The Prosecutor v Bosco Ntaganda

Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare

Dr Sunneva Gilmore

October 2020

Table of Contents

INTRODUCTION 3

PART I - PRINCIPLES 6

1. TEMPORALITY AND PRIORITISATION 9
2. VICTIM PARTICIPATION AND CONSULTATION 10
3. TRANSFORMATIVE REPARATIONS 13
4. RESPONSIBILITY OF CONVICTED PERSON 17
5. EFFICIENCY AND PROMPT REPARATIONS 18
6. GENDER-SENSITIVE APPROACH TO INTERNATIONAL CRIMES 19
7. SEXUAL AND GENDER BASED VIOLENCE 21

PART II – 1. SCOPE, EXTENT AND EVOLUTION OF THE HARM 23

1.1 INFECTIOUS DISEASES 25
1.2 PREGNANCY 29
1.3 GYNAECOLOGICAL AND OTHER PHYSICAL COMPLICATIONS 32
1.4 MENTAL HEALTH AND PSYCHOSOCIAL IMPACTS 36
1.5 CHILDREN AND SEXUAL VIOLENCE 42
1.6 INTERGENERATIONAL AND INDIRECT VICTIMS 46
1.7 STIGMA 49

PART III - APPROPRIATE REPARATIONS FOR RAPE AND SEXUAL SLAVERY 51

1. COMPENSATION 53
2. REHABILITATION 77
2.1. MEDICAL REHABILITATION 80
2.2 SOCIAL REHABILITATION 104
3. SYMBOLIC MEASURES 109

PART IV ATTACKS ON HEALTHCARE 119

1.1 ATTACK ON HEALTHCARE IN THE *NTAGANDA* CASE 123
1.2 STATE PRACTICE ON REPARATIONS FOR ATTACKS ON HEALTHCARE 125
1.3 APPROPRIATE REPARATIONS FOR THE SAÏO HEALTH CENTRE 127

RECOMMENDATIONS 135

Introduction[1]

1. As the *Ntaganda* case offers the first opportunity for reparations to be awarded for rape and sexual slavery at the ICC and in the Iturian case,[2] this report outlines a gender-sensitive and victim-centred approach to the harm and appropriate forms of reparations. This is in line with the Chamber's direction to 'address the modalities of engagement with victims of such crimes' following the TFV suggestion that advice be provided on the adoption of reparations principles concerning victims of SGBV.[3] It also addresses attacks on healthcare, given its effects on medical rehabilitation, as well as its impact on victims of rape and sexual violence.

2. Due to the Covid-19 pandemic and on-going insecurity during the appointment of the experts in the reparation proceedings in the *Ntaganda* case, fieldwork in [redacted] was not possible. As a result this report draws from interviews that were carried out virtually with key stakeholders, including victims through their legal representative, civil society actors, [redacted] medical/healthcare professionals, ICC and other international organisations' staff as well as a roundtable with [redacted] civil

[redacted] The author of this report, Dr Sunneva Gilmore MB BCH BAO MRCOG, is a medical doctor in obstetrics and gynaecology in Northern Ireland. [redacted]

[2] See Andrea Durbach and Louise Chappell, 'Leaving Behind the Age of Impunity: Victims of Gender Violence and the Promise of Reparations', *International Feminist Journal of Politics* 6(4) (2014): 543–562; and Estelle Zinsstag and Virginie Busck-Nielsen Claeys, Sexual Violence as an International Crime, the Restorative Paradigm and the Possibilities of a More Just Response, in M. Bergsmo (ed.), *Thematic Prosecution of International Sex Crimes*, Torkel Opsahl (2018), 501-536 p515.

[3] ICC-01/04-02/06-2528-Red, 14 May 2020, para.14.

society organisations.[4] The report also draws upon data provided by victims' legal representatives, information held within the Court by the VPRS, including a sample of relevant application forms, and confidential transcripts of witnesses who appeared before the Chamber in the *Ntaganda* case. Although a field mission would have allowed more of these interviews and focus groups to take place, this report draws from the author's comparative research in other contexts as well as an extensive review of the literature to provide a more detailed analysis to inform the Chamber's reparation order.[5]

3. While the Chamber suggested that the experts 'should endeavour to submit a joint report',[6] this report is written separately given the difficulty of coordinating the expert team across [redacted] countries and two languages in the time frame of their mandate. At the start of our work as a team, we decided to divide up the crimes, with this author focusing on attacks on healthcare as protected buildings, rape and sexual slavery.[7] In line with the sampling mandate in the Trial Chamber's first reparations decision, the author provided feedback on: (i) the reparation consultation form for participating victims; (ii) the reparation form for new,

[4] [redacted]

[5] [redacted]

[6] ICC-01/04-02/06-2528-Red, 14 May 2020, para.11.

