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## Belfast guidelines on reparations in post-conflict societies

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# Belfast Guidelines on Reparations in Post-Conflict Societies



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## Introduction

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

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

Furthermore, reparation programmes can be misused by governments to avoid victims bringing further legal claims to national courts, regional or international human rights bodies, or to benefit those loyal to or who fought for the State. Reparation programmes are sometimes conflated with development programmes, diminishing the right to remedy and appropriate measures for victims. Staff and institutional cultural practices within reparation programmes can also suffer from bias or discrimination, leading to secondary victimisation that further marginalises those who come before it.

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

innovative funding tools to offset some of the cost, such as repurposing sanctioned assets that belong to perpetrators, financial debt write-offs or international financial support in exchange for commitments to support victims, meeting other goals of access to justice, inclusion and poverty alleviation. A society can see a return on its financial investment in reparations by ensuring that those left worse off by an armed conflict are able to rebuild their lives, which can help to reduce tensions and the recurrence of violations. In this sense, effective reparations can contribute to strengthening the rule of law and the transition to more just societies.

These Guidelines are designed to share good practice with State and non-State actors on the implementation of effective reparations in post-conflict situations, with the aim of overcoming common challenges identified in extensive research and fieldwork conducted in several societies affected by armed conflict. The Guidelines are based on interviews with over 250 individuals across seven countries: Colombia, Guatemala, Nepal, Northern Ireland, Peru, South Sudan and Uganda. Respondents included victims, ex-fighters, government officials, policy makers, civil society actors, experts and donors. Three workshops were held in Bogota, Geneva and New York alongside an expert roundtable to extrapolate best practices and lessons learned. These Guidelines reflect the findings of a five-year project, 'Reparations, Responsibility and Victimhood in Transitional Societies', funded by the United Kingdom's Arts and Humanities Research Council.

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

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



## General Guidelines

Reparations for violations committed during armed conflicts are a historical and contemporary practice across the world. Reparations are also a legal obligation of responsible actors to remedy the harms caused to victims by the violation of their human rights.

1. **Reparations for Post-Conflict Societies**
  - a. Reparations are a means to remedy the harm caused to individuals, groups and communities by the atrocities committed during armed conflict and to secure peace by ensuring the violations of the past are not repeated.
  - b. Armed conflict includes both situations of international armed conflict between States, as well as non-international armed conflicts between a State(s) and non-State armed group(s).
  - c. International humanitarian law recognised that Parties to international armed conflicts are liable for compensation for violations, but under customary law it extends such obligations to non-international armed conflicts. In addition, the application of human rights law in a situation of armed conflict ensures the rights of individuals and groups to an effective remedy and access to justice.
  - d. Given the gravity and serious consequences caused by gross violations of human rights, a range of complementary reparation measures (restitution,

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

- e. Armed conflict causes a range of widespread loss, long-lasting harms and mass suffering to individuals, communities, society and the environment. Civilians are often killed, maimed, injured, tortured, displaced, and suffer sexual and gender-based violence and other gross violations. These consequences of armed conflict cause physical and psychological harm and disrupt social connections and networks that would normally support victims and assist in recovery and development. Armed conflict also damages key civilian infrastructure, which can worsen shortages of food, clean water supplies, electricity and sewage whose knock-on effects on education, housing, healthcare, nutrition and the transmission of diseases can be devastating. The environment, land, wildlife and natural resources can be deeply affected by armed conflict through weapon contamination, pollution, loss of natural habitats and the poaching of protected species to name but a few. In addition, armed conflict can lead to the destruction of cultural property and traditional practices of communities,

peoples and indigenous groups that can result in loss of inter-generational knowledge, identity and social connection. Reparations should aim to remedy these wide-ranging and devastating harms.

- f. Reparations are a necessary measure to counter impunity for international crimes, alongside States' obligations to investigate, prosecute or extradite those identified as responsible for such crimes. Reparations are not substitutes for trials or truth recovery mechanisms and vice versa, as accountability and access to justice are key forms of reparation. Victims accepting reparations does not discharge the State's obligation to investigate, prosecute and punish those responsible for violations, neither does it extinguish victims' right to truth and justice. Given the gravity and scale of violations during armed conflict, reparations alongside trials, vetting and truth recovery mechanisms contribute to remedying the violations of the past and guarantee their non-repetition. Reparations often need to be complemented by, not substituted for, development and assistance programmes to alleviate the damage caused to communities, infrastructure and the environment as a result of armed conflict.
- g. Reparation measures should primarily re-affirm victims' rights, dignity and equality, acknowledge their harm, relieve the consequences of wrongdoing and fulfil the State's obligations to prevent and remedy such violations. Reparations can contribute to broader societal efforts such as reconciliation, civic

trust, transformative justice and sustainable peace by ensuring that victims are treated in a dignified manner, as rights-holders, and that redress contributes to tackling the root causes of violence by guaranteeing their non-repetition.

