

AMENDS AND REPARATIONS FOR CIVILIAN HARM IN ARMED CONFLICT

**CENTER FOR
CIVILIANS IN CONFLICT**
RECOGNIZE. PREVENT. PROTECT. AMEND.



RECOGNIZE. PREVENT. PROTECT. AMEND.

December 2022

T +1 202 558 6958

E comms@civiliansinconflict.org

civiliansinconflict.org

ORGANIZATIONAL MISSION AND VISION

Center for Civilians in Conflict (CIVIC) is an international organization dedicated to promoting the protection of civilians in conflict. CIVIC envisions a world in which no civilian is harmed in conflict. Our mission is to support communities affected by conflict in their quest for protection and strengthen the resolve and capacity of armed actors to prevent and respond to civilian harm.

CIVIC was established in 2003 by Marla Ruzicka, a young humanitarian who advocated on behalf of civilians affected by the war in Iraq and Afghanistan. Honoring Marla's legacy, CIVIC has kept an unflinching focus on the protection of civilians in conflict. Today, CIVIC has a presence in conflict zones and key capitals throughout the world, where it collaborates with civilians to bring their protection concerns directly to those in power, engages with armed actors to reduce the harm they cause to civilian populations, and advises governments and multinational bodies on how to make life-saving and lasting policy changes.

CIVIC's strength is its proven approach and record of improving protection outcomes for civilians by working directly with conflict-affected communities and armed actors. At CIVIC, we believe civilians are not "collateral damage" and civilian harm is not an unavoidable consequence of conflict — civilian harm can and must be prevented.

ACKNOWLEDGEMENTS

This issue brief was drafted by Claire Simmons as part of a partnership between CIVIC and the Essex University Armed Conflict and Crisis Hub. The paper was reviewed by Noam Lubell, Director of the Armed Conflict and Crisis Hub, and Dan Mahanty, Director, Research, Learning, and Innovation. The author is grateful for the contributions of Professor Carla Ferstman, Dr. Haim Abraham, Dr. Ebba Lekvall, and Marc Linning.

EXECUTIVE SUMMARY

This paper provides an overview of the assistance states provide to civilians who have been harmed as a result of military operations. It clarifies the distinction between **amends**, which are electively offered to civilians for harm (even if those operations were lawful), and **reparations**, which are provided by states for violations of law. The paper also identifies some of the key issues and controversies related to post-harm assistance and provides a summary of recommendations for states in the development of effective post-harm assistance policies.

Some of the key issues and findings identified in this paper:

1. The elective provision of amends can undermine the obligatory provision of reparations, e.g. in cases where a state provides amends prior to the conclusion of an effective investigation, or if a state provides amends as a substitute for full and proportionate reparations.
2. States that only provide amends to advance operational goals (e.g. winning hearts and minds in a counterinsurgency campaign) may overlook other important and durable reasons for doing so.
3. The provision of amends and reparations in the context of partnered and coalition operations often involves several additional challenges, including those that result from a lack of consistent or uniform policies among participating states.
4. Effective amends policies are only one important part of a comprehensive response to civilian harm, which should also include recording, documenting, investigating (when necessary), and tracking civilian harm.

Key recommendations:

- States should include both amends and reparations in their policy framework for addressing civilian harm.
- States should have clear policies that distinguish between the provision of amends and reparations for civilian harm in armed conflict.
- The policies adopted by states should clearly recognize that amends and reparations are not mutually exclusive, and that the decision to provide amends should not hinder any potential future reparative action.
- States should incorporate a comprehensive but flexible amends framework that, at minimum, requires acknowledging harm and makes available a range of possible amends options such as public and private recognition of harm, explanation or formal apologies, ex gratia payments, livelihood assistance, community-level support, and restoring damaged property or public infrastructure.

- States must have procedures in place to effectively investigate possible violations of international humanitarian law and international human rights law. Investigations must clarify individual and/or state responsibility, and clearly identify cases where reparations are warranted as a result of a suspected violation. States must investigate if there is reason to believe a violation occurred, regardless of whether they have already provided amends for the same act.
- States should avoid limiting their amends policies to specific operational contexts. Instead, a comprehensive protection framework should include amends that can be adapted to a range of operational contexts.
- States involved in partnered or multinational coalition operations should advocate for uniform amends and reparations standards and protocols in joint missions. These protocols must be adapted to the local situation and culture, may need to be updated over time, and will require ongoing cooperation between coalition forces.
- States involved in partnered or multinational coalition operations should ensure that civilians are able to report cases of harm without the undue burden of identifying the specific state that caused the harm.
- States should take active measures to facilitate access to amends by limiting procedural hurdles and other barriers such as language, distance, or risk to personal safety.
- Policies should ensure that post harm assistance is perceived as reasonable, and not unjust or arbitrary, for example if a state pays less for a civilian's death or serious injury than for a damaged vehicle.
- States should emphasize the importance of documenting civilian harm to all actors and units involved in military operations. It is beneficial to standardize recording procedures across units, and across states in multinational operations.
- States should ensure amends policies are situated properly with efforts to document, investigate, and track harm as part of an effective and comprehensive response.