[7] This report should be read in light of the 'Experts Report on Reparation in the Case of The Prosecutor v. Bosco Ntaganda'.

potentially eligible victims; and (iii) the sampling methodology.[8] Some of the key points in terms of victim participation and consultation are outlined under the "Principles" section of this report.[9] The author provides details on the harms caused by rape, sexual slavery and attacks on a protected building, but given insufficient data available from information within the Court (collection is ongoing) and inability to travel to [redacted], a limited and indicative sum of relevant costs are included in this report.[10]

4. Part I of this report begins by outlining some relevant principles that the Chamber may want to consider incorporating or developing the *Lubanga* principles further. Part II addresses the scope, extent and evolution of the harm, including the long term consequences suffered by victims of rape and sexual slavery, including against the civilian population and former child soldiers as well as children born as a result of rape.[11] Part III outlines appropriate modalities of reparations for rape and sexual slavery, in particular medical and social rehabilitation, compensation and symbolic measures. As the defence notes, the crimes Mr Ntaganda was 'convicted of, are committed on a **specific date, within a precise timeframe and in a particular location**'.[12] Accordingly the author has concentrated on appropriate reparations limited to the charges of which Mr Ntaganda has been convicted and their temporal and spatial scope. Although most of the report addresses rape and

[8] This included providing details on methodology of stratified sampling and representiveness, using more simpler language to convey concepts to victims as well as how the information they would provide would be used and stored.

[9] While the Chamber did extend the experts time to allow them to integrate material collected from the Registry's 30 September 2020 filing, the ongoing pandemic has meant that little information has collected.

[10] The author would need to clinically assess victims to be able to determine appropriate investigations and treatments, which have their own costs, including variabilities to type of medication, available and supply networks, especially in light of the COVID-19 pandemic.

[11] While the Chamber outlined that harm should indicate potential cost under this heading (ii), without sufficient data and further victims to be added it is incredibly difficult to quantify a global cost for such harm. Nevertheless, some costs that were discerned from interviews and quantified from comparative analysis are included in Part III on appropriate modalities. The author did not in her application apply to be an expert under ground (i) on liability, so limits her comments to appropriate modalities in light of this issue with regards to compensation. Order setting deadlines in relation to reparations, ICC-01/04-02/06-2447, 5 December 2019, para.9(b).

[12] Emphasis in original, ICC-01/04-02/06-2479-Red, para.70.

sexual slavery, Part IV provides some analysis of attacks on healthcare, in particular the attack against a protected building (the health centre in Saïo), given the author's engagement with doctors and healthcare practitioners in the area.

Part I - Principles

5. The Chamber's ability to establish principles on reparations enables it to have the 'necessary flexibility' to tailor reparations to the consequences of the crimes convicted before them.[13] Indeed the *Lubanga* principles are framed as a foundation to allow subsequent chambers to develop case specific and a more general corpus of jurisprudence in a principled fashion in redressing international crimes.[14] The *Ntaganda* case offers an opportunity for the Court to develop more comprehensive principles that speak to international crimes, rather than specific crimes or incidents that mark previous reparation awards. This can reflect a next-stage in the evolution of reparations at the Court similar to the experience of the Inter-American Court whose initial case load and jurisprudence focused on disappearances, but which advanced over time to more large scale adjudication on massacres. [15] Other courts have responded to legitimate criticism of their shortcomings in providing remedies to victims by evolving their remedial schemes.[16] Accordingly the Chamber in its reparation order in the *Ntaganda* case can hopefully provide a more consistent vision of reparations that can better help victims understand the Court's reparation system and allow the Registry plan for future cases. [17]

[13] David Donat-Cattin, Article 75: Reparations to Victims, in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court,* Hart (2008) p1399-1412, p1402.
[14] Order for Reparations, ICC-01/04-01/06-3129-AnxA, para.5.
[15] See Antônio Augusto Cançado Trindade, *The Access of Individuals to International Justice*, OUP (2011).
[16] Elisabeth Steiner, Just Satisfaction under Art 41 ECHR: A Compromise in 1950 – Problematic Now, in A. Fenyves, E. Karner, H. Koziol and E. Steiner (eds.), *Tort Law in the Jurisprudence of the European Court of Human Rights*, De Gruyter (2011), 1-26, p22-24.
[17] See Carla Ferstman, Reparations at the ICC: the Need for a Human Rights Based Approach to Effectiveness, in Ferstman and Goetz (2020), 446-478, p453.