- h. As far as possible a reparation process should be designed and operated with consideration for the structural factors that caused violence and victimisation, to avoid their replication or compounding harm through the provision of redress. Victims, and other relevant actors, should take centre stage in reparation processes and be allowed to actively participate in their design, implementation, monitoring and evaluation. A victim-centred approach to reparations involves victims' views and concerns being continually considered in reparation decisions and ensuring that any process contributes to their repair. Ensuring the inclusion of the voices and agency of those most affected by armed conflict can shed light on structural factors of inequality, violence and victimisation that continue to affect them and on how to best address them. Commissions of inquiry, archives, trials, truth recovery bodies' findings and other mechanisms could be useful to uncover such patterns. Reparations should be connected to other programmes aimed at redressing historical grievances and marginalising structures to maximise the effects of reparations, such as addressing corruption and institutional reform.

## 2. Responsibility of the State

- a. States as signatories to international treaties, including human rights conventions, have obligations to ensure victims of gross violations of human rights have access to an effective remedy, whether a State or non-State actor commits the violation. A lack of political will does not detract from the international and domestic obligations to ensure a remedy for victims. For violations committed by State actors, reparations can be a means not only to meet its obligations, but to make amends for the past, gain the trust of victims and affirm their rights, and contribute to non-repetition.
- b. As part of its responsibility, a State should recognise the existence of an armed conflict, victims' rights and its role in violations in any reparation programme.
- c. States can also be responsible for the violations committed by private or non-State actors whether in terms of complicity or due to failure to prevent the violations, protect against them and investigate them. While the obligation to make reparations and to ensure an effective remedy is the responsibility of the State, no matter who is responsible for the violation, private or non-State actors responsible for violations may be obliged to provide financial contributions to the State for reparations it has made to their victims.

### 3. Non-State Armed Groups

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

ex-fighters' relationships with other ex-fighters once deemed the 'enemy', with communities adversely impacted by their violence, and in some cases even with individual victims. Such engagement does not relieve ex-fighters from being held accountable for violations for which they are responsible.

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

For example, in exchange for the restitution of property, apologies, the clarification of events, the identification and location of remains and engagement in community conflict-resolution, among others, perpetrators could be considered

for mitigation of their criminal sentence or other benefits, as long as their punishment reflects the gravity of their crimes.

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

#### 4. Other Responsible Non-State Actors

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

#### 5. Victims

- a. Consistent with Principle 8 of the 2005 UN Basic Principles and Guidelines on a Right to a Remedy and Reparations, victims are those persons, whether



individually, collectively and/or as a legal entity, who have suffered harm as a direct result of gross violations of human rights and/or serious violations of international humanitarian law. A victim's immediate family members and dependents can claim reparations for the harm suffered as a result of the violations. Reparations may also be awarded to 'persons who have suffered harm in intervening to assist victims in distress or to prevent victimization'. What constitutes an immediate family member will depend on the social and cultural context of the victim. Other members of the extended family might qualify as family if there is a close emotional bond between the direct victim of the violations and the other members of the family, if there is economic dependency from one on the other, or in any case if they have suffered harm as a result of the violations. While a 'close emotional bond' can depend on the sociocultural context of a victim, it can also reflect their proximity to, dependence on and living arrangements with those who were killed or suffered violations.

- b. Organisations, institutions and protected areas may also be recognised as victims given the harm social institutions (e.g. hospitals), cultural organisations (e.g. religious) and the environment can suffer during armed conflict. To realise reparations for these legal and natural victims, it may be appropriate to consult with and facilitate the participation of relevant victim groups connected to such institutions or protected areas.

