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Engaging non-state armed groups on reparations

Moffett, L., Hearty, K., Lawther, C., & McEvoy, K. (2022). *Engaging non-state armed groups on reparations*.

Document Version:

Publisher's PDF, also known as Version of record

Queen's University Belfast - Research Portal:

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/ ENGAGING NON-STATE ARMED GROUPS ON REPARATIONS /

Reparations, Responsibility

 Victimhood in Transitional Societies

PROJECT INFORMATION:

This handbook is produced as part of the 'Reparations, Responsibility and Victimhood in Transitional Societies' project - a three year project funded by the Arts and Humanities Research Council (AHRC). It intends to inform Non-state Armed Group (NSAG) engagement on reparations in societies transitioning from conflict.

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

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

Interviews were conducted with over 250 individuals across the six case studies, including victims, ex-fighters (state and non-state actors), civil society, reparation programme staff, CSOs and donors. The project partner is the REDRESS Trust, with collaborating organisations of the International Centre for Transitional Justice (ICTJ) and the International Organisation for Migration.

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

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EXECUTIVE SUMMARY

Non-state armed groups (NSAGs) are one of the most numerous actors involved in armed conflicts around the world. Although they are not parties to international law, where they are sufficiently organised, sustain violence and/or control territory they can have certain obligations under the laws of war and be responsible for certain human rights obligation and international crimes. A lesser considered role is armed groups / contribution to reparations processes, aimed at repairing the harms caused to victims by armed conflict. For both legal and political reasons, NSAGs have been traditionally overlooked as stakeholders in reparations processes. However, transitional justice practice and policy is increasingly recognising the role that NSAGs can, and should, play in reparations. NSAG involvement in reparations can introduce helpful insights and practices from restorative justice to transitional justice contexts. This can help broaden the issue of repair beyond individual victims and offenders by looking at the wider impact that armed conflict has on communities. This thicker understanding of reparation can contribute to the conflict transformation process by moving beyond a narrow retributive agenda that is most often directed against NSAGs to look to social co-existence and set the foundations for future reconciliation.

NSAGs can offer compensation, apologies, truth, information, restitution, and assurances that displaced persons can return to their community. They can also use reparation processes to offer guarantees of non-recurrence, thus feeding into broader transitional justice goals of reconciliation, coexistence and sustainable peace. This requires NSAGs to engage with victims to identify and determine what victims need from the reparation process and how NSAGs might deliver this. An engagement of this kind is not without challenges for NSAGs and victims alike. NSAGs will not be able to respond to all the material and symbolic needs of victims, but they can seek to repair past harms in the most appropriate way and to the fullest degree that they can.

Engagement with reparations processes can help to humanise ex-fighters who were responsible for past harms. Reparations processes can provide a platform for dialogue 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 that this involvement has. However, involvement in reparations processes can help prevent the stigmatisation of ex-fighters, help ex-fighters to 'make sense' of their new post-conflict identity, and allow ex-fighters to 'make good' with the victims and communities impacted by their violence. Engaging in reparations processes can also transform ex-fighters' relationships with other ex-fighters once deemed the 'enemy', with communities adversely impacted by their violence, and in some cases even with individual victims.

INTRODUCTION

International human rights law, international humanitarian law, and transitional justice have all increasingly accepted the responsibility of victimisers to address the harms they caused to victims during armed conflict. Yet focusing only on state actors overlooks the harms committed during armed conflict by a range of non-state actors. This raises important questions about the role that armed groups can and should play in reparations processes designed to repair the harms caused to victims. At the very least, NSAG engagement in reparations processes might force those responsible for past harms to accept responsibility for these harms, acknowledge the suffering caused to their victims, and offer some form of accountability for past harms. However, based on our field research, we submit that NSAG engagement in reparations processes offers other significant benefits, including better meeting the needs of victims, helping to 're-humanise' those previously involved in armed conflict, and underpinning broader processes of community and societal transformation.

This handbook seeks to inform and shape best practice around NSAG engagement with reparations processes after armed conflict and/or as part of broader transitional justice processes. We are aware that NSAGs in post-conflict contexts come in very different shapes and sizes with varied levels of organisational capacity and leadership. Some have political wings and some do not. Some have been legalised and others have not. Some have morphed into de facto veterans' organisations, while others have effectively left the political stage.¹ We are primarily concerned with those NSAGs and their former members (referred to herein as ex-fighters) who retain sufficient organisational capacity to engage in the collective design and delivery of reparations to victims and communities affected by their past violence.

We aim to highlight the challenges and opportunities NSAG engagement with reparations processes brings in transitional justice contexts. Using extensive comparative field work, we offer suggestions as to how these challenges can be managed and overcome and how these opportunities can be identified and built upon.

The handbook is structured as follows. The first section briefly sets out the basis for NSAGs engaging in reparations processes. Here the concept of reparation, the uncertain legal status of NSAGs under international law, and the processes used during, and the outcomes of, NSAG engagement with reparations processes are discussed. Second two outlines restorative justice principles and practices. It then turns to consider how restorative justice insights have been applied to peacebuilding, including in various transitional justice contexts. The potential value of adopting a restorative justice approach to NSAG reparations is then explored. Section three moves on to explore the value that NSAG reparations have for victims. It discusses how engagement between NSAGs and their victims is necessary if the needs of victims are to be identified. It then offers examples of the various need victims have expressed across our study sites, and examines how NSAGs have responded to these various needs.

Section four concludes with an examination of how NSAG engagement with reparations can feed into wider transitional justice goals. This includes exploring how ex-fighter involvement with reparations can humanise them, help their reintegration into post-conflict society, and underpin conflict transformation processes by changing relationships between ex-fighters from opposing sides, communities harmed by their past violence, and their victims.

1. REPARATIONS & NSAGS

This section provides an overview of reparations and how NSAGs can get involved in delivering them. It begins by briefly defining what the term reparations means, before outlining some examples of different types of reparation. Following this, it then discusses the legal position of NSAGs under international law and how this may impact on their potential involvement in reparations programmes. It then explores why NSAGs might engage with reparations processes, outlining the political, moral and social reasons noted from existing practice. It concludes by critically examining how NSAGs can deliver reparations. Here, the processes that NSAGs use to deliver reparations and their outcomes are identified and discussed.

1.1 What are reparations?

Reparations are measures aimed at remedying the harms caused to victims. These measures might be *material* whereby something tangible (e.g. compensation or property) is offered to victims or they might be *symbolic* by offering something intangible (e.g. truth or an apology) to victims that expresses certain values. Reparations can be provided to *individual* victims for the specific harms they have suffered (i.e. compensation for being injured) and/or they can be made *collectively* to entire communities that have experienced structural harms (e.g. reconstruction of bombed healthcare clinic). Likewise, reparations might be offered by *individuals* personally responsible for harming victims or they may be offered *collectively* by NSAGs to those harmed by the group.

