or take years or decades to materialize (or do not materialize at all).

There remains an important role for reparations in supporting victims' route to recovery. In this article, we have argued that there is a need to pay greater attention to victims' agency and their ability to some extent self-repair or engage in informal repair processes with civil society actors. Our intention was to shed light on both the implementation gap of reparations and how victims live without reparations, as well as the sustainability of such measures. We have also suggested that self-repair and informal repair can complement reparation measures, making them better attuned to the more ethereal emotional, spiritual, and social needs of victims to which the law struggles to respond. This is perhaps part of a broader critique of reparations that, as measures taken by responsible actors (in particular the state), they cannot by themselves rebuild social harmony and civic trust and fully remedy victims' harm. This is highlighted by the political fragility of countries emerging from mass violence where the political order can change, modify, remove, or scale down reparations to victims on a whim. We should consider what reparations can achieve in terms of the acknowledgement and remedy of harm. Some aspects of acknowledgement and remedy can also be achieved through self-repair and informal repair, which can bolster the benefits of reparations. Importantly, victims can find their own ways to live with the past, but without transitional justice to uncover the truth and deliver justice and reparations, such self-repair or informal repair will always be partial, individualized, and private.

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