- c. Children have their own right to reparations independent from their parents. Reparations for child victims of armed conflict should be attuned to the long-term impact over formative years of their life and the likelihood of living for decades with their harm. Children born as a result of rape have their own right to reparations separate from their mothers, to reflect the specific harms suffered and the need for appropriate measures to redress them. To enable them to access reparations it is key that their right to identity is duly recognised and operationalised by States.
- d. Harm is experienced by victims in different ways. States and other bodies should be aware of the impact violence has on individuals and groups, depending on their gender, sexual orientation, race, age, disability, ethnicity, socio-economic position, and any other characteristic or identity, as well as how such harm can intersect across multiple characteristics or forms of identity. Eligibility under a specific reparations programme can then depend on the type of violation, harm caused and the appropriate remedy, which may involve prioritising resources for those who are in a situation of vulnerability or that have suffered the gravest violations. The application and determination process is one on which it can be an important to consult with victims to ensure they have an effective avenue through which to express their views and concerns on their harm and appropriate reparative measures.

- e. Victims who suffer harm based on their shared identity, association with a group or type of collective harm may identify themselves as being collectively victimised. It is up to victims to decide whether they want to identify themselves as part of a collective for the benefit of reparations or to individually receive redress. Whether they are delivered individually or collectively, victims still have an individual right to reparations. Such measures should be determined, in consultation with victims, to be appropriate and effective in remedying the harm caused. Collective reparations must be implemented only in relation to those who have suffered violation of their rights. They must respond to the various harms of victims and should be designed with the participation and ownership of victims from affected groups, peoples or communities. The decision making and participation process should respect existing governance structures of ethnic, indigenous and other groups. As far as possible, collective reparations should reflect the collective's understanding of harm, identity, rights and reparations. Alternative understandings of harms for those who experienced them, particularly indigenous peoples, tribal groups and afro-descendants, should be taken into account when designing reparation programmes. This includes being sensitive to their cosmovisions, collective rights and connection to their environment.

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

## 6. Victim Participation and Mobilisation

- a. Victims have a right to effective and meaningful participation at every stage of a reparation programme, from its design to its implementation, monitoring and evaluation. Participation should be transparent and regular to avoid misunderstandings and mistrust. Participation can take different forms

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

- b. Participation should take place bearing in mind gender, ethnicity, race, age, socio-economic situation, forms of victimisation, and other factors that can generate barriers to victims' active engagement in the design, implementation and monitoring of reparations. Participation should be designed in a way that is respectful of other views and traditions.
- c. Participation should be aimed at placing victims at the centre of the design, implementation, monitoring

and evaluation of reparations. Reparations can be a victim-centred process by allowing victims to express their views, needs, expectations and harms. Consultation and participation should be ongoing, promote dialogue, and be a means to inform victims' expectations and reaffirm their rights. Victim participation should not be a perfunctory or empty provision, but should contribute to the continual evolution of a reparation programme and personal transformation for victims.

- d. Staff of a reparation programme and those supporting claimants should treat victims empathetically. The application process should not be an interrogation, but a verification process respectful of a victim's dignity and their central role in the process. Training on victim's rights, dealing with trauma, active listening and data protection must be provided to anyone in contact with victims in a reparation process so as to minimise secondary victimisation.
- e. Victims coming together to mobilise around their right to an effective remedy for violations they have suffered is an important part of leveraging political will to see reparation programmes established. Victim organisations play an integral role in collectively strengthening victims' demands for redress as well as supporting their wellbeing. Not all victims need to be part of a victim organisation and consideration should be made to ensure effective access to redress for all victims, whether affiliated with an organisation or not.

- f. States should endeavour to carry out a wide consultation on developing a reparations policy with the affected communities and key stakeholders, including non-State actors responsible for the violations, to increase visibility of the issue and allow a broad range of input on its implementation. Specific mechanisms such as representative panels or monitoring bodies may need to be established to allow the effective participation of transnational victims, refugees or those who are internally displaced. Consultation should be complemented with information programmes in relevant languages and audio-visual mediums to inform victims of their rights and comparative practices in a way they understand so that they are informed and can provide input into such processes.
- g. Where appropriate to ensure participation, reparation programmes should take a territorial approach with dedicated regional outreach offices, locally staffed with people from a range of diverse backgrounds. Such local offices should act as contact points through which to engage with and provide information to victims and affected communities on an ongoing basis. For refugees or exiled victim populations, information on the programme and application submission should be provided through international outreach offices and/or embassies.