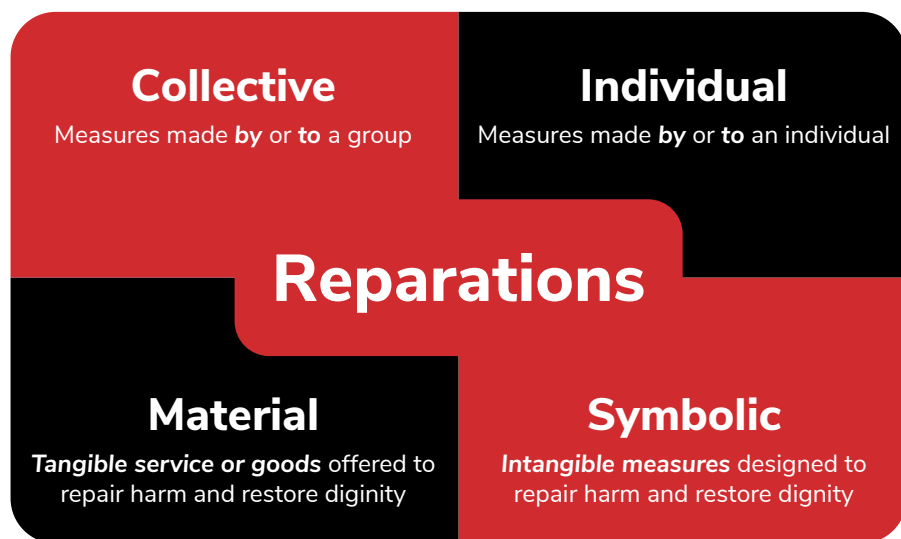
The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation state that '[a]dequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.'

Reparations should include *restitution, compensation, rehabilitation, measures of satisfaction and guarantees of non-repetition*.²

- ▶ **Restitution** involves reinstating the victim in the position they would have been in if the harm had not occurred, which can include 'restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.'
- ▶ **Compensation** involves providing victims with money in a lump-sum or periodic payments to alleviate the consequences of the harm they suffered.
- ▶ **Rehabilitation** involves providing a range of social, medical and legal services that can allow a victim to improve their quality of life and live a dignified existence.
- ▶ **Measures of satisfaction** publicly vindicate victims' dignity and cease the harmful effects of violations. They include: acknowledgement of responsibility, public apologies, dignification, uncovering the facts, recovery, identification and appropriate funeral rites of the remains of those disappeared and missing, holding to account those responsible, and the commemoration of victims.
- ▶ **Guarantees of non-repetition** are institutional, legislative and organisational reforms aimed at removing the root causes of violations. Guarantees may include reform and training on human rights and international humanitarian law for members of the military and police, the creation of an independent judiciary, the promotion of mechanisms for conflict resolution and codes of conduct in line with international standards.

These five forms of reparations are intended to be used together in a holistic approach to redress gross violations of human rights and serious breaches of international humanitarian law. For example, the payment of compensation as a material act, can also carry symbolic meaning too if payment is taken as recognition of a wrongful act being committed against the victim.

A collective apology from a NSAG might reflect the views of its individual members and provide public acknowledgment to of victims' suffering. Other victims, though, might feel that a collective apology inadequately recognises and remedies the harm they personally suffered. Some members of the NSAG may even disagree with issuing an apology as a betrayal of what they fought and their comrades died for. There are advantages and disadvantages of material, symbolic, individual and collective reparations. Each have their benefits and shortcomings, but together they aim to provide a more rounded account of redressing victims' harm.



1.2 The international legal position of NSAGs

Whether NSAGs have an obligation to provide reparations for the harms they caused remains unclear under international law.³ The initial difficulty is defining the conflict taking place and the actors involved in it.⁴ It is well established under International Humanitarian Law (IHL) that conflict-related activities of NSAGs create obligations for them for non-

international armed conflicts under Common Article 3 of the Geneva Conventions, and in particular where they are well organised and exert control over territory under Additional Protocol II.⁵ Yet it remains still hotly debated whether they have human rights obligations.⁶

Under IHL, Additional Protocol II to the Geneva Conventions of 12 August, and Relating to the Protection of Victims of Non-International Armed Conflicts requires NSAGs to have territorial control and be organised under a 'responsible command'. Common Article 3, by contrast, has a lower threshold requiring only organised command and sufficient intensity without territorial control.⁷ The reality remains, though, that many NSAGs have caused harms in non-international armed conflicts (i.e. a conflict between a state and NSAG within the territorial jurisdiction of the state rather than an international armed conflict between two states) that did not cross the IHL threshold.⁸ Moreover, IHL is silent on many of the most pertinent questions about reparations: what violations give rise to a right to reparation for victims; whether there is an individual and collective right to reparation, what the most appropriate enforcement mechanism might be, and how this might apply to non-international armed conflicts.⁹

In human rights law, NSAGs are not parties to human rights conventions. Their responsibility only applies in the rare circumstances where they control territory.¹⁰ Unlike the victims of state violations, victims of NSAGs cannot address an NSAG through mechanisms like the European Court of Human Rights or the United Nations Human Rights Committee.¹¹ However, there is increasing practice of commissions of inquiry and other similar bodies calling upon NSAGs to make reparations for gross violations of human rights.¹²

Under the rule of attribution for state responsibility, NSAGs can assume obligations to address their past violations if they succeed in taking over the country; essentially this becomes the responsibility of the State.¹³

While this rule was crafted with accountability in mind,¹⁴ it is unlikely to include situations where the political wings of a rebel group participate in a power-sharing arrangement or take power through democratic elections.¹⁵ In International Criminal Law the leaders of NSAGs can have individual criminal responsibility for international crimes of the organisation. Yet, there remains reluctance to recognise the collective legal personality of NSAGs.¹⁶

Even if we focus on NSAG contraventions of the Geneva Conventions or gross human rights violations, it still remains unclear as to how reparations may be extracted from them. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions notes the ‘unacceptably large deficits’ in international legal frameworks to hold NSAGs to account.¹⁷ While International Criminal Law may provide a possible solution by focusing on the individual responsibility of those apprehended,¹⁸ the experience of the International Criminal Court to date shows that these individuals often do not have the resources to make reparations themselves.¹⁹ There is the additional difficulty that many NSAGs are prohibited or proscribed as illegal or terrorist organisations under domestic and/or international law. This makes it increasingly difficult for humanitarian actors to engage with them in furtherance of reparation programmes. In other words, law does not get us very far in explaining how and why armed groups should provide reparations.

1.3 Why do NSAGs make reparations?

In the absence of clearly defined legal duties to provide reparations, NSAGs may choose to make reparations for political, social and moral reasons. Political reasons might reflect the ideological basis for the group engaging in armed conflict and/or the transitional justice process. Moral reasons might reflect a determination to right past wrongs by repairing injuries caused. Social reasons might speak to fostering peaceful co-existence between ex-fighters and victims in a post-conflict society.

These motivations might overlap,²⁰ but they provide insight into how to engage armed groups on reparations.



Political reasons

Offering reparations to civilians can reinforce an armed group’s self-image as honourable fighters. NSAGs like the Nepalese People’s Liberation Army (PLA),²¹ the Irish Republican Army (IRA), and the South African National Congress (ANC) have offered measures of truth and apologies where civilians were harmed contrary to established codes of conduct. While taking responsibility for these harms, offering reparations allows NSAGs to frame the harms caused to civilians in such instances as ‘excesses’ or military ‘miscalculations’ rather than being deliberate violations.²²

NSAGs may even see involvement in transitional justice processes, including reparations processes, as the political continuation of previous armed conflict. This is particularly true where NSAGs believed they were fighting to create a more just and equal society or for national liberation from a coloniser/occupier. One Fuerzas Armadas Revolucionarias de Colombia/Revolutionary Armed Forces of Colombia

(FARC) commander told us that the reparations process is another 'tool to continue the struggle' to improve society.²³ An ex-fighter from Guatemala similarly informed us that 'we used to be guerrillas, now we are helping victims with the consequences of the war...We are still fighting and struggling here'.²⁴

This belief may be particularly strong among senior members of NSAGs who aim to convert the group into a political party.²⁵ Getting the group to collectively engage with transitional justice processes like reparations can build political support and help them integrate into the democratic process.

