Reparations for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law

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AHRC project ‘Reparations, Responsibility and Victimhood in Transitional Societies’
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Reparations in Nepal have stalled, despite efforts to deal with the past through a comprehensive transitional justice process.
Reparations and Transitional Justice

- Over 100 countries have provided some form of reparations
- Reparations can take the form of compensation, rehabilitation, memorials, apologies, restitution of land and rights, commitments to not repeat violations and institutional reform
- Reparations to recognise victims’ harm, accountability, reconciliation
reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.

Chorzow Factory case (1925)
Reparations and International Law

- Right to remedy in most human rights conventions
- Reparations as a core component of international law
- UN Basic Principles on the Right to Remedy and Reparations for Gross Violations of Human Rights and Serious Breach of International Humanitarian Law
- Reparations through administrative, judicial or mixed bodies to large victim populations
Reparations Implementation

- Olsen et al. - up to 2010 only 14 out of 84 transitional societies implemented reparations

- South Africa – 18% of Apartheid victims benefited from compensation

- Ratner et al (2014) – 47 transitional societies only 25% delivered reparations

- In our studies of post-conflict societies (eligible victims received reparations):
  - Colombia ~10%
  - Guatemala 16%
  - Peru – 95% - excluding ex-SL & MRTA
  - Nepal – only victims of disappearance, displacement, injury and extrajudicial killing
  - Northern Ireland – 2021 injured victim scheme, no bereaved scheme
  - No reparation programmes in Uganda and South Sudan
“it is very difficult to repair a victim when you have another victimisation next month. How do you close the tap of reparations then.”

- Colombian civil society actor
/ ENGAGING NON-STATE ARMED GROUPS ON REPARATIONS /

NSAGs Reparations During Conflict

Motivations to provide reparations:
- Governance
- Ideology
- Improve public image
- Cultural

‘necessary blood compensation in cash with the corpse in order to prevent revenge from the victim's kin’ reflects a “culture of compensation”, as something “for our own benefit as people need to support the war effort.”
- ONLF commander, November 2018

Forms:
Rehabilitation; Cash: Apologies or acknowledgements of responsibility: and guarantees of non-repetition – removal of those responsible or other sanctions
Post-Conflict Reparations

• Measures:
  • Assets/land restitution
  • Information
    • Location of disappeared/clandestine burial sites
    • Truth recovery
  • Rehabilitation and restitution
  • Acknowledgement (≠ apology)
  • Guarantees of non-repetition
    • Mitigating future violence; demining; infrastructure

• Challenges:
  • NSAG may no longer exist
  • Indigent or impoverished
  • Symbolic measures over ‘tangible’ reparations
  • Threats from dissidents
  • Capacity
Recovery of Remains

- Northern Ireland – Independent Commission on the Location of Victims’ Remains (ICLVR)
- Colombia - Unit for Search Disappeared Persons (UBPD)
• Working with victims on reparations should be based on genuine consultation and co-ownership that facilitates victim participation in the design, implementation and monitoring of reparation programmes.

• Engaging with victims and providing them space to articulate what reparations should look like and can change over time is essential in informing the appropriate forms of reparations.

• Consider what is feasible, realistic and in keeping with the ethos and capacity of the organisation when making reparations.

• Reparations need to be viewed as holistic measures. Not fulfilling promises can be worse than promising less.
Primary responsibility of States to ensure reparations to victims.
Non-state actors also responsible for reparations.
Making amends during conflict does not extinguish right to reparation.
An individual’s status as a victim is not obliterated by their past actions or character.
Interim reparations in protracted conflicts may be needed.
Funding for victim groups and allied civil society organisations is vital to support mobilization and success in securing reparations.
Conclusion

• Reparations as a legal entitlement, but political contested and resisted by those responsible for violations

• Victims are the driving force for seeing reparations delivered

• Non-state armed groups as responsible actors and potential community leaders can play an important role in reparations

• Significant role funding makes in supporting victims and allied CSOs

• Reparations take years, decades, even generations to be delivered so long-term view needed in supporting victims