

Syria Justice and Accountability Centre



Syria: Using Data, Documentation, and Evidence in Reparations Processes

Prepared by
Christalla Yakinthou

April, 2014

Memorandum Series: Documentation in Transitional Justice



Syria: Using Data, Documentation, and Evidence in Reparations Processes

Prepared for the Syria Justice and Accountability Centre
By Christalla Yakinthou

Introduction

The purpose of reparations is both to provide redress, as far as possible, to victims of gross human rights violations, and to re-establish a broader system of legal and social norms. Reparations can be both collective, addressing a group or society as a whole, and individual. They should be multi-layered, and not rely on a single strategy or measure. They should also be woven into truth-seeking, criminal prosecutions, and institutional reform processes. While reparations are often considered to be primarily economic, they can and should be both material and symbolic.

Correct document and evidence collection and analysis will help the state identify priorities when setting its reparations strategies. This information will be especially pressing if state resources for reparations are limited, since priorities will need to be carefully considered. At the same time, well-collated data will be of use long into the future, especially as a part of memory and truth-seeking efforts.

Reparations in Context

Nature and Objectives of Reparations

International human rights law recognizes the right of victims of human rights violations to seek redress and remedy. This can be pursued through national or, if necessary, international forums. Reparations programs are usually administered by state institutions; this is an important principle underpinning the legitimacy and purpose of reparations programming. Reparation is an admission by the state of the violation, of its duty to protect its citizens, and proof of its commitment to rectify serious human rights violations and provide redress for harm suffered.

Reparations have three primary goals: to acknowledge the violations of fundamental human rights that have taken place, to include victims in the rebuilding of the state and society after conflict, and to try to repair the harm done to victims and survivors. With these three goals in mind, any comprehensive reparations program must take into account the following three guiding elements: what is the scope of the program, what is capacity to administer the program, and who are the beneficiaries?

Types of Reparations

Generally, when properly integrated into a broader transitional justice policy, reparations processes focus on the following five principles:

- ⌚ Restitution;
- ⌚ Compensation;
- ⌚ Rehabilitation;
- ⌚ Satisfaction; and
- ⌚ Guarantees of non-repetition.

Symbolic reparations include but are not limited to:

- ⌚ Official apologies and public acknowledgement;
- ⌚ Memorials and memory projects;
- ⌚ Rehabilitation/reputation restoration projects; and
- ⌚ Public education programs that foreground repressed narratives.

Material reparations include both direct and indirect economic benefits such as:

- ⌚ One-off or recurring payments for families of victims and incapacitated survivors;
- ⌚ Pensions for victims and survivors;
- ⌚ The provision of education, healthcare (including trauma counseling and psychological support programs), and/or housing;
- ⌚ Targeted community reparations funds for specific projects; and
- ⌚ The provision of start-up funds and loans for enterprises.

The Importance of Documentation for Reparations Programming

It is important to note that when reparations have resulted after civil wars, they have often been weak, reactive, and deeply politicized. This is partly because the negotiations and compromises ending the conflict weaken accountability efforts and attention to victims – key facets of effective reparations programs. In general, civil war also results in the destruction of crucial information for reparations, such as birth, marriage, property, civil, and police records. In short, collecting documents during and after violent conflict is not easy, and these challenges should be considered when setting up and administering a reparations program. Without strong data that demonstrate the scale of violations and show patterns of violations across geographic, ethnic, or other significant markers of conflict, a reparations process can fall to the whims of the victor's justice, deepening existing tensions within an already-fragile context.

Documentation collection and the development of data play an important role in establishing effective reparations programs. Comprehensive data analysis and mapping of human rights violations can inform reparations' vision and strategy. This information allows funding

committees to more accurately estimate resources available and cross-reference them against geographic and socio-economic need.

Data and evidence collection on all sides of a conflict also gives weight to individuals or groups calling for balance during periods where communities tend to recognize only their own victims. Balanced evidence collection will create a foundation for even-handed reparations processes that are less likely to suffer attacks by extremists from one side or the other, as such accusations of one-sidedness that would discredit reparations processes.

In Peru, for example, there has been significant governmental opposition to providing reparations for victims who belonged to opposition or ‘terrorist’ groups, which has deepened divisions and tensions within the country. In contrast, in Cyprus, evidence collected by journalists of massacres conducted by both Greek and Turkish Cypriots changed public perceptions and created support for the work of a bi-communal commission of forensic anthropologists, geneticists, and civil servants to identify burial sites, exhume and test the remains of the interred, and return victims to their families. The bi-communal commission conducted their work in a climate of significant political division, demonization of the ‘other’ community, and a frozen peace process.