Moral reasons

Offering reparations can reflect a willingness of the NSAG to 'make good' for harms committed during the conflict. Ideology, culture, and political context can all influence whether or not a NSAG will try to make amends for their actions following an armed conflict. This is particularly true where the NSAG has been deeply embedded within their community and wishes to maintain community relations throughout the transition from armed conflict.²⁶

Engaging with reparations can also reassure victims, and society more generally, that the NSAG are truly working towards peace.²⁷ A commitment to peace means trying to repair relations with those harmed by the group, even if this process discomfits the NSAG. This was particularly notable in Northern Ireland with those disappeared by Republicans. As one interview stated, 'there's a great incentive on Republicans to try to finish that, to try to locate all the bodies because it is a huge black mark on them of the disappeared people'.²⁸

Social reasons

Engaging with reparations processes can also enable NSAGs to contribute to the social reconstruction of society following conflict. While ex-fighters might still be reluctant to recognise the legal or

moral wrongdoing of their actions in light of the group's ideology, they often have to share a physical space with victims. This requires them to engage with the human cost of their violence.²⁹ Showing a commitment to repairing the injury caused can generate greater social cohesion and lead to a more peaceful co-existence. This can help to reduce feelings of resentment towards and threats of revenge against ex-fighters.

Reparations can also repair divisions within NSAGs and their support base over in-group harms committed during conflict. The ANC, for instance, established the Skweyiya and Motsuenyane Commissions to investigate ill-treatment and torture against their prisoners and detainees. This led Nelson Mandela to accept collective responsibility for these harms on behalf of the leadership and apologise to the victims.³⁰

1.4 How can NSAGs make reparations?

Processes



There are different processes by which NSAGs can try to repair harms caused to civilians, its community, its own members, and members of other groups:

- 1 Direct provision to victims** - NSAGs can provide reparations directly to civilians who are injured or killed by the group or those who have had their property requisitioned. This might be through courts they operate within the areas under their control,³¹ or they might simply recognise the right of victims to claim redress and agree to provide reparations to those affected by their violence.³²
- 2 Claims-making:** NSAGs can claims-make on behalf of their communities. For instance, in South Sudan members of the Sudan People's Liberation Army-in- Opposition (SPLA-IO) demanded \$200,000 compensation from Kenya to return two Kenyan pilots who had crashed landed in South Sudan killing a local woman and livestock.³³ Claims-making might also feature in some peace negotiations. Rebel groups in the Central African Republic made a range of demands on behalf of victims and affected communities, including housing for those displaced and the establishment of a compensation fund for victims.³⁴ However, as one FARC commander stated, NSAGs are not 'guardian angels' of the civilian population.³⁵ Rather than advocating for all victims they may only claims-make for their own community or supporters.
- 3 Supporting in-group dead/injured:** NSAGs may provide support to injured comrades or to the family of comrades killed in combat. For example, in Uganda the Lord's Resistance Army (LRA) wanted compensation for losses they themselves suffered during the Juba peace negotiations.³⁶
- 4 Remedying intra-group harms:** NSAGs also respond to harms committed within the group against its own members. In Nepal we interviewed a number of former Maoists who spoke about sexual

assaults of female members being punished and support being given to the victims.

- 5 Remedying inter-group harms:** some NSAGs try to repair harms committed against other armed groups.³⁷ For example the FARC and the Ejército de Liberación Nacional/National Liberation Army (ELN) signed a pact in 2010 acknowledging the harm done to each other and their communities and apologising for this. Compensation was also provided to some civilians.³⁸ In Yemen there is a strong practice of settling killings through inter-tribal mediation and reconciliation for violence between armed tribes.³⁹

NSAGs have also committed to reparations as part of various peace agreements, in response to the recommendations of truth commissions, and to comply with special criminal courts like the Jurisdicción Especial de Paz/Special Jurisdiction of Peace (JEP/SJP) in Colombia. This has seen armed groups committing to a range of reparation measures under peace agreements including: compensating victims;⁴⁰ helping to recover those disappeared;⁴¹ returning property to its rightful owner;⁴² contributing to a trust fund for victims' rehabilitation;⁴³ restitution of land and property;⁴⁴ repatriation of those displaced;⁴⁵ and measures of satisfaction and *guarantees of non-repetition*.⁴⁶

Outcomes



- 1 **Restitution:** NSAGs have sought to restore victims to their pre-harm position by, for example, returning stolen property to its rightful owner. In Timor Leste ex-fighters engaged in symbolic ‘acts of reconciliation,’ that included returning stolen property.⁴⁷
- 2 **Compensation:** Although there is logistical, procedural and legal difficulty in recovering the illegal assets of NSAGs, some NSAGs have shown a willingness to financially contribute to victims’ funds. For example, the FARC agreed under the 2016 peace agreement to surrender over \$300 million in assets as a contribution to reparations. However, four years later it had only surrendered \$12.9 million, citing the government’s bad faith in dealing with the past and ongoing violence against demobilised ex-fighters.⁴⁸
- 3 **Rehabilitation:** in Northern Uganda former LRA fighters who were abducted, forced to fight, carry goods or sexually enslaved, run community projects to support other ‘girl mothers’ through counselling, education, childcare and seeking reconciliation with their communities.⁴⁹

- 4 **Satisfaction:** NSAGs have made important statements to victims that acknowledge their responsibility for past harms, clarify certain facts about the commission of these harms and, in some cases, express remorse for these harms. In Northern Ireland, republicans and loyalists have carried out internal investigations into murders to determine and clarify facts. These have in some cases resulted in apologies, especially for those wrongfully identified as informers.⁵⁰ The importance of acknowledging responsibility and providing victims with the truth was noted by one FARC commander who told us: ‘I think it is very important that we have those conversations where we tell people, look, we did this this way and this is why. [...] First of all, that the truth be known. And that people know the truth about what the FARC did’.⁵¹
- 5 **Non-repetition:** NSAGs have also used reparations to let society know that they are determined to prevent past harms happening again. Often this is framed in terms of using their past experiences to help future generations avoid a renewal of armed conflict. A former FARC commander argued that: ‘You have to tell the society that “look the conflict with the FARC is over and they are asking for forgiveness”. [...] I think that it is a first measure of reparation and those types of actions are what we are going to end up doing as a form of reparations, especially what regards the future, with the new generations, because it is about having the capacity to tell them that look, we acknowledge some error, we acknowledge a conflict and we are doing this to change it’.⁵²

During the course of our discussions, NSAGs showed a broad understanding of reparations. Many regarded reparations as something that should be offered collectively to communities affected by violence rather than just to individual victims. For example, it was suggested that any sanctions placed on ex-fighters under reparations programmes should be ‘constructive’ and premised on bettering the community as a whole:

Putting a person in jail is not constructive... We speak of constructive penalties, then dedicate to it, you brother, who left responsible for this activity in such a part or for the disappearance of such a thing six months to work with this community, you who are a teacher, you who know such a thing, then teach here in that school for six months during a year. ... we see it this way, otherwise the prison sentences are useless. Prison sentences wouldn't build anything.⁵³

It was even proposed that reparations might provide a useful opportunity for NSAGs to reflect on their responsibility for environmental harms:

In terms of reparations, ... we tried to frame this was to not look at specific victims, human victims, but look at the environment as a subject for reparations with them, because they have... I mean they're blowing up the pipeline, they've caused such a huge amount of environmental damage, which they haven't been held accountable for. And I thought this was a sort of face-saving opportunity to address the harm they caused without having to present them to certain people who would say, you know, you are guilty of doing this to me.⁵⁴

Many interviewees also shared their belief that reparations should “acknowledge collective responsibilities, but also individual responsibilities.”⁵⁵ This reflects that NSAG engagement on reparations needs to involve the input of individual ex-fighters who were personally responsible for certain harms. These ex-fighters would be working together with others to repair the harms caused to victims, communities and the environment. Reparations as a form of accountability requires those responsible to answer for their actions and to make amends to those affected.