6. Given that the *Lubanga* principles reiterate the sentiment that reparations are a 'key feature' of the Court, and are linked to the success of the Court.[18] This is well understood in affected communities, in that legitimacy of the Court rests to some extent on how it is perceived by those who carry the burden of the harm caused by international crimes in their everyday lives. Such legitimacy depends on the coherence of the ICC reparation system to develop its own consistent reparations that are appropriate and meaningful for victims.[19] While the Court's reparation mandate has been criticised by former judges,[20] for the victims with whom the author was able to engage with reparations through the ICC was their only resort to securing redress for their suffering.[21] While the author, VPRS and legal representatives sought to inform victims and manage their expectations, there is a deep sense of distrust of local institutions, which serves to silence them and leads them to withdraw into themselves.[22] This is not to position the Court as their saviour, nor to suggest that reparations awarded will be 'full' *restitutio in integrum*. Indeed the author's recommendations in this report are designed to be modest and feasible so as to encourage transparency and reflect a bottom-up engagement with victims in the *Ntaganda* case.

7. It is worth noting that a unique selling point of the ICC is as an avenue for victims to obtain reparations for international crimes. While its reparations are awarded against a convicted person, in comparison to state-based adjudication at regional human rights courts, the ICC has a global jurisdiction. The Court would benefit from more clearly spelling out its own vision of reparations. As affirmed by the

[18] ICC-01/04-01/06-3129-AnxA, para.3.
[19] Luke Moffett and Clara Sandoval, Tilting at Windmills: Reparations and the International Criminal Court, *Leiden Journal of International Law* (*forthcoming* 2021).
[20] Judge Christine Van den Wyngaert reparations at the Court 'risk being more symbolic than real', in Victims before International Criminal Courts: Some Views and Concerns of the ICC Trial Judge, (2011) 44(1) *Case Western Reserve Journal of International Law,* 475-496; and as 'disappointing' and 'dismal' by Judge Elizabeth Odio Benito, in C. Ferstman and M. Goetz (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, Brill (2020), pX.
[21] [redacted]
[22] [redacted] lawyer, interview [redacted] and [redacted] civil society organisation, interview [redacted]

Appeals Chamber in the *Lubanga* case, reparations at the Court serve two functions: to 'oblige those responsible for serious crimes to repair the harm they caused to the victims and [to] enable the Court to ensure that offenders account for their acts'.[23] Perhaps this can be more simply stated as follows: reparations by convicted persons serve to demonstrate that they take responsibility for their actions and to vindicate victims' suffering by acknowledging and remedying their harm. Reparations at the ICC are about ensuring accountability and moving beyond the sentence, helping to ground redress in measures that acknowledge and alleviate the continuing suffering of those most affected by international crimes.[24]

8. Reparations should also be appropriate. The reparation measures ordered should correspond as far as possible to the harm experience by victims and their understanding of what is needed to redress it. In order to determine what is appropriate reparation processes should also be victim-centred, by allowing victims to shape such measures to their needs. This involves meaningful participation and to avoid 'manipulating trauma' to justifying assistance programming or to speak for and undermine victims' agency to speak for themselves.[25] Victims should be engaged with at an early point of proceedings to collect data on harm and views and concerns on reparations, and should not dismissed as being too vulnerable to be able to speak for themselves. This resonates with the principle of doing no harm, in that that victims should be treated with dignity and respect and reparations should not compound their harm or expose them to unnecessary risks or unethical practices.[26] In addition to determining the form and scope of reparation, measures should be proportionate; in other words, the obligation imposed should be feasible. Much of the jurisprudence on reparations sees them as pushing the boundaries on redress, but

[23] ICC-01/04-01/06-3129-AnxA, para.2.
[24] Carla Ferstman, The Reparation Regime of the International Criminal Court: Practical Considerations, *Leiden Journal of International Law* 15 (2002) 667-686, p668.
[25] Interview 18, civil society actor, [redacted]
[26] Sunneva Gilmore, *A medico-legal approach to reparations for sexual violence in times of conflict*, QUB (2021).

not to the extent that it impoverishes those responsible.[27] Thus there is a balance to be struck between appropriate reparations in light of victims' harm and measures which are proportionate with regards to the liability of the convicted person and the capacity of the ICC.