INTRODUCTION

Harm to civilians can result from both lawful and unlawful military conduct.¹ Many states provide monetary payments or in-kind relief for harm caused by their operations.² Under international humanitarian law, states are obligated to provide reparations for harm caused by violations. States may also choose for moral or strategic reasons to provide amends, when otherwise lawful acts cause harm.³ This paper provides an overview of the meaning of amends and reparations for civilian harm in armed conflict and identifies several key issues related to both. This overview is not meant to constitute an exhaustive analysis of the topic but rather to illustrate some of the issues that have surfaced in contemporary settings.

AMENDS VERSUS REPARATIONS

Different terms describe distinct forms of monetary or in-kind post-harm assistance for civilian harm in armed conflict. It is useful to distinguish between **amends** awarded for any harm to civilians due to military operations, even if lawful acts caused the harm, and **reparations** for harm provided on the basis of a violation of applicable laws.⁴ The processes are not mutually exclusive, but there are important reasons to distinguish between harm from lawful acts in armed conflict and harm from violations of applicable laws (e.g., international humanitarian law or international human rights law).

Amends

Amends refers to the “practice of warring parties providing recognition and assistance to civilians they harm within the lawful parameters of their combat operations.”⁵ Depending on the national framework and type of amends a state awards, they may take the form of “*ex gratia* payments,” “solatia payments,” “condolence payments,” “battle damage payments,” “honor payments,” or “acts of grace payments.”⁶ Amends can include monetary payments, but also “public acknowledgement of, and apologies for, harm, community level acknowledgement of harm, livelihood assistance, and restoration of damaged public infrastructure, and other offerings in accordance with victims’ needs and preferences.”⁷ To be effective, amends “must be calibrated to meet both the expectations of the victims and their communities,”⁸ and take into account the form of amends in local cultural traditions.⁹ The form amends may take varies considerably depending on the state involved, the location and type of conflict, the individuals tasked with providing the amends, as well as the recipients and their preferences. In contrast to reparations, amends are not usually meant to provide full compensation for the harm suffered.

Amends refers to the “practice of warring parties providing recognition and assistance to civilians they harm within the lawful parameters of their combat operations.”

Instead, the recognition and assistance provided may seek to meet some immediate needs of victims or may simply be offered as a dignifying gesture.¹⁰

Is there a duty to make amends?

It is generally accepted that there is no legal obligation to provide compensation for harm to civilians caused by a state's lawful operations.¹¹ Provisions for amends usually explicitly state that they do not recognize liability, fault, or negligence for the harm caused. However, they may recognize that the state or force in question caused the harm and include expressions of contrition. The practice of making amends usually stems from policy decisions, often related to strategic considerations.¹² The rationale for making amends may also derive from warring parties' perceived moral obligation.¹³

How can amends protect civilians in armed conflict?

Acknowledging harm should be a minimum requirement for any form of amends.¹⁴ Recognizing harm also makes other forms of financial payment or assistance possible and opens communication with affected individuals and communities. Some forms of amends "are used to express contrition,"¹⁵ which in itself "can serve an important role in recognizing the loss and agency of civilians affected by war."¹⁶ Recognizing harm, and potentially apologizing for such harm, can convey respect for human dignity.¹⁷ A formal apology for harm, even if not accompanied by acceptance of liability (for example, when harm occurred during lawful activities), can be important for victims, and at times more important than any material or financial assistance. Explaining why harm occurred and efforts to prevent similar harm from recurring can also serve as a dignifying gesture and help provide victims closure. Providing amends can also tie into the general right of families to know what happened to their relatives, by providing information about the fate of their loved ones. Not knowing the fate of the missing can mean an inability to carry on or rehabilitate for the individuals or communities affected.¹⁸

Making amends for civilian harm in armed conflict is also key to protecting the livelihood of those affected and to enhancing the resilience of civilians and communities to the effects of armed conflict, and can help victims and communities recover from the losses caused by violence. It may make little difference to the victims whether the harm arose from lawful or unlawful acts of war.¹⁹ It is therefore important that states provide support whether or not an unlawful act caused the harm. Victims may be the principal breadwinners of households, which can greatly impact their relatives' livelihoods.²⁰ Victims should never be led to believe that financial remuneration is an attempt to put a monetary value on life,²¹ but financial and practical aid can make an important difference for those affected to be able to rebuild their lives. To be effective, states should provide amends relatively promptly and with few bureaucratic obstacles. States can provide monetary relief through payments to the families of those harmed, through livelihood assistance, or community assistance.²² Amends can also take the form of remediation for damage to property, cultural objects, or the environment.²³ Such remediation would seek to provide longer-term protection by helping to rebuild important assets to communities, rather than simply providing immediate material assistance.