Types of Information Needed for Effective Reparations Programs

A well thought-out reparations program relies on five factors:

1. Information about the victims to understand victim’s needs: Specific information includes basic details such as age, gender, original and current listed location, violation(s) suffered and consequences, religious, ethnic, and socio-economic profile, family structure, dependents, education and current and former employment, and a list of accompanying (and missing) documentation. Documentation includes birth certificates, land ownership registration, police or military records, detainment forms and search documents, and hospital admission. This information is key for identifying categories of victims that are most vulnerable and in need of urgent support.
2. Participation and buy-in of stakeholders, especially civil society organizations that represent victims and are unlikely to have trust in the future government: In reality civil society and NGOs will hold more information needed by reparations programs than the mandated officials, especially if trust in official parties during conflict and immediately post-conflict is low. If these organizations become genuine stakeholders in the reparations design process, they are also more likely to share information about victims with officials spearheading reparations processes.

Civil society can also be a conduit between the government and communities, and can relay important information like application dates, documentation needed,



guidance on how to apply, and eligibility for reparation measures. This means that civil society needs to be involved in the design and implementation of reparations programs. As a general additional point, society as a whole should be also included as a stakeholder to minimize the perception that reparations programs are biased.

3. Outreach to victims: Transparency throughout reparations processes is a key principle, and victims must be included in each stage of the design, planning, and implementation. The process of creating the reparations measures, the criteria for determining beneficiaries, and the challenges that will be faced should all be made clear, as should timeframes and the fact that reparation is a long-term, and often multigenerational, effort. An important part of the messaging, particularly for the broader society, includes emphasizing that reparations are not hand-outs or welfare, but a duty owed to victims, and not the same as post-conflict redevelopment and reconstruction efforts.

4. Accessibility of benefits: Benefits from reparations programs should not be difficult to access. Application deadlines should be reasonable, open, well-publicized. Consultation with victims' groups (particularly in remote areas or underprivileged communities) will help guard victims from processes that further disenfranchise or re-traumatize them. Application guidelines could include information on who is eligible to apply for reparations, and the logistics of receiving payments, accessing compensation, education, training, or rehabilitation centers from remote locations.

5. Standards of evidence: Standards of information required to be eligible for reparations programs should be consistent, but should not be so high that they further disadvantage victims. When collecting documentation, consider whether it is likely that victims (particularly those outside of urban areas) will have medical records, evidence of home ownership, or access to police or psychological reports, and whether such documents exist and what will be needed to make a successful claim. Other questions to address when considering what kind of information will be necessary include what type of information will be needed for victims of torture or sexual abuse, whether or not police and intelligence or military records are comprehensive enough to demonstrate abuse, and whether or not NGOs should be able to create victim abuse records.

Documentation Collection for Reparations Processes during Conflict

Collecting the following information during conflicts will maximize the impact of future reparations programs:

1. Official records, including:



- ⌚ Police headquarter, military, and intelligence agency documentation that may show policies or patterns of violations;
- ⌚ Station, prison, and local intelligence cell documentation (written and audio-visual);
- ⌚ Military records and logs, which will all be particularly relevant for tracing and providing support for cases of enforced disappearance, abductions, and politically-motivated killings;
- ⌚ Urban planning data is useful in cases where minorities have been forcibly displaced;¹
- ⌚ Judicial proceedings against political opponents of the state;
- ⌚ Documentation outlining policies of victimization of minorities or structural discrimination of particular groups.

2. Unofficial records, primarily: physical materials, audio-visual or written documentation, and forensic evidence of human rights violations.

In addition to the value unofficial records have for reparations, they also contribute to creating a narrative of what occurred during the conflict.

3. Testimonies and victim/survivor stories that can form the basis of a dossier for each individual. Basic elements of a witness or victim testimony include the following: personal details of the individual, verification of identity, setting out in detail the harm suffered (who did what to whom and where), and where relevant, any documentation of the harm done. Do not take original documentation from victims, but take copies.

Victim/survivor testimonies are important because they can be used for data collection that will contribute to a mapping of gross human rights violations. They can be used as legal evidence and also contribute to oral history projects that will be important for preservation of memory and building a complete narrative of the conflict – a component of symbolic reparations.

It is important to note that collecting oral histories in the immediate years following a conflict can be challenging because victims can be re-traumatized when retelling painful stories. Especially in civil war contexts, extreme psychological fatigue and a desire to leave the past behind can prevail and people may be reluctant to share their experiences. In Cyprus, Lebanon, and Spain, this reluctance has lasted a full generation and has been difficult to dislodge. Immediate collection, if possible, is therefore critical.

4. Analysis, including: existing briefs, habeas corpus, legal documentation, and trend analysis.

¹ Note that under international law, the obligation clearly exists to provide reparation in death and disappearance, but it is not as clear regarding displacement.



These documents will help establish the scale of crimes, extreme human rights violations, and patterns of violations that can inform reparations programs.

Recommendations

Managing the Pressure to Move Too Fast

Previous experience shows that a well-developed reparations process takes time and its legitimacy will rest on the buy-in it receives from victims, including refugees and those in exile. In order for this to happen, sufficient time must be set aside to consult stakeholders on what a reparations process should look like.