1. Temporality and Prioritisation

9. International crimes can have a differentiated impact over time. The principle of temporality appreciates that different reparative measures will be required over time depending on the victim's circumstances and the manifestation of the harm.[28] This is apparent with victims of sexual violence who contract HIV, which without medical management will result in death. It may be that interim or prioritised reparations are made to vulnerable victims,[29] such as those who have suffered sexual violence, children, the disabled or the elderly, to help mitigate their harm as soon as possible.[30] Prioritisation can take the form of paying interim relief payments, fast-tracking their applications, or providing specific forms of payment for those who are vulnerable (e.g. an increased amount or a lump sum rather than periodic payments).[31] In Guatemala the criteria for prioritisation of individual reparations under the PNR has to consider the gravity of the violation, the victim's socio-economic situation, and social vulnerability with special attention to widows, orphans, the elderly and children.[32] Some reparation bodies have prioritised women and vulnerable children, including preferential proportions to spouses and mothers as well as children with disabilities.[33] The Timor Leste draft reparation

[27] *Stolyarova v. Russia*, App. No. 15711/13, 29 January 2015, para.75.
[28] Gilmore (2021). This is apparent with protocols around being gender-sensitive and trauma-informed in engagements with victims discussed below in Part III.2.
[29] Lindsey defines vulnerability as 'the precarious living conditions of individuals, households or communities in the face of a threat in the form of an abrupt change in environment.' Charlotte Lindsey, *Women Facing War*, ICRC (2015), p30
[30] Such as in Sierra Leone - See Mohamad Suma and Cristián Correa, *Report and Proposals for the Implementation of Reparations in Sierra Leone,* ICTJ (2009); and in Tunisia - Article 11, Organic Law on Establishing and Organizing Transitional Justice 2013.
[31] Such as in Nepal; Section 16, Agreement between the Federal Republic of Germany and the State of Israel 1952; and section 24(1), Victims' Payment Regulations 2020.
[32] Artículo 8, Resolución de la Comisión Nacional de Resarcimiento, Número CNR-001-2015.
[33] TDC p427. For instance for the death of a single victim the compensation divided between parents with 60% for the mother.

framework prioritised individual reparations to 'vulnerable' victims, which included those who suffered rape or sexual slavery or had been born as a result of such crimes.[34] Such individual reparations included the provision of medical rehabilitation, education grants and vocational training.[35] The *Lubanga* principles recognise that priority may need to be given to victims who are in 'a particularly vulnerable situation or who require urgent assistance.'[36] Considerations of vulnerability in reparation awards should be concerned with equity, rather than equality between different groups of victims.[37] As such vulnerability should assist reparations in better appreciating the lived reality and compounding harms victims' experience from marginalisation, discrimination, health inequities and poverty.[38] Responding to such vulnerabilities through reparations should aim to build victim resilience.[39] This is apparent in redressing the harm of victims of sexual violence, where marginalization and layers of discrimination and stigma impact the direct victim and their family, in particular children born as a result of rape. Accordingly this requires prioritisation of such victims who risk suffering aggravated harm as a result of international crimes.

2. Victim Participation and Consultation

10. Victims should be participants in the design, process, and assessment of outcomes in any agreed reparations framework. This serves not only to recognise their right to a remedy, but also to calibrate measures, ensuring they are appropriate and

[34] Articles 4(b) and 6(2), National Reparations Framework, Draft Law no. 19/11 (2011).
[35] Article 9(1)(b).
[36] Principle 19, ICC-01/04-01/06-3129-AnxA. In *Al-Mahdi* reparation order this is interpreted as those 'most harmed' by the crimes - ICC-01/12-01/15-236, para.29. In implementation this refers to 'women and elderly' - ICC-01/12-01/15-291-Red3, para.121. See also *Bemba* experts reparation report - ICC-01/05-01/08-3575-Anx-Corr2-Red, paras.143-144. A case by case approach should be followed, with attention to the circumstances of the crimes and context in affected communities.
[37] Martha Albertson Fineman, Vulnerability and Inevitable Inequality, *Oslo Law Review* 4(3) (2017), 133–149, p142.
[38] See Luke Moffett, Vulnerability, Resilience and the Responsive State in Transitional Societies: Seriously Injured Victims of the Troubles in Northern Ireland, in J. Gallen and T. Ní Mhuirthile (eds.), *Responsibility and Vulnerability in Society: State Accountability and Responsiveness*, Routledge (2021).
[39] Fineman defines resilience as 'means and ability to recover from harm, setbacks and the misfortunes that affect our lives'. Fineman (2017), p146.