Finally, some forms of amends may directly or indirectly serve to prevent future civilian harm. Striving to avoid repetition of harmful acts, and to prevent future harmful acts, can in and of itself be a form of amends.²⁴ In the context of harm stemming from unlawful acts, it can be a legal obligation to provide guarantees of non-repetition as part of reparation. Making amends provides financial and political reasons to prevent and reduce civilian harm. Tracking civilian harm can also provide necessary data to understand how to effectively mitigate it, especially through pattern analysis and lessons-learned exercises. This paper will explore below some of the ways amends tie into prevention of future harm, in relation to documenting civilian harm.

Reparations

The term “**reparations**” refers to the measures that international law requires when a state commits an internationally wrongful act, such as a violation of international humanitarian law or international human rights law.²⁵ Reparations should “seek to eliminate all the harmful consequences of a violation of rules of international law applicable in armed conflict and to re-establish the situation that would have existed if the violation had not occurred.”²⁶ Other terms used in similar contexts include “remedy” or “redress” for international law violations.²⁷ Reparations may consist of restitution, compensation, satisfaction, rehabilitation, and/or guarantees of non-repetition, and will depend on the violation and the harm caused.²⁸ For example, restitution of the *status quo ante* for deaths is impossible, and states should seek other forms of reparation.

The term “reparations” refers to the measures that international law requires when a state commits an internationally wrongful act, such as a violation of international humanitarian law or international human rights law.

The obligation of reparation for unlawful acts

When violations of international legal obligations cause harm, states are obligated to provide reparation. The scope of this obligation to individual victims of international humanitarian law violations is actively debated under international law.²⁹ It is generally recognized that states should provide victims of gross violations of international human rights law and serious violations of international humanitarian law with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.³⁰ This paper will not address the many ways states may fulfil the obligation to provide full reparation for international law violations.³¹

Other forms of compensation or assistance

Other forms of compensation do not necessarily fit into these two categories, including different forms of **combat-exclusion tort claims procedures**.³² Such tort claims procedures may recognise liability for a harm caused (for example, road accidents involving military vehicles), but often exclude any harm caused during combat or even during military operations. This type of tort claims procedure would not fulfill a state’s responsibility to provide reparation for violations of international humanitarian law if it excludes such acts.³³

Amends and reparations for harm are also different from providing **humanitarian assistance**,³⁴ understood as financial and material aid to individuals affected by conflict or other disasters. The needs of those affected primarily drive humanitarian assistance, rather than a causal link between the harm and those providing aid.³⁵ Victims of actions in armed conflict may seek amends or reparations from those responsible, and also receive humanitarian assistance from other actors (such as NGOs, international organizations, inter-governmental organizations, or in some cases from non-state armed actors).

KEY ISSUES

Does making amends hinder providing reparations?

While amends may be a gesture of goodwill, paying amends may hinder the obligation to provide further reparations when a violation caused harm.³⁶ In some cases, amends may even be seen as a tool to amplify impunity, as a form of “blood money” payment to prevent allegations being brought forward to more serious platforms.³⁷

Amends and reparations are not mutually exclusive processes. As it is not always obvious from the outset whether harm was caused by a violation, states may make amends before it is known whether or not a lawful or unlawful act caused the harm. However, this should not preclude providing any potential future reparations, as amends are not considered adequate or effective reparation for an international law violation. Full reparation would usually include adequate restitution and compensation, as well as rehabilitation, satisfaction (including acknowledgement of the violation), and guarantees of non-repetition.³⁸

Furthermore, identifying the need for reparations usually requires an investigation to establish whether or not a violation of the law occurred. For this reason, providing amends should not preclude any investigation into legal wrongdoing. If harm may have resulted from a violation, investigations are legally required and responsibility (state and/or individual) must be determined, even if the state has already provided amends.³⁹ Therefore, allegations of violations should be referred to an appropriate authority to determine whether an investigation is necessary.⁴⁰ An affected individual will often not know whether the harm they suffered was a result of a violation or a lawful act.⁴¹ As states have an obligation to investigate *proprio motu*, investigations into possible violations should not depend on affected individuals making these allegations.