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



donors need to recognise that advocacy and activism around the design, implementation, monitoring and evaluation of reparation programmes might take many years, if not decades, and long-term support should be considered. Funding for civil society activities and programmes by should be considered by donors as a key part of peacebuilding and conflict transformation.

- d. Efforts to redress the past carried out by civil society and victims themselves, for example through commemoration, documentation and dignification projects, can be vital in supporting and complementing reparations and triggering State action. Nevertheless, civil society initiatives cannot by themselves replace the implementation of reparations delivered by those who are responsible for the violations.
- e. Other non-responsible actors in society, such as religious actors, community leaders, and businesses, can play a key role in supporting reparations and non-repetition efforts.

## 8. Interim Reparations

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

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

- b. During hostilities, State and in certain circumstances non-State armed groups have primary obligations under international humanitarian law to alleviate the suffering of civilians and *hors de combat*, including those in detention; provide aid and medical assistance; search for, collect and evacuate the wounded, sick, and shipwrecked; and return the remains and personal effects of the dead. These duties are distinct from reparations, which fulfil secondary obligations to remedy breaches of primary obligations of State and non-State actors.
- c. Humanitarian assistance is an important right of victims in times of armed conflict so as to mitigate the worst effects of warfare and to ensure individuals have access to the basic necessities to live a dignified life. Development initiatives to rebuild infrastructure and opportunities for communities affected by armed conflict often come after the cessation of hostilities. Assistance is aimed at those in need, and development is intended to benefit society as a whole or populations affected by conflict. Reparations intend to remedy the harm suffered by victims based on the violation of their rights.

To respond to violations effectively, reparations need to be established for the life of the victim, whereas assistance or development programmes often follow fixed time plans reflecting donor funding priorities or oversight of expenditure. A longer-term approach to reparations, assistance and development is needed to adequately respond to victims' and affected communities' needs. Governments should recognize and address legacies of conflict through their national development plans but should maintain reparations as a distinct process that complements, rather than replaces, development efforts.

## 9. Making Amends

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

Where they are adequately carried out, making amends can serve to acknowledge victims' harm as well as reduce animosity and community tensions.

## 10. Reparations as Part of Comprehensive Transitional Justice

Reparation mechanisms should be established in coordination with and complementary to other transitional justice mechanisms at the national level and, if applicable, at the transnational or international level. This is not to suggest a toolkit or sequential approach; reparations are politically contentious and technically complex, with each context needing to find its own path to redress the past as long as it takes place within the international standards.

Truth recovery, accountability, vetting, institutional reform and reparations are complementary and overlapping mechanisms to provide a comprehensive response in redressing the past and preventing the continuation of violations. Reparations should be delivered alongside other peacebuilding and conflict transformation programmes, such as the disarmament, demobilisation and reintegration of fighters, to minimise tensions over ex-fighters benefiting from support before civilian victims. These processes may need to be connected to asset recovery bodies or corruption commissions to capture broader structural drivers of violence and to maximise State resources.

# Administrative Framework

## 11. General Considerations

- a. A reparation programme should be guided by simplicity to ensure accessibility and to expedite awards to victims. Complex procedures or burdensome evidential requirements are likely to exclude more victims, increase operational costs and can themselves be a source of harm. In the aftermath of armed conflict where there is mass victimisation, reparations should be delivered through an effective system to administer in a cost-effective and victim-centred way measures which are prompt, adequate and effective for a large universe of victims.
- b. For international armed conflicts a reparation programme can take a number of forms including an inter-State body, claims commission, arbitration or reparation body established within each State to administer the reparations made by the responsible State. This should not be an exchange of the costs of armed conflict between States, but should result in reparations being delivered to victims. States have an obligation to deliver redress to victims within their jurisdiction. Such reparation programmes can use frozen sanctioned assets of responsible actors to fund reparative measures. The use of such assets, especially where they are State-owned, may also be necessary in reconstruction

efforts that requires a balance to be struck between competing needs and ownership rights.