2. THE VALUE OF RESTORATIVE JUSTICE IN POST-CONFLICT TRANSITIONS

In this section we briefly outline the concept of restorative justice and explore its potential value in post-conflict transitions. Although originating from efforts to address crime and anti-social behaviour in ‘settled’ democracies, restorative justice has been increasingly applied in various transitional justice contexts.

2.1 What is restorative justice?

Restorative justice offers a different way of understanding crime, human rights abuses or anti-social behaviour. It regards such actions as less of a breach of the law and an offence against the state and more as an act of ‘harm’ involving three stake-holders – the offender, the victim and the community.⁵⁶ In contrast to retributive justice, restorative justice shifts the emphasis away from the punishment of an offender and towards the responsibility of the offender to try to repair the damage done to both victims and communities. It also seeks to hold offenders accountable in ways other than punishment, while at the same time offering them a reintegrative pathway back into the community, once their responsibilities to repair have been addressed.⁵⁷

Restorative justice practice often involves bringing together all the affected parties of a particular offence in order to collectively resolve how to deal with the consequences of the offence.⁵⁸ Restorative justice processes include: victim offender mediation, community mediation, family group conferencing and other techniques designed to address harms, facilitate ‘making amends’ and restore relations between the stakeholders.⁵⁹ Restorative justice also has a structural dimension which is aimed at transforming human relations and society more generally,⁶⁰ by encouraging a broader societal commitment to human rights, non-violence and social justice.⁶¹

2.2 Restorative justice and post-conflict transition

Restorative justice has been increasingly applied to transitional justice in countries emerging from conflict in contexts as diverse as the Solomon Islands, Timor-Leste, and Pakistan.⁶² In post-Apartheid South Africa, the Truth and Reconciliation Commission was explicitly framed as an instrument of restorative justice designed to foster reconciliation.⁶³ The 2016 peace agreement in Colombia also incorporates elements of restorative justice (e.g. the truth commission and reparations programme) as well as a way of rationalising reduced sentences for those who plead guilty to war crimes and human rights violations and contribute to truth recovery and reparations.⁶⁴ In Northern Ireland, following the IRA and Loyalist cease-fires in the mid-1990s, community-based restorative justice projects (in many instances staffed by ex-fighters) have played a central role in replacing paramilitary punishment violence and improving relations between historically disaffected republican communities and the reformed police service.⁶⁵ Likewise, in the Democratic Republic of Congo, restorative justice has been proposed as the most appropriate framework for addressing the needs of former child soldiers and encouraging reconciliation with the victims and communities harmed by their past actions.⁶⁶

Support for practical reparations framed as a variant of restorative justice evident from our fieldwork. One Colombian interviewee spoke of the need to approach reparation “in a logic that is alternative, different, new, to understand justice, retributive justice, restorative justice... within a logic of reconciliation.”⁶⁷ Similarly, a Peruvian observer noted the importance of processes of dialogue that underpin the restorative justice approach: “the first thing that should be done for the victims, and in general in the country, is to open spaces of dialogue, opportunities to debate, to change opinions, recognise mistakes, give apologies, in a very honest open way.”⁶⁸

More generally, restorative justice was also discussed in our fieldwork as a source for the ‘vision thing’ – what Simpson and others have referred to as a more ‘holistic’ way of understanding the structural causes of violence but also what must be done in order to ‘engage the underlying causes of violent conflict and the diversified lived experiences of injustice.’⁶⁹ Restorative justice is more than a focus on efforts to repair individual harms between victims and ex-fighters. It has an explicitly transformative component that resonates strongly with the more expansive understanding of reparations that was reflected in our research. For example, as one former Peruvian ex-combatant told us:

Reparations require not only that they repair the right to life, to health, to education, to incorporation, to non-exclusion, among many other aspects, fundamental rights of the person who is systematically and permanently violated by the state. People have experienced constant social violence and constant political violence, sometimes at the direction of the state as well as armed groups so we can only repair one aspect of a conflict – the armed actions – this is not the whole context of reparation. The people not only need to repair roads, posts, classrooms, we only need that there is respect for their human condition, like every human being, to live in dignity, to develop and to progress.

In sum, restorative justice is therefore a key theoretical and policy framework for addressing past harms in societies emerging from conflict. More specifically, reparations are a significant element in that process 'restoring' individuals, communities and societies which have been deeply affected by past violence and of transforming the underlying causes of violence.



3 NSAGS AND THE NEEDS OF VICTIMS

In this part of the Handbook, we consider the relationship between reparations, NSAGs and victims. To do so, we explore and make recommendations on the following three areas: the value of reparations for victims; victim's material and symbolic needs; and whether victims will accept reparations from NSAGs. Victims engagement on reparations by non-state armed groups is a fundamental component to ensure that such measures are agreed as suitable and adequate in meeting victims' needs. Such engagement may take time or be through trusted interlocutors to facilitate reparative outcomes, such as the recovery of remains or the return of those displaced to their homes. This encounter with victims, armed groups or ex-fighters and perhaps interlocutors needs to recognise victims' interests, the power dynamics in engaging with armed groups and their role in taking active responsibility in making amends for their past actions.

3.1 What is the value of reparations for victims?

The extent to which some transitional justice processes are truly 'victim centric' has been debated among scholars, policy makers and practitioners. In some cases, it has been argued that these processes are driven primarily by the priorities of the post-conflict state, rather than the victims who suffered harm. Reparations, however, have been noted as the most tangible commitment towards addressing the harms suffered by victims of conflict. Ideally, then, there should be consultation with, participation by and ownership of reparations processes by victims. For their part, the direct engagement of ex-fighters in reparations processes can help these actors take fuller responsibility for the harms they have caused and understand the need to repair their victims.⁷⁰ This requires NSAGs to engage with victims to ascertain what their specific needs are and how ex-fighters might address these.

One former ELN commander recognised the importance of consulting with and listening to victims:

It's important for them that victims come forward and talk about what they suffered throughout the war so that the different actors can assume the responsibility of what has been done. And in relation to that, it's important for them that those victims are repaired, physically, morally and even environmentally.⁷¹

Another interviewee from Guatemala similarly argued that “we see reparation is an agreement that is reached with people who were victims of a criminal act and that is born from that group how they want to be repaired.”⁷²

However, not all victims will be able or willing to engage with ex-fighters like this. Fear, trauma, anger, suspicion and rejection of political compromises in peace settlements might prevent victims from engaging with NSAGs.⁷³ Nor is there any guarantee that victims will accept reparations where they are offered by NSAGs. The natural scepticism that victims might have about the motives for ex-fighters engaging in reparations was demonstrated by the comments of one victim from Northern Ireland who said “if anybody came to my door I wouldn't entertain them. I don't think they'd be genuine.”⁷⁴ Similarly, a woman whose husband was disappeared in Nepal argued that while an apology and information on where her husband is buried would be welcome it would not be a substitute for accountability:

We personally can forgive if that person came up and told us about where the body is, but we can't support an amnesty. It cannot be allowed just by saying where the body is, because we have been suffering for so long and now, if they come up and say sorry and tell us about where the body is, that would not be enough.⁷⁵