Limiting amends policies based on operational context

Limiting amends to *ad hoc* policy and strategy considerations can lead to inconsistent practice depending on the type and location of conflict, and less protection for civilians harmed by conflict. Some states explicitly connect providing amends to war-fighting objectives, commonly as part of “counter-insurgency” campaigns. They may provide amends to temper harm’s negative effects on political support for the military campaign (for example by limiting amends to “friendly” civilians), or for the safety of their personnel on the ground by ensuring good relations with local communities.⁴² However, a disproportionate emphasis on amends’ strategic value can produce inconsistent and less effective harm mitigation. For example, in contexts of remote airstrikes with fewer or no personnel present on the ground, some immediate strategic incentives to provide amends may considerably diminish, often leaving victims no access to such processes in practice.⁴³ While providing amends may have strategic benefits, limiting their scope to circumstances where assistance furthers war aims may obscure other, equally valid reasons to provide amends. It also places unnecessary constraints on the provision of amends based on the operational context (e.g., counterinsurgency). As seen above, providing amends is important for protecting civilians regardless of strategic considerations.⁴⁴

Amends and reparations in multinational operations

Amends and reparations for harm caused by multinational operations create a set of specific challenges. For multi-national coalition or partnered operations, the biggest challenge to providing amends is the lack of uniform policies across different contributing states (and sometimes even within states). Inconsistencies often include the amounts given for similar types of harm, the types of harm that may prompt monetary payments, whether or not there is proactive engagement with local leaders and communities, and procedural requirements (for example, whether there is a requirement to prove that the state in question caused harm).⁴⁵ Inconsistencies in national practice for making amends can make the process seem “arbitrary, mystifying or downright cruel to recipients,”⁴⁶ undermine the amends’ effectiveness, and can harm the overall mission strategy.⁴⁷ Coalitions as a whole generally do not take responsibility for civilian harm, and the responsibility for amends generally falls to the state to whom causal harm is attributed.⁴⁸ This causes further challenges when civilians must identify which state caused this harm, especially if multiple state forces operate in one area.⁴⁹ Although some coalitions have adopted non-binding guidelines on civilian casualties, the lack of cooperation between states regarding amends causes difficulties in claims for civilians who have to deal with different, seemingly arbitrary, procedural requirements.⁵⁰ This is aggravated when there is no proactive engagement with local communities, and when the burden is on affected civilians to approach military bases and provide evidence.⁵¹ Conversely, there can be advantages to members of multinational operations and other bodies (such as UN or civil society organizations) sharing information and good practices. For example, good communication processes can lead to improved verification mechanisms for providing amends, a better identification of needs, and a better understanding of local customs and norms.⁵²

Similar difficulties arise for civilians seeking reparations for violations of international law committed by members of multi-national operations.⁵³ In coalition settings, it can be difficult or impossible to identify the state responsible for a violation, and therefore responsible to provide reparation.⁵⁴ Inconsistent transparency mechanisms between states also affect the ability to identify the relevant state, with an incentive to avoid responsibility potentially leading to a race to the bottom in terms of transparency.⁵⁵ If an international organization effectively controls a multinational operation, the responsibility for the violation can fall on both the contributing state whose conduct caused the harm, as well as the international organization.⁵⁶ Attribution for such responsibility rests on complex legal considerations establishing who had effective control over the troops at the time, a question that would most likely be impossible for a harmed civilian or community to answer.⁵⁷

Specific challenges have been noted in the practice of amends and reparations for acts of UN peacekeeping operations.⁵⁸ The existing third-party claims system is a form of combat-exclusion tort claims system,⁵⁹ and does not encompass amends or reparations. Instead, with the exception of some *ad hoc* payments,⁶⁰ the UN appears to encourage contributing states to address allegations and make amends.⁶¹ In other cases, it expects civilians harmed to approach member states for compensation.⁶² Other UN bodies may address some harm caused by peacekeeping operations, but this falls under the practice of humanitarian assistance, not amends.⁶³ In the context of international law violations committed by UN peacekeeping forces, victims have a right to reparation.⁶⁴ Complexities arise regarding identification of the entity responsible for providing reparations (whether the host state, troop-sending state, or the UN), and claims of UN immunity have produced further legal challenges.⁶⁵ In general, while sending states may remain responsible for the individual criminal liabilities of members of their forces, it has been posited that the UN holds some form of international responsibility for violations of international law that UN peacekeeping forces commit.⁶⁶

Documenting civilian harm for amends and reparations

Multiple actors in armed conflict have increased the practice of documenting civilian harm. It usually includes “**civilian harm tracking**” as internal processes by armed actors,⁶⁷ and “**casualty recording**” by civil society, intergovernmental organizations and state actors.⁶⁸ There are differences in the scope, purposes, methods, and transparency of these procedures.⁶⁹ This paper uses the term “**documenting civilian harm**” broadly to denote any formal recording of conflict-related harm to civilians.

Documenting civilian harm as amends or reparation

Generally, documenting civilian harm can tie into amends and reparations processes by providing victims recognition, acknowledging the loss of loved ones, and clarifying the fate of the missing.⁷⁰ Documenting civilian harm can help give the victims a human face by acknowledging the individuals harmed by conflict beyond the numbers.⁷¹ Documenting can also support building a historical record as a part of transitional justice and truth building,⁷² and can help bring a political end to violence.⁷³ Furthermore, civilian harm documentation can be used in accountability processes, including criminal trials.⁷⁴

Formally documenting all military operations serves a range of operational and legal reasons.⁷⁵ Arguably, states have a duty to document all civilian casualties in armed conflict, and to document a broader range of incidents to monitor and prevent violations of international humanitarian law.⁷⁶ In all cases, the importance of documenting civilian casualties, as well as civilian harm more generally, has been highlighted in many circumstances, including regularly emphasized by the UN Secretary General.⁷⁷

In general, “data must be robust and credible in order to be applied effectively.”⁷⁸ Credible civilian harm recording can help clarify the truth surrounding incidents, including whether or not a violation occurred. Building trust in civilian harm documenting mechanisms can help to defuse false allegations,⁷⁹ and therefore enhance the legitimacy of actors in armed conflict.