- c. In non-international armed conflicts a reparation programme can be established by the State during the conflict or after the cessation of hostilities, whether through an administrative programme or victims' claims before courts or judicial and semi-judicial bodies. The existence of an administrative reparation programme does not preclude the right of victims to seek reparation through courts. However, if a victim obtains adequate, prompt and effective reparation through a domestic reparation programme, and pursues litigation before a court, the judicial award may need to take into account what a victim has already received for harm caused by the same violation and vice-versa. Reparation programmes should be created for as long as they need to complete their mandate and have sufficient authority to withstand political changes. Where a country has established multiple, overlapping reparation programmes, efforts should be made to streamline and coordinate their frameworks and approaches.
- d. Reparations can be awarded to victims through national or international courts, administrative programmes or/and traditional forums. While efforts should be made to minimise disparities and prevent a hierarchy between different systems and to ensure complementarity across different remedies, victims

have the right to access all available remedies to obtain adequate reparations. This is particularly relevant in relation to federal States where reparation programmes can vary in what they provide to victims within a country. In such political contexts States have an obligation to ensure that the right to reparation is provided in a manner that does not distinguish between the location of the victims, and always bearing in mind the right to equality and non-discrimination. For traditional forums used to support reparations, procedural guarantees will need to be included to avoid marginalisation or discriminatory practices of certain groups, in particular women.

- e. While States have the primary obligation to provide reparations to victims, if they fail to do so through effective domestic remedies, whether judicial or non-judicial, other bodies, such as supranational human rights bodies, could gain jurisdiction to adjudicate on such issues. In doing so, supranational mechanisms should avail themselves of all relevant information to decide how best to address reparation claims, including by considering victims' testimonies, expert views, and in-site visits, amongst others. Supranational bodies might also offer the parties a space for settlement or dialogue so that an adequate road map for reparations can be designed and implemented. Where appropriate supranational bodies may consider existing reparation processes at the national level, so that international decisions

- maximise the impact of any reparations for victims.
- f. Reparation programmes should be established on an authoritative legal basis, such as a legislative act or presidential decree. Such a legal framework informed by consultation and a participative process should set out the purpose, the beneficiaries, the forms of reparation, the requirements that must be met, the duration of the programme, and those responsible for its implementation. The creation of any administrative reparation programme should be based on the most accurate mapping of violations and victimizations, and an adequate quantification of the cost of such a programme during its lifetime, as well as where the resources to fund the programme will come from. An administrative programme should aim to assess and to implement reparations as soon as possible and be prepared to provide lifelong support to victims, where applicable. For these programmes to be able to deliver on their mandates, they need to be bestowed with the necessary powers within the State hierarchy. Oversight mechanisms should exist to monitor the work and impact of domestic reparation programmes.
- g. Victims should have access both to support services to assist them in applying for reparations and to psychosocial assistance throughout the process. Victims can be supported in the application process by civil society organisations, whether funded by the State or donors, so as to allow sufficient coverage



and access to affected populations. Any financial or other cost incurred when applying for reparations should be mitigated by the State, such as filling in forms, providing medical evidence or travelling to urban centres, by developing a process that is accessible, easily understood and sensitive to victims' capacity and needs.

- h. Measures should be taken to ensure that those in situations of vulnerability such as those forcibly displaced or those that suffered serious injury can access prompt reparations to mitigate the deterioration of their situation. Interim measures should be considered to alleviate victims suffering further harm. In this context, special attention must be given to children, including child soldiers and children born out of rape, the elderly and persons with disabilities, and victims of sexual and gender-based violence, among others. Prioritisation to access certain forms of reparation might be a necessary and legitimate tool if it is reasonable, justifiable and necessary.
- i. A State's concern over reparations benefiting or ending up in the hands of non-State armed groups is not a ground to deny or withhold the right to reparation. A victim has a right to reparation and an effective remedy for violations, no matter their background or family associations.
- j. A communication strategy could be developed on how, when and how often victims will be

communicated with. This strategy must be underpinned by principles of effective and regular communication with victims to keep them informed of developments and to treat them in a respectful and dignified way. Any reparation programme should use a range of formats including the media, state gazette, social media or other culturally appropriate means to inform victims of the opportunity and of their right to apply to the programme. It is important to address the victims' queries through a number of responsive systems, including telephone, email, secure messaging and post. Public visibility and communication of developments can be assisted through a website to regularly inform victims, signpost to other support services, and answer commonly asked questions. In resource-poor settings, communication should be provided through local radio, newspapers and other mediums that local populations regularly use.