Victims might also feel that reparations processes are being done to, instead of for, them, leaving them reluctant to participate in a process where they have had no input or agency.⁷⁶ This again highlights the importance of involving victims in the design and delivery of reparations processes. One innovative feature of the lengthy political negotiations between FARC and the Colombian government in Havana Cuba (2012-2016) was the involvement of victims. During these negotiations a delegation of victims flew to Havana in 2014 ‘to present their proposals and expectations about peace-building and the satisfaction of victims’ rights’.⁷⁷ Encounters like this had a profound effect on the political negotiations,⁷⁸ with negotiators turning their attention to devising measures to satisfy victims’ needs.⁷⁹ One international peace-maker interviewee suggested that it also had an effect at an organisational and human level amongst FARC ex-fighters:

I think some of the engagement that they [FARC] had with victims in Havana, was a learning experience for them. I think it changed them as well as people. So, while maybe at the start, engagement with victims was about developing their political credibility, building the political party and so on, it's moved on from that. Certainly, I sense in talking with individual FARC members that there is an appreciation of just the extent of the pain that was caused and an acknowledgement of having contributed to that.⁸⁰

3.2 What do victims want?

Reparations should meet the everyday material and the symbolic needs of victims. However, different victims will have different needs and different views of what adequate reparation is for them. Factors like harm suffered, gender, disability, age, location, indigenous background etc should all be considered by reparations processes. For example, victims of NSAG violence may demand redress like compensation or

rehabilitative healthcare services where they are left seriously injured.⁸¹ In other cases, displaced victims might seek the return of their property and further reassurances about safely returning to live there again. Others still might be seeking information about the fate of missing loved ones.

Below we discuss the various needs of victims that arose during the course of our fieldwork: **restitution; repair; acceptance of responsibility; accountability; truth recovery; compensation; acknowledgement; apology; and guarantees of non-repetition.**



Restitution and repair

The importance of restoring the property rights of displaced and dispossessed victims was noted during our fieldwork. This includes allowing the displaced to return to their property and to enjoy their property rights free from any ongoing threat from NSAGs. One Colombian observer put the matter as follows:

All the armed actors have a responsibility regarding victims in terms of truth, justice and even reparations in terms of, for instance, if I have taken over lands, part of the reparations is that I give them back. The fact that they are in my name and I have a dummy and I have three paramilitaries or my entire family has a direct line to paramilitaries, you have to have them as part of the mechanism reparations. Independently of whether you will return to the lands, because they are yours and I have taken them.⁸²

For some victims reparations also represented an opportunity for ex-fighters to repair damaged relations with the wider community. Particularly in Colombia, this has seen ex-fighters getting involved in collective reparations processes like demining programmes and rebuilding infrastructure in conflict-affected communities. For example, one interviewee told us of a case where:

Some family members [of victims who were killed while being held by the FARC] said, we want FARC to build a very important school in the two municipalities in which they were held, kidnapped, a school for children of those municipalities. I think that's kind of a viable, doable project.⁸³

A former member of the Colombian guerrilla group M-19 even suggested that reparative engagements like this could help ex-fighters

be more readily accepted in post-conflict society:

You see the former members of the FARC building roads or aqueducts, or farming, but it's not just for them, it's really with the people. That's very important ...I mean, it's not about people ghettos. ... I believe that if people see the benefits there are also lowered stigmas, prejudices, fears, besides that they are no longer armed, that is, what is sometimes not seen here is that it is one thing to be a guerrilla and another thing to be an ex-guerrilla. If you laid down your arms and you're in the community working, then you don't have to be afraid of it anymore.⁸⁴

Acceptance of responsibility and accountability

Interviewees also suggested that reparations processes represented an opportunity for ex-fighters to accept responsibility for the harms they caused to victims. Ex-fighters bearing responsibility for their actions in the presence of their victims created some sense of accountability. This was highlighted by a Colombian interviewee who argued:

What more sanction can be when a child, who is the son of the victims, because of those who died there, because a little poisoned by what his relatives told him, that those murderers, the little boy stands in front of [FARC Commander Pablo] Catatumbo, [and says] you are a murderer, you killed my father. That's already a shame, humbly, brother, here I don't start explaining to the child, because the child doesn't understand, how is war and how is the dynamic of the confrontations in society. But to endure that already begins to be a pity, for me it already begins to be a pity because I am there humbly, telling you I am here humbly facing the music for what we have done to you, brother, you are

an affected one and chat with him, explain to him, let us reconstruct between the two, between all fraternity and harmony. Let's rebuild what was damaged in the back.⁸⁵

Accepting responsibility has also been a pressing issue in Uganda too, with one observer telling us that:

If we take the case of the LRA if justice is to be done then the perpetrators should come and openly tell the truth and admit that we were responsible, we are responsible for the atrocities that took place here. As the LRA or government or whoever was responsible and then that should now lead to reconciliation and say 'yes we have hurt you' and then the people also say 'yes you have hurt us but we have to move forward'.⁸⁶

However, another interviewee from Uganda spoke of the cultural importance of taking collective responsibility for the harms caused by ex-fighters. This transformed the reparation process from being between victim and ex-fighter to one between the victim's clan and the clan of the ex-fighter. Elaborating on this, they informed that:

If I commit an atrocity, I can't just write a cheque, no. And our culture even...however much money I have, I can't just get out my chequebook and say how, how much? And then write a cheque. That will not be acceptable. What is acceptable is that my clan should sit...I can contribute, but all members of my clan have got to come because people must feel...everybody's wallet must be hit, so to speak.⁸⁷

In Uganda, of course, this approach reflects wider reintegrative ceremonies like the mato oput rituals that are rooted in local culture and tradition:

For those who are still coming we demand for them to undergo those reparations by the rituals because where they are being staying [sic] we believed they had been doing bad things, killing, stealing which is a bad habit in Acholi so reparations are needed like doing the rituals.⁸⁸

For other victims, however, accountability can only be delivered through retributive processes of criminal justice. As one Guatemalan interviewee argued:

They are aware and know perfectly well that the search for access to justice is one of the reparation measures they are requesting, that those responsible for the facts be sought and that they be tried. It is not only the economic, basic services, but also that those responsible for these facts are tried and convicted on the basis of a process of investigation. They know perfectly well that there are mechanisms to investigate and judge a responsible person because that is part of the work that has been initiated for many years now with the families in the case of Rio Negro.⁸⁹



Truth recovery

Truth is thought to be a form of reparation in itself. It has been further suggested that truth is a prerequisite to accepting the ‘obligation to repair’ that underpins any understanding of reparations.⁹⁰ If NSAGs are not willing to engage in meaningful truth recovery victims are unlikely to trust their commitment to repairing the damage they have done. Even if they are unable to offer much by the way of material reparation to victims, ex-fighters can at least contribute to truth recovery. For example, one observer from Peru commented that:

In the case of Sendero or MRTA, they are not in a position of being able to give material reparations. However, I do think that they can provide moral reparations - transmit experiences, recognise mistakes, clarify past acts. I think that this the kind of work they can contribute to.⁹¹

Some victims we spoke to made a connection between truth recovery and reparations. One woman whose husband was seriously injured in an IRA bombing told us that her view of reparations was that,

We would like to know who done it. Now, we don't want anything, we just want to know who it is. I don't want any convictions or anything because well, what's the point? And they have to live with themselves, but I would like to know who done it and obviously, their theories behind it and has it progressed them in any way.⁹²

Another Colombian interviewee said,

When you talk to the victims, when you talk to the displaced population, you realise that there is a very strong demand, especially in terms of truth.