A necessary prerequisite for other forms of amends and reparations

Documenting civilian harm is often an essential prerequisite for awarding any form of amends or reparation—if civilian harm is not documented, other steps cannot occur. Militaries usually check allegations of civilian harm against their own documenting processes, and often only provide any form of amends or reparation if the evidence matches their own information.⁸⁰ Although states should not rely solely on their own information for awarding post-harm assistance,⁸¹ proper civilian harm documenting can improve the efficiency of amends or reparation procedures. On occasion, cooperation between different bodies (e.g., militaries and UN bodies) may lead to these bodies sharing civilian harm documenting and an improved verification of facts for compensation purposes.⁸² In this way, proper civilian harm documenting can help “promote evidence-based discussion and cooperation between military and non-military actors to promote more effective action to protect and assist civilians.”⁸³ Documenting civilian harm also enables militaries to proactively reach out to potential victims, thereby enhancing access to amends and reparations.⁸⁴ For some humanitarian organizations, civilian harm documenting can support their assistance programs and humanitarian response to victims of conflict.⁸⁵

Prevention of future harm

Finally, documenting civilian harm is key to preventing future harm, which in itself can be a form of amends, and/or part of reparation through guarantees of non-repetition, and is key for long-term civilian protection. Documenting civilian harm can be used to review and revise policy to reduce

casualties in future operations,⁸⁶ while lessons learned exercises may inform future tactical directives and operational practices.⁸⁷ Civilian harm documenting, especially when combined with proper analysis of recorded data, can also be crucial to detect patterns of violence or systemic problems that may otherwise not be apparent.⁸⁸ They can provide early warning or indications of deteriorating conditions,⁸⁹ but can also help prevent violations of international law.⁹⁰ In some cases, civilian harm documenting can be used to identify the need for specific action, for example, clearing unexploded ordnance in specific locations in Afghanistan,⁹¹ or highlighting behavioral patterns to commanders. In this way, documenting civilian harm can also make it more likely that states will not repeat incidents that led to such harm. In the case of harm resulting from violations, guaranteeing such non-repetition may be a legal obligation as part of reparation.