- k. An independent body should monitor the implementation of reparation programmes whether through a panel, forum or commission with representation from involved government agencies, victims and civil society. Such monitoring should report on a regular basis, have an independent mandate and have powers to make requests, conduct research and give advice to government officials on improving the reparation programme. All reports should be publicly accessible.

The work of such a body could include existing State oversight mechanisms, such as an ombudsman, human rights commission or legislative committee.

## 12. The Scope of Eligibility in Administrative Reparation Programmes

- a. Reparations should be available to all victims of gross violations of human rights and serious violations of international humanitarian law. In terms of who is eligible for reparations, the scope of an administrative programme might be determined based on its temporal parameters for when the violations took place, the types of violations involved, and its jurisdictional and territorial scope. The State should broadly and accurately define the armed conflict to include a wider range of conflict-related incidents to be remedied, such as collateral damage.
- b. Eligibility requirements should be proportionate and effective in responding to the situation of victims, the gravity of the violation and the need to ensure an effective remedy. Eligibility requirements must be revised over time to ensure that they remain adequate for the context in which they apply and effective to provide reparation to all victims.
- c. Administrative reparation programmes can provide a more expeditious process for victims through lower evidential thresholds that reduce the burden of proof on them to prove and substantiate their claims. This

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

- d. Sworn statements from victims and witnesses may be used to corroborate victim's claims, but this may create difficulties for clandestinely committed violations such as sexual violence, disappearances and torture. Death certificates may be available for those killed, but they should not be required in relation to those missing or disappeared. To facilitate the broadest benefit for those who suffer the most, States implementing reparations should consider the evidential presumptions, reverse burdens of proof or lower evidential thresholds that apply in relation to certain violations (for example in relation to those tortured or disappeared and last seen in custody of the State) and for vulnerable victims (for example victims of sexual and gender-based violence and children born as a result of rape).

- e. The assessment process can be split into different categories or stages in order to expedite claims, in line with the obligation to ensure prompt reparations. This can include prioritising the assessment of victims who suffer from ongoing violations, such as disappearances and sexual violence, categorising smaller claims as needing a 'light(er) touch' review than larger claims, or involving victim or civil society organisations to administrate certain reparation measures when appropriate. Alternatively, an initial sifting process (e.g. a traffic light system in which green = meets eligibility criteria and has sufficient evidence, amber = meets eligibility criteria, but needs more evidence, red = does not meet eligibility criteria) can be used to facilitate subsequent determination assessments by coding applications.
- f. The situation of specific victims should be considered when requiring certain evidentiary documents. For example, children born as a result of rape, internally displaced persons, refugees and stateless persons might not have identification documents. For those victims with serious injuries, non-invasive assessments such as a medical or disability review should only be carried out with the consent of the victim, free of charge by trained staff in a way that respects their dignity, and only where there is not sufficient information already in government or civil society records.

### 13. Victim Application and Registration

- a. Data on victimisation should be collected through a victim registry to help corroborate victims' claims through information in government records and in the public domain. The registry should include both individual and collective victims as well as all relevant violations for which victims suffered harm. Confidentiality is the right of a victim, not the State.
- b. Simple and victim-friendly application forms, in paper and/or online, should be designed for victims to complete with their personal details and relevant information on their loss, injury or harm. Application forms should be available in languages used by victims along with accessible versions and in braille. For illiterate victims, assistance should be provided by funded civil society organisations to enable them to complete their application forms.
- c. Application forms and other data collected from other relevant bodies and agencies should be consolidated in a national registry. Such data should be held confidentially, with clear disclosure obligations on how such data should be handled and for what purposes, and to what extent it can be accessed by victims and organisations working on reparations in line with victims' consent. All records should be kept in accordance with the victims' right to privacy and in line with best practices on data protection, storage and handling.

- d. There may be a need to extend the registration period to allow victims who had not heard of or had been initially ineligible for the scheme to register. The need to extend the registration period is particularly important in relation to vulnerable victims who face barriers such as stigma, marginalisation, displacement or ongoing security issues to speak about their suffering to others or to register for reparations at a later stage.

