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Gender and Reparations in South-East Asia

Lessons for Myanmar

WHAT ARE REPARATIONS?

The purpose of ‘reparations’ is to repair the damage to, and suffering of, individuals and communities caused by serious human rights violations. The goal is to recognise and address the harm suffered by victims, by addressing their moral, physical, psychological, and/or social needs.

Reparations are important, as they restore the dignity and violated rights of victims, and begin to repair the social fabric torn by conflict. Reparations play an important role in the aftermath of massive violations by not only supporting social integration and reconciliation, but also by contributing to strengthening the rule of law, and by restoring and promoting trust in institutions.

Reparations may take different forms, like material (compensation, rehabilitation, restitution), symbolic (apologies, memorialisation), or guarantees of non-repetition (legal and institutional reforms). They may be individual (designed for a specific group), or collective (designed for a community).

The right to reparations is an established principle of international human rights law, recognised by the U.N. General Assembly. The ASEAN Declaration of Human Rights also recognises victims’ right to effective remedy. Governments, therefore, are legally obliged to provide such reparations.

Essentially, there are two avenues for state-sponsored reparations programs. Courts can order reparations as part of their decisions, especially if they are legally mandated to do so. Such decisions are generally limited to parties to court proceedings. The other method is by instituting large-scale reparations programs through policy and administrative decisions, usually supported by specific laws or regulations. These programs have the potential to reach many more victims.

Key documents

- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. General Assembly, 2005¹
- Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, 2007²
- Guidance Note of the U.N. Secretary-General on Reparations for Conflict-Related Sexual Violence, 2014³

WHAT MAKES FOR GENDER-SENSITIVE REPARATIONS?

Since violence against women takes root in gender discrimination, and inequalities between men and women, reparations must be used not only to restore victims' rights, but also to address discrimination and inequalities. This is the transformative potential of reparations, whereby reparations programs aim at addressing the conditions that enabled gendered patterns of human rights violations in the first place.

Issues to consider include, how gender impacts on types of human rights violations addressed by reparations, the importance of challenging gender assumptions when designing reparations, ensuring reparations do not discriminate against or exclude women, and ensuring gender is mainstreamed in reparations advocacy and policy development.

In order that patterns of discrimination are not reproduced, definitions used to identify victims eligible for reparations, including relatives of deceased persons, must be developed through gender-sensitive lens, using progressive typologies, and looking at the gendered impact of violations.

Women and victims of sexual and gender-based violence must be included in reparations programs through meaningful participation and consultation in mapping, design, implementation, and monitoring and evaluation. Victims must be able to receive and understand information about all programs and forms of repair, and to access benefits in a manner that is appropriate to their situation.

It is crucial to explore and prioritise reparations measures that can transform the structures of gender exclusion, discrimination, and inequality, taking into consideration gender and its intersectionality, including ethnic, cultural, and social origins.

1 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

2 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf

3 Guidance Note of the Secretary General: Reparations for Conflict-Related Sexual Violence <https://www.ohchr.org/sites/default/files/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

REPARATIONS MECHANISMS IN SOUTH-EAST ASIA

Aceh, Indonesia

In 2002, the governor of Aceh developed a compensation scheme for the families of those killed or disappeared, under the Islamic tradition known as *diyat*. The scheme provided small grants of three million Indonesian rupiahs (approximately USD 200) for 20,000 widows.

Thailand

Through the establishment in 2005 of the “Committee on Policy and Remedy for People Affected by the Incident in Southern Borders Provinces”, Thai authorities set out processes for victims of conflict-related violence (committed by both state and non-state actors) to receive reparations. A number of government departments and services collaborated to provide services, including medical and psychological care, and financial and economic support, as part of the reparations program.

Cambodia

Although not government-sponsored, official reparations have taken place following decisions by the Extraordinary Chambers in the Courts of Cambodia, or ECCC. More than 20 community-based projects have been initiated by reparations flowing from ECCC cases, including mental and physical healthcare, and documentation initiatives. The ECCC’s victim support team, along with civil society organisations, jointly provided psycho-social support to victims of sexual violence.

The Philippines

Reparations initiatives in the Philippines range from a class action in a US Federal Court in Hawai’i by victims of abuses, to official efforts to recover Marcos’s ill-gotten wealth to be used for social programs. More than USD\$500 million were recovered from Swiss bank accounts, with the stipulation that released funds must be used to compensate victims. The Human Rights Victims Claims Board was established to distribute the funds, compensating 11,103 individual victims. Recognised victims also received support from government social services.

Japan

In 1995, the Japanese government established the Asian Women’s Fund, or AWF, to benefit women who suffered abuses as “comfort women” during the Second World War. From 1997 to 2002, the government in the Philippines, distributed AWF funds to victims through the Lola Project. The project assisted 106 women, with a focus on medical assistance, counselling, and housing assistance.

Timor-Leste

The Commission for Reception Truth and Reconciliation, or CAVR, implemented an urgent reparations program, which included small cash grants, health assistance, and collective reparations projects. The follow-up body, the Centro Nacional Chega!, or CNC, worked with government ministries to provide assistance to some of the most vulnerable survivors, and is leading a working group tasked with developing a National Action Plan for Reparations.

LESSONS LEARNED

A regional study by AJAR and the Transitional Justice Asia Network, or TJAN⁴, showed that:

- Governments need to shift their mindsets with regard to reparations, acknowledging that they are an obligation, and a legal right of victims, rather than just optional policy decisions.
- Much more needs to be done by justice systems to address sexual and other gender-based violence, including by transitional justice mechanisms and reparations programs.
- Policy-makers and civil society stakeholders need to increase their capacity to develop strategies for gender-sensitive reparations, through training and exchanges.
- Lessons may be learned from assistance programs not only in Myanmar, but also from reparations processes in other countries.
- Victims themselves, especially women, need more agency in shaping official reparations programs. This requires long-term holistic support to victims, commitment to victim participation, and inclusive and effective consultation processes.
- There is value in constructive partnerships between civil society and government institutions to identify innovative, creative, and practical measures for meaningful official reparations programs.
- Urgent interim reparations schemes are necessary, in addition to broader long-term programs to address the most vulnerable victims' immediate needs. Innovative government/civil society partnerships can be effective in this regard.
- In some instances, funds to support official reparations programs may be leveraged from international and UN agencies, as a pragmatic way to meet victims' needs.

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Asia Justice and Rights (AJAR) is a regional human rights organisation based in Jakarta, Indonesia. AJAR works to increase the capacity of local and national organisations in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and willingness to learn from the root causes of mass human rights violations in the Asia Pacific region.

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4 Urgent Steps to Ensure Right to Remedy for Victims of Sexual and Gender-based Violence in ASEAN
<https://asia-ajar.org/resources/books-research/urgent-steps-to-ensure-right-to-remedy-for-victims-of-sexual-and-gender-based-violence-in-asean/>