ENDNOTES

- 1 "Civilian harm" refers to conflict-related death, physical and psychological injury, loss of property and livelihood, and interruption of access to essential services. Lawson, Ewan, "Entering the Grey Zone: Hybrid Warfare and the Protection of Civilians in Ukraine," Center for Civilians in Conflict, 2021, 6.
- 2 For a comparative overview of amends practices in some states, see Shiel, Annie, "The Sum of All Parts: Reducing Civilian Harm in Multinational Coalition Operations," Center for Civilians in Conflict, 2019; and Burke, Roseanne and Mark Lattimer, "Reparations for civilian harm from military operations: Towards a UK Policy", Ceasefire Centre for Civilian Rights, 2021.
- 3 See section B below for the definitions of amends and reparations.
- 4 This distinction and the definitions below are made for the purposes of this paper and the clarification of key issues identified within. In practice, the terms may be understood differently in different academic or operational settings.
- 5 Mahanty, Daniel, Jenny McAvoy, and A.S. Henry, "The US Military and Post-Harm Amends Policy and Programs: Key Considerations and NGO Recommendations", NGO Recommendations for DoD Policy on Civilian Harm, 2019, 2. There is usually an assumed causal link between the harm caused and the state providing the amends, although not always.
- 6 These terms are used *inter alia* by the United States (*ex gratia*, solatia, condolence, battle damage payments) and Australia (honour and acts of grace payments). They all refer to different forms of "amends" as defined in this paper, yet have different conditions and specificities. Rogers, Chris, "Addressing Civilian Harm in Afghanistan: Policies & Practices of International Forces", Center for Civilians in Conflict, 2010.
- 7 Mahanty, McAvoy and Henry, "The US Military and Post-Harm Amends Policy and Programs"; Oswald, Bruce and Bethany Wellington, "Reparations for Violations in Armed Conflict and the Emerging Practice of Making Amends" in *Routledge Handbook of the Law of Armed Conflict*, ed. Rain Liivoja and Tim McCormack (London: Routledge, 2016), 521.
- 8 Paul, Scott T., "The Duty to Make Amends to Victims of Armed Conflict", *Tulane Journal of International and Comparative Law* 22 (2013): 103.
- 9 See e.g., Nikolaus Grubeck, "Civilian Harm in Somalia: Creating an Appropriate Response," Center for Civilians in Conflict, 2011, 25-34.
- 10 Paul, "The Duty to Make Amends," 103; Hunke, Madison, "Making Amends: A Guide to US Law and Policy on Post-Harm Amends," Center for Civilians in Conflict, 2021.
- 11 Mahanty, McAvoy and Henry, "The US Military and Post-Harm Amends Policy and Programs."
- 12 Gregory, Thomas, "The Costs of War: Condolence Payments and the Politics of Killing Civilians," *Review of International Studies* 46: 1 (2020); Keenan, Marla and Jonathan Tracy, "United States Military Compensation to Civilians in Armed Conflict," Center for Civilians in Conflict, 2010, 1; Paul, "The Duty to Make Amends," 105.
- 13 Paul, "The Duty to Make Amends," 106.
- 14 "Reversing the Trend: CIVIC Blueprint for US Protection of Civilians Policy in 2021 and Beyond," Center for Civilians in Conflict, 2020, 3.
- 15 Mahanty, McAvoy and Henry, "The US Military and Post-Harm Amends Policy and Programs."
- 16 Ibid.
- 17 Paul, "The Duty to Make Amends," 115; "The United States Should Release Records on Civilian Casualties Under FOIA and In Furtherance of Transparency and Dignity," Center for Civilians in Conflict, 2018.
- 18 Baranowska, Grazyna, "Advances and Progresses in the Obligation to Return the Remains of Missing and Forcibly Disappeared Persons," *International Review of the Red Cross* 99:2 (2017): 714; "Operational Best Practices Regarding the Management of Human Remains and Information on the Dead by Non-Specialists for all armed forces for all humanitarian organizations," International Committee of the Red Cross, 2004, 3; Mégret, Frédéric and Chloe Swinden, "Returning the 'Fallen Terrorist' for Burial in Non-International Armed Conflicts: The Rights of the Deceased, the Obligations of the State, and the Problem of Collective Punishment," *Journal of International Humanitarian Legal Studies* 10 (2019): 370.
- 19 Paul, "The Duty to Make Amends," 89.
- 20 International Committee of the Red Cross, "Operational Best Practices"; Baranowska, "Advances and Progresses," 713.
- 21 Hunke, "Making Amends: A Guide to US Law and Policy on Post-Harm Amends."
- 22 Ibid.
- 23 See e.g., Jensen, David and Steven Lonergan, "Natural resources and post-conflict assessment, remediation, restoration, and reconstruction: Lessons and emerging issues" in *Assessing and Restoring Natural Resources In Post-Conflict Peacebuilding*, ed. David Jensen and Stephen Lonergan (London: Routledge, 2012).
- 24 Hunke, "Making Amends: A Guide to US Law and Policy on Post-Harm Amends."
- 25 Shelton, Dinah, "Reparations," *Max Planck Encyclopedia of Public International Law*, 2015.
- 26 "Declaration of International Law Principles on Reparation for Victims of Armed Conflict (Substantive Issues)," International Law Association, Res no 2/2010, Art 1.
- 27 Shelton, Dinah, *Remedies in International Human Rights Law (3rd Edition)*, (Oxford: Oxford University Press, 2015), 16-17.
- 28 Ferstman, Carla, "Reparations for Mass Torts Involving the United Nations," *International Organizations Law Review* 16, 2019, 62; "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", United Nations, A/RES/60/147, 2005).
- 29 Gillard, Emanuela-Chiara, "Reparation for Violations of International Humanitarian Law," *International Review of the Red Cross* 96, 2014; Zegveld, Liesbeth, "Remedies for Victims of Violations of International Humanitarian Law," *International Review of the Red Cross* 85, 2003; Ferstman, "Reparations for Mass Torts Involving the United Nations"; Abraham, Haim, "Tort Liability for Belligerent Wrongs," *Oxford Journal of Legal Studies* 39: 4, 2019.
- 30 "Basic Principles on the Right to Remedy and Reparation," Principle 18; Abraham "Tort Liability for Belligerent Wrongs."
- 31 For a comprehensive analysis of the obligation of reparation in armed conflict, see *inter alia* Correa, Cristian, Shuichi Furuya, and Clara Sandoval, *Reparations for Victims of Armed Conflict* (Cambridge: Cambridge University Press, 2020); Ferstman, Carla, "The Right to Reparation for Victims of Armed Conflict", in *The Grey Zone: Civilian Protection Between Human Rights and the Laws of*