#### 14. Funding, Risk Management and Financial Safeguards

- a. States should establish a dedicated budget line over a number of years to sustainably fund reparations for all victims within a reparation programme. Complex reparation programmes are implemented often for more than a decade and therefore, budgetary planning should be considered under this assumption.
- b. Administrative reparation programmes should not be excessively expensive, bureaucratic systems that have little impact on realising victims' right to reparations. Operational costs should be minimised to ensure that resources are maximised for victims. Those who provide funding to a reparation programme are also responsible for monitoring expenditure and ensuring due diligence and impact. Such budgeting should be publicly available and audited, falling under financial oversight with regular reporting of expenditure.
- c. Funding from other sources can be used to supplement or offset State-budgeted reparation

programmes or for specific projects earmarked in consultation with affected victims. Assets seized and liquidated for the purposes of a reparation programme should be promptly and efficiently disposed for the use for victims.

## 15. Administrative Regulations

- ▶ In light of the preceding guidance this section outlines a miniature version of standards to be considered for the legal framework of a reparation programme. The regulations of reparation programmes should be publicly available in the relevant languages of victims, and guided by the following provisions:
- ▶ Staff appointed to the administrative programme should be trained to be victim- centred and trauma-sensitive in their work. Staff should reflect a broad range of skills and experiences including in legal, anthropological, financial, and medical expertise.
- ▶ A reparation programme should avoid causing secondary victimisation to those before it by taking a do-no-harm approach to its operation.
- ▶ There should be internal complaint mechanisms to address complaints from victims in a prompt and effective way, with recourse to an independent body or commission for inadequately addressed complaints or misconduct. Where the internal appeals processes of the administrative reparation programme have been exhausted, victims can take



recourse to appeal through the courts.

- ▶ Heads or directors of a reparation programme must have the experience and high moral authority likely to command the respect and confidence of victims. They must be able and willing to exercise their functions in an independent, impartial and sensitive manner. They should have no financial or other conflict of interest in the performance of their functions.
- ▶ Administrative programmes should have a governance board that can monitor, advise and analyse the work and impact of the programme. This body must include diverse victim representatives and civil society organisations, as well as other relevant stakeholders.
- ▶ The programme should set out a victim-centred approach in exercising its mandate, for example by defining how victims will participate throughout the process and establishing key permanent bodies for victim participation.
- ▶ Eligibility of which individuals, groups and dependents can apply should be clearly detailed.
- ▶ Information should be provided on how victims can apply and the eligibility criteria that victims must meet to be beneficiaries of reparations. Such criteria facilitate prompt and effective access to reparation and remove any unnecessary burdens from victims.
- ▶ A registry of victims should be set up to account for all individual and collective victims that classify

as victims. This registry should have and respect regulations on data and privacy protection in the processing and storage of such data.

- ▶ A victim application form usually includes certain details including victim's name, date and place of birth, gender, correspondence address, names of their parents (if known), number of identity document (passport, driving licence, national ID), type of violation/harm suffered, date and place of incident(s), details and/or narrative of violations, any corroborating evidence or witnesses, any dependents or carers, and space to indicate what appropriate reparations they would want to receive given the scope of the programme. For those victims who do not have in their possession or have never been issued with personal identification documents, a process should be developed to provide them with relevant documentation for free. This is often a barrier to accessing a remedy for children born as a result of rape, indigenous and tribal groups and those displaced or stateless persons. In any case, the lack of an identification document *per se* should not be used to deny access to reparations.
- ▶ The forms of reparations and benefits that victims could receive through a reparation programme should be made clear to them for transparency and to inform their expectations.
- ▶ The principles guiding the decision-making process of how claims are assessed and determined should

be established in the regulations. These should include, at the very least, the principles of dignity, victim-centred approach, non-discrimination, promptness, effectiveness, do no harm, intersectionality and accessibility.

- ▶ Outcomes of decisions should be promptly provided to claimants in writing and in a language they understand, providing the reasons for the decision, whether or not they are eligible, what they are entitled to and, where appropriate, the appeals process. Letters to successful applicants should, where appropriate, acknowledge the individual or collective as a victim, specify for which incidents, explain what measures they are entitled to and provide follow-up information on next steps. These letters are a key form of acknowledgment and recognition.
- ▶ Annual reporting and accounting of the activities of the reparations programme should be made publicly available, including disclosure of all funds received and breakdown of expenditure; reparations implemented so far; how victims have been communicated with, involved in consultation(s) and participated in the programme; demographic and geographic breakdown on beneficiaries; and other relevant information to assess the effective implementation of the reparations mandate of such mechanism.



Reparations, Responsibility  
 Victimhood in Transitional Societies

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