*There is a need to link the issue of clarification of truth and justice with the issue of reparations. Of course, people will say, give me housing, give me work and so on. But there is also a very strong demand in terms of what happened, why it happened, and who is responsible.*⁹³

In cases where victims have been disappeared, truth recovery can help to relocate their remains and allow the family to hold an appropriate burial ritual for their loved one. The importance of the link between truth recovery and the recovery of remains was discussed by one interviewee from Nepal who said,

*If that person is killed or disappeared, then they must have been buried somewhere around this place, we know that, we all know that they are buried somewhere here in this place. [...] If the family get only the dead body or if they can do the last rituals that would give a lot of satisfaction to the victim's family.*⁹⁴

The importance of recovering the remains of disappeared victims has been acknowledged by NSAGs too. One former FARC member told us that working on the disappeared was “one of our main concerns” as it would demonstrate that “FARC is serious about finding the remains of those disappeared.”⁹⁵

Compensation

Conflict victims can often come from socio-economically deprived backgrounds. This means that many of them may prioritise material measures that will improve their everyday life. In Colombia, for example, it has been reported that the three main expectations of victims were compensation (18.3%), accountability (13.6%), and truth (11.4%). These victims also prioritised access to and support for productive projects, access to health and education and favourable access to

lines of credit.⁹⁶ In Northern Ireland, too, victims have been active in demanding compensation for conflict-related injuries. Indeed, victims group WAVE have led a long-term campaign for severely injured victims to be given a pension.

Compensation can be a divisive issue among victims. Some may reject the offer of compensation as ‘blood money’, particularly if it is not accompanied by sufficient acknowledgement of wrongdoing. One victim from Northern Ireland informed us that for them “it’s [reparations] not just about money”, but about “truth, disclosure, honesty.”⁹⁷ However, other victims might see a symbolic underpinning to the awarding of compensation, while others still might see it as helping to meet their everyday material needs. As one interviewee from Peru pointed out to us: “there are some [victims] who say well, I’m not here for the money, and there are others who say well, that serves me well for my children, for my grandchildren.”⁹⁸

Acknowledgement and Apology

As well as being an opportunity for ex-fighters to accept responsibility, some victims believe that reparations can provide a platform for NSAGs to acknowledge that the harms inflicted on their victims were wrong. In some cases, victims believe that an apology would be an appropriate form of reparation to provide this acknowledgement. As one interviewee in Nepal stated:

*It would be good if they could apologise. So, they should apologise not for the one who came into the war and fight, but for those who were innocent and who died or who were killed innocently. In that case, they should apologise, definitely.*⁹⁹

Another victim from Nepal noted that while an apology could not meet the material needs of victims, it could nonetheless meet important symbolic needs: “apologizing will not bring the dead people back

but definitely, it will give some kind of satisfaction to the family of the victim.”¹⁰⁰ Acknowledgments of responsibility and apologies by armed groups can contribute to vindicating victims’ experience and good name, as well as sending important moral messages on the wrongfulness of such past actions to prevent their repetition.

Guarantees of non-repetition

Victims also linked reparations with guarantees of non-repetition. While preventing past harms from happening again is naturally an important part of any conflict transformation process, it is especially important for victims who often have to live side by side with ex-fighters who have previously harmed them, their families or community. Preventing the repetition of past harms is something that victims often expressed in our interviews, that they did not want their children or family to undergo the suffering they experienced. One interviewee from Northern Ireland told us:

*I have moved on. My thought pattern has now changed over the years basically because as I have grown older I want progress. I just want things to move on and to normality [sic] and also for my children, I just want normality for them... I'd like them just to live in a normal society here where everybody can tolerate each other.*¹⁰¹

Ex-fighters who are committed to conflict transformation are often the key constituency in providing guarantees of non-repetition,¹⁰² whether that is through encouraging their comrades to remain committed to a path of non-violence or dissuading young people from becoming involved in a renewal of armed conflict.¹⁰³ Some of the ex-fighters we interviewed openly spoke of how their efforts to prevent violence recurring were a distinct form of reparations for victims and communities affected by past violence. A former FARC guerrilla stated that:

*Engaging in politics, leaving behind our weapons and joining the democratic way is a form of reparations. So, from the perspective of FARC, we sent a signal that we want to do things differently, we want to do things right... So obviously, you can't make somebody forget that their son has died. We can't give them back, we can't make people forget that they're wounded, that they have been displaced but in terms of political action we can guarantee that this can never happen again to somebody else. At least not from our side.*¹⁰⁴

3.3 Will victims accept reparations from NSAGs?

If NSAGs fail to accept responsibility for and acknowledge the harms caused to victims it is unlikely that victims will accept reparations from them. This is particularly true where ex-fighters continue to present themselves as heroes¹⁰⁵ or justify their past actions.¹⁰⁶ From our research we found that where NSAGs engage on reparations, victims have often initiated the process – sometimes through a commonly trusted local intermediary or interlocutor. Victims can, either through community, religious and traditional leaders or through more formal transitional justice processes, engage in dialogue with ex-fighters on what appropriate reparations can be made. This engagement can practicably help with the delivery of reparations. For example, it can ensure that careful



consideration is given to the exact phrasing of apologies and statements of acknowledgement. This would minimise the likelihood of victims being re-victimised through NSAG statements that allude to strategic reasons for the harms suffered or damage the reputation of the victim by questioning their innocence.

In other cases, victims may seek reparations from NSAGs through established processes or mechanisms. For example, in Ireland the families of a number of people disappeared by Irish republican organisations obtained information – and in the majority of cases the return of remains – through the British and Irish government supported Independent Commission for the Location of Victims' Remains (ICLVR).

At the same time, though, victims may be further victimised by their engagement with NSAGs or by the politics around dealing with the past. For instance, in Nepal there were calls to prioritise redress to 'real martyrs' (i.e. killed Maoist fighters and supporters) over civilian victims.¹⁰⁷ There are similar contests in South Africa and Timor Leste.¹⁰⁸ It is also true that an acknowledgment of harms by ex-fighters may not be sufficient to assuage the retributive demands of some victims. Invariably, there will be some victims who maintain that ex-fighters should 'pay a price' for the harm they caused rather than rebranding themselves as peacemakers.¹⁰⁹ For example, in Spain there are ongoing criminal proceedings against former ETA leader Josu Urrutikoetxea despite the group apologising to victims and ending hostilities in 2017.

4 NSAG REPARATION & 'HUMANISING' EX-FIGHTERS

In this section we examine how NSAG engagement with reparations processes can help to 'humanise' ex-fighters who were responsible for conflict-related harms. We discuss how reparations processes can help reflect that ex-fighters may have suffered harms themselves, how reparation processes can help ex-fighters reintegrate into the community, and how reparations processes can feed into conflict transformation processes.

4.1 Ex-fighters as 'complex' victims

Many studies across transitioning sites have shown that ex-fighters have themselves been subjected to violence, human rights abuses and other forms of injustice and discrimination.¹¹⁰ Often they experienced individual, familial or communal victimhood that pre-dated or directly led to their involvement in conflict.¹¹¹ This, however, is problematic for a transitional justice logic that tries to neatly separate 'victims' and 'perpetrators' into different categories. In reality, ex-fighters blur the lines between these two abstract categories, representing what are often referred to as 'complex' victims; those who are both victim and perpetrator.¹¹² This view of ex-fighters duly recognises individual choice and agency but also places victimhood and perpetratorhood within the broader causes, context and consequences in which violence occurs.