- War, ed. Mark Lattimer and Philippe Sands (London: Hart Publishing, 2018); Burke and Lattimer, "Reparations for civilian harm from military operations," 63.
- 32 Examples include the way in which the US Foreign Claims Act is used, and the way in which the UN applies its Principle of Limited Liability during UN peacekeeping operations. Keenan and Tracy, "United States Military Compensation to Civilians in Armed Conflict," 2; Burke and Lattimer, "Reparations for civilian harm from military operations," 32-35; Shagra, Daphna, "UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage," *American Journal of International Law* 94: 2, 2000, 410; Abraham, Haim, "Tort Liability, Combatant Activities, and the Question of Over-Deterrence," *Law & Social Inquiry*, 2021.
- 33 However, for an argument about how tort claims procedures may be used properly in the context of reparations for violations of international humanitarian law, see Abraham, "Tort Liability for Belligerent Wrongs."
- 34 For example, USAID's Marla Ruzicka Iraqi War Victims Fund set up in 2005 and Turkish law number 5233 passed in 2004. Hunke, "Making Amends"; Paul, "The Duty to Make Amends," 103; Burke and Lattimer, "Reparations for civilian harm from military operations," 59.
- 35 Paul "The Duty to Make Amends," 103; Mahanty, McAvoy, and Henry, "The US Military and Post-Harm Amends Policy and Programs," 3.
- 36 Burke and Lattimer, "Reparations for civilian harm from military operations," 27-29; Gilbert, Emily, "The Gift of War: Cash, Counterinsurgency, and 'collateral damage,'" *Security Dialogue* 46: 5, 2015, 403; Jerome Starkey, "Karzai Offers Families 'Blood Money' for Sons Killed in Raid," *The London Times*, March 8, 2010.
- 37 Gregory, "The Costs of War," 158; Gilbert, "The Gift of War"; Jones, Murray, "UK Compensation Payments for Afghan Civilian Harm Examined," AOA, 2021.
- 38 "Basic Principles on the Right to Remedy and Reparation," paragraph 18; Burke and Lattimer "Reparations for civilian harm from military operations," 18; Correa, Furuya, Sandoval, *Reparations for Victims of Armed Conflict*, 2; Ferstman, "The Right to Reparation for Victims of Armed Conflict."
- 39 Lubell, Noam, Jelena Pejic, and Claire Simmons, "Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice," International Committee of the Red Cross/Geneva Academy of International Humanitarian Law and Human Rights, 2019.
- 40 Ibid., guidelines 1-6.
- 41 Burke and Lattimer "Reparations for civilian harm from military operations," 23.
- 42 Ibid., 19.
- 43 Ibid., 48.
- 44 Gregory, "The Costs of War"; Burke and Lattimer, "Reparations for civilian harm from military operations."
- 45 Rogers, "Addressing Civilian Harm in Afghanistan," 1; Shiel, "The Sum of All Parts," 22-24; Burke and Lattimer "Reparations for civilian harm from military operations," 26.
- 46 Khan, Azmat and Gopal, Anand, "The Uncounted," *The New York Times*, November 16, 2017; Shiel, "The Sum of All Parts," 24.
- 47 Rogers, "Addressing Civilian Harm in Afghanistan," 7.
- 48 Shiel, "The Sum of All Parts," 24.
- 49 Ibid.; Rogers, "Addressing Civilian Harm in Afghanistan," 7.
- 50 In August 2010, NATO nations approved the non-binding Civilian Casualty Guidelines. NATO, "Nations Approve Civilian Casualty Guidelines" NATO, August 6, 2010; Shiel, "The Sum of All Parts," 23; Rogers, "Addressing Civilian Harm in Afghanistan."
- 51 Rogers, "Addressing Civilian Harm in Afghanistan"; Shiel, "The Sum of All Parts," 24.
- 52 "Casualty Recording: Assessing State and United Nations Practices: Joint Summary of Findings and Recommendations" AOA and Oxford Research Group, 2014, 4; Burke and Lattimer, "Reparations for civilian harm from military operations," 27.
- 53 On the legality and challenges of individuals seeking reparations (as opposed to states), see note 29.
- 54 Burke and Lattimer, "Reparations for civilian harm from military operations," 45; Palchetti, Paolo, "The Allocation of Responsibility for Internationally Wrongful Acts Committed in the Course of Multinational Operations," *International Review of the Red Cross* 95: 891/892, 2013; Nollkaemper, André, Jean d'Aspremont, Christiane Ahlborn, Berenice Boutin, Nataša Nedeski, Ilias Plakokefalos, "Guiding Principles on Shared Responsibility in International Law," *European Journal of International Law* 31: 1, 2020.
- 55 Burke and Lattimer, "Reparations for civilian harm from military operations," 45.
- 56 Palchetti "The Allocation of Responsibility," 738; Ferstman, Carla, *International Organizations and the Fight for Accountability* (Oxford: Oxford University Press, 2017), 5.
- 57 Palchetti "The Allocation of Responsibility," 742. Civilians seeking reparations may also encounter hurdles related to international organization immunity. Ferstman, *International Organizations and the Fight for Accountability*, 2.
- 58 As opposed to UN-authorized operations, where responsibility would most likely rest on contributing states. Palchetti "The Allocation of Responsibility," 728-729.
- 59 See section B for definitions and use of terms. Shagra, "UN Peacekeeping Operations," 409-410; Oswald and Wellington, "Reparations for Violations in Armed Conflict," 532-533.
- 60 Ferstman, "Reparations for Mass Torts Involving the United Nations," 64.
- 61 Ferstman, "Reparations for Mass Torts Involving the United Nations," 59; "Administrative and budgetary aspects of the financing of the United Nations peacekeeping: Report of the Secretary-General," United Nations, A/51/903, May 21, 1997, paragraph 12; Rashkow, Bruce, "Remedies for Harm Caused by UN Peacekeepers," *American Journal of International Law Unbound* 108, 2014, 12.
- 62 Ferstman, "Reparations for Mass Torts Involving the United Nations," 52; "Administrative and budgetary aspects of the financing of the United Nations peacekeeping" United Nations; Rashkow, "Remedies for Harm Caused by UN Peacekeepers," 12.
- 63 Ferstman, "Reparations for Mass Torts Involving the United Nations," 64-65; Rashkow "Remedies for Harm Caused by UN Peacekeepers," 15. See section B for definitions of these terms.
- 64 Ferstman "Reparations for Mass Torts Involving the United Nations."
- 65 Ibid.; White, Nigel D., "In Search of Due Diligence Obligations in UN Peacekeeping Operations," *Journal of International Peacekeeping* 23, 2020.
- 66 Ibid., Ferstman "Reparations for Mass Torts Involving the United Nations."