Consider data obtained during conflict as the core of an initial needs assessment and aim to have strong evidence of what happened, to whom, and where. This information will ensure that the full spectrum of violations is captured.

It is important to note that what people feel they would need to redress what they have suffered will change over time. What victims need will not be the same in six months, two years, or five years, as what they say they need today. Therefore if there is a significant time lag between the end of the conflict and the beginning of a reparations process, priorities will change. The best that you can hope to do at the moment is capture as much information as possible from as broad a spectrum of society as possible. Testimonies and evidence captured before reparations are implemented are particularly valuable.

Limitations of Reparations Processes

Implementing reparations programs and processes requires continuous evaluation and re-evaluation of efficiency, satisfaction, and impact. It is very important to note from the outset that reparations programs are never a linear process from development to implementation, but rather a series of steps towards the restitution of victims' and survivors' rights. Data and documentation properly collated to show trends and scale of abuse can help guide reparations, particularly if this data can be collected before a reparations process begins. It will also help point to the most vulnerable populations needing immediate attention.

Maximizing the Impact of Reparations Processes

The Chilean experience is a useful thinking tool for being strategic and thinking beyond material reparations, and the challenge of adapting material that was originally collected for advocacy and legal defense. In Chile, victims' families demanded justice and truth in addition to the economic reparations they had received. Both truth commissions and all the processes for registering victims relied heavily on the documentation work of Vicaria de la Solidaridad and other human rights NGOs.



Guiding Principles for Data Collection

- ⌚ Look to establish patterns, scope, and cross-cutting themes of crimes so the reparations program can be as comprehensive as possible.
- ⌚ Which victims will be more at risk? Consider age, health, gender, women who have no income support, etc. Documentation efforts will feed into assessments for reparations programs, and the more organized documentation efforts are, the quicker reparations programs can be designed post-conflict.
- ⌚ Avoid weaknesses from past data collection processes. Reparations programs historically fall into the trap of neglecting silent categories, such as crimes against religious or ethnic minorities, targeting women, and LGBT communities. If documentation groups can establish these trends and make them transparent, it will be easier to feed them into comprehensive reparations programs.
- ⌚ Child-specific reparations are an undeveloped area. Think about how violations are particularly affecting children and how reparations programs can directly mend this harm.
- ⌚ Think about developing strategies for filtering data that will not meet standards of rigor necessary for material reparations but can inform other longer-term initiatives, such as truth-seeking and memorialization efforts.

Documentation as Collective Memory

Do not underestimate how much documentation can be used for symbolic reparations projects. Collective memory and education projects and programming can be aided by documentation and data collection. In Chile and Peru, the need to talk about what happened in a public space was considered by victims and survivors to be as important as material reparations.

Identify Gaps

Loop the findings of your data back into discussions with victims' and support groups as a tool to consult with them about their most pressing needs.

Is the healthcare system likely to be decimated? Are there psychologists specializing in trauma or do they need training? Where will rape counseling centers be needed? Where are the likely locations of mass graves so they can be exhumed as soon as possible? Where are events that might become sites of conscience or memorial for symbolic reparations? Documentation can be an important source of information for such projects by pointing out gaps and needs.

Data collection can also help highlight priorities for internationally-funded projects that can complement material reparations programs, such as building community centers for victims of torture or reburial projects for missing persons or victims of massacres.

Conclusion

Syria Justice and Accountability Centre



The careful collection and analysis of documentation during conflict feeds directly into reparations processes that provide justice for victims and survivors of gross human rights violations. Particularly during civil wars, it is all too easy for data to be later discredited if the collection process is judged to be politically motivated. A key task will be to convince each side that it is important to give space to the collection of violations from all sides. This is going to be particularly difficult if the same organizations are collecting data for possible future prosecutions, as well as for post-conflict restorative work. It may be easier to begin by collecting narratives or by finding an entry point that is less threatening to build trust in the documentation process.

International support for reparations processes can be lobbied for ahead of time with clear data and documentation identifying victims' needs. Ideally, if the data is collated and analyzed by the war's end, strategies for reparations to address the most urgent victim needs, as well as strategies for allaying victim resentment with the process, can be addressed earlier. Data and evidence will therefore build victims' trust in reparations processes, inform the vision and processes of an effective reparations program, and allow programs to begin as soon as possible.

About The Syria Justice and Accountability Centre

The Syria Justice and Accountability Centre (SJAC) is a non-profit, multilaterally-supported organization that envisions a Syria where people live in a state defined by justice, respect for human rights and rule of law. The SJAC is collecting, preserving and analyzing information on human rights violations and other relevant data to contribute to and inform a transitional justice process for Syria. Employing an unbiased and non-partisan approach, the SJAC also builds and maintains close relationships and partnerships with Syrian individuals, organizations, communities and international actors working towards justice and accountability for all Syrians.