Interviewees from across our case study sites spoke to this reality. In Nepal, for example, a number of interviewees told us that the Maoists often recruited child soldiers whose parents had been killed by the government.¹¹³ Likewise, in Northern Ireland ex-fighters told us that the perceived need to defend their communities against violent attacks encouraged recruitment to republican and loyalist NSAGs.¹¹⁴ In other cases, more localised experiences of harm motivated people to become involved in organised political violence. This included gender-based violence. We were informed that young women

in Colombia often joined FARC to escape abuse and violence at home:

Some ex-combatants... they come from situations ... of extreme violence in their home where it is presumed that you would be protected and where you were also sexually abused or where you had heavy workloads in terms of the household. And they come into a structure that to some degree offers some protections, that allows you to look after yourself [so that you do not get pregnant], it makes you look after yourself, where your sex life is more controlled because it does not allow you to get with whomever, and does not allow for whomever to get with you. ... A girl of 13 or 14 could easily say, when I got to the guerrillas, I got a boyfriend, that was authorised and so he was my husband, so then nobody beat me, nobody raped me.¹¹⁵



Memorial to executed injured guerrillas by the army in an ex-fighter community in Guatemala

Ex-fighters also experienced torture, sexual violence, the extrajudicial killings of friends and family and a range of other harms by the state, rival NSAGs and, in some cases, their own organisations. During our interviews ex-fighters shared their experiences of torture at the hands of state forces in Northern Ireland, sexual violence committed by and forced upon them as bush wives in Uganda and the massacre of nearly 250 Shining Path inmates at El Frontón and Lungancho prisons in Peru. Unsurprisingly, ex-fighters continue to suffer physically and psychologically as a result of their involvement in conflict.

Ex-fighters also face complex emotional and ideological challenges during the transition from armed conflict. Some might struggle to redefine their 'conflict identity', their sense of self and their relationship to their community in a new, non-violent context.¹¹⁶ Others may struggle to accept the political compromises required to make peace when set against the sacrifices made by themselves and former comrades.¹¹⁷ For others still, the process of re-examining the impact that their involvement in conflict had on their relations with their own families, communities and, of course, victims can be problematic. Once the intensity of conflict has passed ex-fighters must confront the mourning of lost friends and family members, feelings of guilt, fear, regret and mistrust or humiliation experienced during interrogation or imprisonment.¹¹⁸ This reality was spelt out by one Peruvian interviewee who is now involved in the provision of reparations:

There were also companeros from my side, that were close friends that died, so one carries that guilt and lives with that responsibility, you ask yourself, 'why I am still alive, why is that friend not alive and why am I alive', so those things you have to live with, and it's very difficult.¹¹⁹

The emotional and psychological challenges that ex-fighters face when reflecting on their past was even acknowledged by one victim in Northern Ireland who conceded:

These people... that planted the bombs, that caused this carnage and this misery and this grief... it must affect those guys because nobody is a machine. It must affect them all these years later the damage that they've caused. In their quiet moments when they're sitting there they must sit there and think 'shit, what have I done'¹²⁰

The dialogue that would naturally accompany ex-fighter engagement with victims on reparations would help to humanise ex-fighters by revealing the causes and lasting consequences that involvement in conflict has for them. This would locate their past actions within the appropriate context. One interviewee from Colombia spoke to this reality when commenting that:

When victims see the individual that caused harm to them and see the individual in the context in which that person made decisions and took action, they are much more comprehensive about how life sort of put them on the wrong side of the moral divide.¹²¹

A Ugandan interviewee made a similar point, arguing that:

If those LRA commanders could come out and just apologise, you know that you committed some issues or you had some issues with a particular community... it will send a message, you know like OK this person is remorseful so people will start looking at the circumstances under which you did that, instead of saying 'OK you Stephen you do this, you know you did it out of your will so we're going to blame you entirely for it.'

But the moment you mentioned that word 'I'm sorry because of what I did', people will start saying 'well I mean who are we to judge?' You know Vito he was simply abducted, it wasn't his will to join. Of course we even know there are studies that indicate that some people joined voluntarily, but again I think people will start now to have that conversation, 'probably yes he was yes abducted, he was under orders that's why he did whatever he did'.¹²²

Even if victims do not accept that ex-fighters' actions were legitimate, they may nonetheless accept that they are 'complex' victims and that, as such, they should have their needs met like other victims do.

4.2 Reintegrating demobilised ex-fighters

In the aftermath of armed conflict ex-fighters are usually addressed through Disarmament, Demobilisation and Reintegration (DDR) processes,¹²³ rather than reparations processes. DDR processes, though, are primarily premised on reducing the security risk posed by ex-fighters rather than addressing the needs of ex-fighters as 'complex' victims.¹²⁴ These processes do, however, aim to facilitate the social and economic re-integration of ex-fighters, promote ownership of conflict transformation among ex-fighters, and end cultures of violence.

Given the complex challenges faced by ex-fighters discussed in the section above, it is important that they are both offered repair and reintegrated into post-conflict society. Failure to do so may create future generations of 'victims of the peace'.¹²⁵ For example, ex-fighters might be stigmatised upon returning to their communities. One female ex-fighter from Nepal told us how:

I first faced a lot of stigma but not only from the society but from my family as well, also from my husband's family as well.

...Many people treated me like I was abnormal or a different personality because I had joined the Maoists. I felt I had no choice, two options basically, either suicide or survive. So, I chose to survive joining the Maoists... and when I returned back from the camp after the Comprehensive Peace Accords, then there were many stigmas I faced. ... I was treated very differently, like I was a danger, and it was humiliating, frustrating and it was not tolerable.¹²⁶

As well as being pushed to the margins of post-conflict society, ex-fighters can also be stigmatised where and when they become the focal point for retribution. For instance, in Peru the fear of reprisal, criminal prosecution, and incurring heavy financial penalties has left many ex-fighters hesitant about making reparations and community engagement.¹²⁷ One former member of Túpac Amaru Revolutionary Movement thus argued that the requirement to make financial reparations was a form of punishment rather than an act of repair to the victim. This made it, they argued, a disincentive for ex-fighters to engage with reparations.¹²⁸

If ex-fighters remain stigmatised and excluded from having their needs met through reparations processes they may become a security threat. This not only endangers the conflict transformation process but it also blunts the reparative potential of guarantees of non-repetition. When ex-fighters become 'victims of the peace' that are placed outside reparations processes they can, as one Colombian observer warned, push back against DDR processes,

The people who are actually actively engaging in warfare, and they're the ones to decide whether we're going to have a continuation of war or peace, are those mid-range commanders. And that is where reintegration has been really poor.