67 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 2017, 1.

68 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 1.

69 For example, while casualty recording usually focuses on documenting deaths and sometimes injuries, civilian harm tracking may document a broader range of harm, such as property damage or destruction or other harm.

70 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 1; Dardagan, Hamit and John Sloboda, "Casualty recording in and for the modern age: Why standards matter," Humanitarian Law and Policy Blog, International Committee of the Red Cross, 2016; "Standards for Casualty Recording," Every Casualty, 2020.

71 Ibid.

72 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 4; Dardagan and Sloboda, "Casualty recording in and for the modern age."

73 "Casualty Recording," AOAV and Oxford Research Group, 3; "Standards for Casualty Recording," Every Casualty.

74 "Guidance on Casualty Recording," Office of the United Nations High Commissioner of Human Rights, 2019, 2.

75 Lubell, Pejic, and Simmons, "Guidelines on Investigating Violations of International Humanitarian Law," guideline 1.

76 Ibid.; Breau, Susan and Rachel Joyce, "Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict," Oxford Research Group, 2011, 1; "The United Kingdom's Obligation to Investigate, Record and Report Civilian Casualties in Armed Conflict," AOAV, 2021; Hampson, Francoise J., "An Investigation of Alleged Violations of The Law of Armed Conflict," *Israel Yearbook on Human Rights* 46, 2016, 13.

77 "Casualty Recording," AOAV and Oxford Research Group, 1.

78 Ibid., 7.

79 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 2.

80 Ibid.

81 Oakford, Samuel, "Credibility Gap: United Kingdom civilian harm assessments for the battles of Mosul and Raqqa," *Airwars*, 2018, 34; Lubell, Pejic, and Simmons, "Guidelines on Investigating Violations of International Humanitarian Law," paragraphs 114-115.

82 For example, the Human Rights unit of UNAMA used evidence from its own recording to advocate with parties to the conflict, and for one compensation program, was able to confirm on request whether victims' cases could be verified through its own records. "Casualty Recording," AOAV and Oxford Research Group, 4.

83 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 3.

84 Rogers, "Addressing Civilian Harm in Afghanistan," 15; "Casualty Recording," AOAV and Oxford Research Group, 3.

85 "Casualty Recording," AOAV and Oxford Research Group, 4. However, such humanitarian response would need to be based on a hierarchy of needs rather than those harmed in specific incidents, in support of the humanitarian principle of impartiality.

86 "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 2.

87 "Guidance on Casualty Recording," Office of the United Nations High Commissioner of Human Rights, 2; "Examining Civilian Harm Tracking and Casualty Recording in Afghanistan," Center for Civilians in Conflict and Every Casualty, 2.

88 "Casualty Recording," AOAV and Oxford Research Group, 3; Lubell, Pejic, and Simmons, "Guidelines on Investigating Violations of International Humanitarian Law,"; Burke and Lattimer, "Reparations for civilian harm from military operations," 27.

89 "Guidance on Casualty Recording," Office of the United Nations High Commissioner of Human Rights, 11.

90 "Casualty Recording," AOAV and Oxford Research Group, 4; ; Lubell, Pejic, and Simmons, "Guidelines on Investigating Violations of International Humanitarian Law."

91 "Guidance on Casualty Recording," Office of the United Nations High Commissioner of Human Rights, 1.