The problem with those midlevel commanders is that they know how to get guns, they know how to recruit, and they really know how to carry on in these practices. And since they haven't really been dealt with, they see a void.¹²⁹

Reparations processes therefore represent an opportunity for ex-fighters to not only repair victims but also to contribute to their communities in a way that can help them deal with the challenges of transition and ease the reintegration process. Granted, many ex-fighters will see any reparative engagement with the community as a non-violent extension of their previous service to the community during armed conflict.¹³⁰ As discussed earlier in the case of the FARC commander who described reparations as 'a tool to continue the struggle'¹³¹, community work is viewed as an extension of their involvement in 'the struggle' rather than as a route to post-conflict reintegration. For others, like the previously mentioned Guatemalan ex-fighter who redefined their identity from guerrilla to someone now "helping victims with the consequences of the war",¹³² reparations are a means to mediate their changing sense of self through practical engagement in the provision of reparative measures and making a tangible contribution to their community.¹³³



Working closely with their communities to deliver collective reparations then, can help ex-fighters to make sense of their pasts, to contribute to their community through productive behaviours and to facilitate processes of ‘delabelling’ or ‘destigmatisation’. Ex-fighters can shed the image of the guilty ‘Bogeyman’ by working in ways that benefit post-conflict communities.¹³⁴ This reflects the importance of what is often referred to as ‘re-integrative shaming’ in restorative justice processes.¹³⁵ Rather than continuing to stigmatise ex-fighters as outcasts, re-integrative shaming treats them instead as good people who have done a bad thing.¹³⁶ Informing restorative approaches to peace-making, re-integrative shaming allows ex-fighters to take ownership of their past acts in a supportive environment that promotes connection and reintegration with their community.¹³⁷

‘Making good’ and re-integrative shaming can have a noticeable impact on the ground in post-conflict communities. Interviewees from Colombia noted how the involvement of ex-fighters in community work had helped to change attitudes towards ex-fighters. For example, one former member of the Colombian guerrilla group M-19 told us that the on the ground presence of FARC ex-fighters ‘in the community working’ had ‘lowered stigmas, prejudices, fears’ about ex-fighters.¹³⁸ Similarly, another interviewee noted that ex-fighters engaged in collective reparations are no longer seen as ‘the monster there in the courtyard’ but an ‘active actor in peacebuilding’.¹³⁹ This is in stark contrast to the shaming and stigmatization of ex-fighters that can sometimes be found in transitional contexts.¹⁴⁰

4.3 Reparations and Conflict Transformation

NSAG involvement in reparations processes can also feed into wider conflict transformation processes. Conflict transformation in its simplest terms means changing the personal, structural, relational and cultural aspects of conflict.¹⁴¹

It involves breaking out of destructive patterns and cycles of conflict by changing relationships between individuals and within society. Ex-fighters, because of their involvement in past violence, can bring a particular ‘moral agency’ to the process of conflict transformation through their socially visible engagement in such work.¹⁴² Moreover, reparations can contribute to conflict transformation by changing or transforming the circumstances in which people previously lived.¹⁴³ Often these circumstances involved exclusion, deprivation and inequality that caused and subsequently sustained armed conflict.

Interviewees from across the case study sites spoke of how NSAG involvement in reparations had fed into conflict transformation processes. This was either by transforming relationships between ex-fighters and impacted communities, between former adversaries and/or between ex-fighters and victims. A former member of FARC who is involved in reparative projects with the local community spoke of how these projects allowed for a constructive engagement with former enemies on a human level. In working for the betterment of the community, relations were transformed not simply between ex-fighters and impacted communities but also between ex-fighters from opposing sides:

I do feel that we have to move away from thinking of those who were involved in violence as just demonizing the enemy. We have to really build bonds with that person who was always my enemy, that I have always looked at as the bad guy. If we start to do work together, it changes the dynamic. So how to start from work... I mean, it's one thing to sit, first you on one side and I on the other, as adversaries it's difficult, but when together we say "hey, come on, let's do". It's in the doing of something, the action, that's where we find the meeting points, between people who were previously always "irreconcilable" in quotation marks.¹⁴⁴

Indeed, in Colombia post-conflict demining programmes have helped to transform relations between former guerrillas, the military and the broader community. While the state, guerrillas and paramilitary forces all used landmines, FARC and ELN guerrillas in particular used them to control terrain and slow the advancement of state forces into rural and jungle areas under their control.¹⁴⁵ Many of these landmines remain in place and demining efforts involving NGOs, the army and former guerrillas are ongoing.¹⁴⁶ One interviewee involved in this work told us that the process ‘had resulted in very personal relationships developing between the military and some [former] guerrillas’.¹⁴⁷ The demining process, he further said, had also transformed relations between FARC and local communities both practically and symbolically:

*In some areas FARC maintained their power through coercion, people were afraid of them. Today, since FARC have disarmed, people can approach them directly. FARC in turn can contribute towards reparations by helping with the demining. They recognise they had committed a serious wrong in planting the mines in the first place which affected the lives of the civilian population. But now the community can see the FARC contributing to demining together with the military and this builds trust and gives optimism that the peace process is being implemented.*¹⁴⁸

In Northern Ireland, too, reparative work has seen NSAGs strike up unlikely relationships. For instance, the IRA worked closely with the Independent Commission for the Location of Victims’ Remains (ICLVR), established by the British and Irish governments to recover the bodies of those killed and disappeared by that organisation during the conflict. All but three of the 17 bodies listed as being killed by Republicans have been recovered. One representative of a victim’s organisation told us:

*As far as I can see they [the commission] got good cooperation and where they didn’t it was because information was lost or because the people involved have fallen out with the IRA and won’t cooperate with the chain of command.*¹⁴⁹

Another emphasised, ‘if you look at the Disappeared Commission, it did work. It was part of moves to get the IRA to face up to things that happened.’¹⁵⁰ During the search and recovery process, relationships of trust developed between the IRA and the ICLVR.¹⁵¹ This is all the more notable given that the public face of the ICLVR is a retired British police officer. By working to provide victims with truth and measures of satisfaction (i.e. the return of remains), the relationship between an anti-state NSAG and a formal body established by the state had been fundamentally changed.

NSAG engagement in reparations has also helped to transform relationships between ex-fighters and individual victims too. We encountered a remarkable example of this in Colombia. A mother whose son had been murdered and disappeared by a NSAG told us how she and other mothers repeatedly travelled to a high security prison to seek information on the whereabouts of the bodies from imprisoned ex-fighters. These engagements led to 68 of the 90 women obtaining information that led to the recovery of the remains of their loved one. More significant, however, were the maternal relationships of love and care that developed between the women and the young men who they visited in prison:

We convinced them to eventually give up this information, because when we went there as mothers, we treated them with love and care. It’s important to change the language that you need to treat people with care, with delicacy and show them that love that they never might have received.

It also shows them this thing that happened to us as mothers could really happen to anyone.¹⁵²

Thus ex-fighters had been completely re-humanised in this instance and their relationship with victims transformed through reparative engagements.



CONCLUSION

With the majority of armed conflicts since the Second World War being non-international armed conflicts and a proliferation of hundreds of non-state armed groups in recent years, it makes practical sense to consider armed groups' contribution to redress. While an obligation to make reparations by armed groups is not explicitly recognised in international law, there are strong pragmatic reasons to recognise the range of reparative practices armed groups make during war and after the end of hostilities. Seeing through a restorative justice lens helps to see the value of armed groups making reparations to their victims, as to not only remedy the harm they have caused, but to reaffirm shared values, to distance themselves from such violations and to prevent their repetition. Armed groups can often be the only governing authority in an area or have specific knowledge or capacity to carry out particular reparations victims may need, such as knowledge of the location of remains, to give acknowledgements of responsibility or ability to remove anti-personnel mines. Members and former fighters of armed groups can take active ownership and participation in reparations to make right their past wrongs. Reparations by armed groups may need to be complemented by State administrative reparation programmes to ensure effective and adequate redress to victims, given the limited resources and often restricted capacity of armed groups. A State only reparation process, while it can often provide a wider range of reparations to victims, an armed group and/or its former fighters may be the only credible interlocutors who can deliver certain sorts of reparations that victims want to see.

ENDNOTES

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/ ENGAGING NON-STATE ARMED GROUPS ON REPARATIONS /

Reparations, Responsibility

 Victimhood in Transitional Societies

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