effective, and to give the reparation process legitimacy.[40] As such, a reparation programme must engage with and consult victims, victim associations and civil society on what reparations should look like, so that they adequately and appropriately respond to victims' needs.[41] This may require some sensitisation on what reparations mean in international law, under the Rome Statute and the practices of other jurisdictions so that they can fully engage in articulating their right to reparation within the system of the ICC.[42] Engagement with victims should be a 'two-way communication' through 'interactive activities, to listen to victims and respond to what they are saying, and to take into account victims' concerns'.[43] Victim lawyers can be well placed to advocate victims' views and concerns, given that they are often trying to find consensus amongst their clients or at least communicate their differing views.[44] However there may be good reason to appoint ad hoc victim forums or private WhatsApp groups (given the impact of COVID-19) to help steer implementation through external oversight that can contribute to improving transparency and ownership.[45]

---

[40] Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, OHCHR, August 2010, para.1090.

[41] See Principle 32, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

[42] As genuine 'information sharing' - see Mariana Pena and Gaelle Carayon, Is the ICC Making the Most of Victim Participation? *The International Journal of Transitional Justice* 7 (2013) 518-535, p531.

[43] ICC Strategy in Relation to Victims 2009, ICC-ASP/8/45, para.22

[44] Luc Walleyn, The Role of Victims' Lawyers in Reparation Claims, in Ferstman and Goetz (2020), 381-400, p398.

[45] In Colombia victim tables (mesas) operate in such capacity, though they suffer from lack of engagement and dominance of gender or local power dynamics. Under Article 193, Law 1448/2011; see Mijke De Waardt and Sanne Weber, Beyond victims' mere presence: an empirical analysis of victim participation in transitional justice in Colombia, Journal of Human Rights Practice 11(1) (2019) 209–228. For a time the Guatemalan reparation programme (PNR) had a 'Consultative Council of Victim Organisations' which included women, indigenous people and human rights organisations to participate and provide more transparency to the process, but could not vote on decisions - Article 4, National Compensation Program - Governmental Agreement 258-2003, 8 May 2003. If this was to be used by the ICC it would have to include women, youth, disabled, healthcare practitioners and other organisations that are independent from the TFV.

11. Engagements with victims, victim associations and affected communities should be made in accessible and understandable terms, including in local languages and using mediums such as visual representations and storytelling where appropriate for those who are illiterate. While speaking to local community and victim group leaders can be useful in obtaining general sentiments, they can act as gatekeepers in limiting or managing access to victims and their engagement with other Court organs. A range of mediums should be used on what modalities will be provided by the Court to victims, such as community mobilization events, radio broadcasts, SMS messaging, and newspaper notices. For victims of sexual violence this will need to be done more discretely, see the recommendations below on camouflaging and screening victims. When consulting with or encouraging the participation of victims on the design of reparations, a special effort should be made to ensure that women, children, the elderly and those who are disabled are able to contribute to the process and have their views and concerns heard and considered.[46] Particular attention should be paid to victims of sexual violence, who may feel stigmatised, socially excluded or psychological harmed,[47] for example, by providing private, discreet forums.[48]
12. Consultation can provide important insights into the ongoing harms and challenges that victims face. In many cases this may unveil high levels of psychological trauma and physical harm.[49] In light of the concept of reparative complementarity,[50] the Congolese government, in cooperation with the ICC, should disseminate information to victims and the general public on 'all available

[46] Special efforts should also be made towards sexual orientation and gender identity diversity.
[47] The ECCC with specialist civil society organisations used a range of targeted and gender processes to encourage victims of sexual and gender based violence to come forward, including providing psychological services and training on gender-sensitive and SGBV, alongside 'women's hearings, self-help groups, one-to-one therapy sessions and forum theatre.' Rachel Killean, *Victims, Atrocity and International Criminal Justice: Lessons from Cambodia*, Routledge (2018), p142.
[48] This could include the use of camouflaging discussed further below using locally trusted solidarity or community support groups. See Gilmore, Guillerot and Sandoval (2020), p24-34.
[49] The Tunisian truth commission's consultation of some 6,275 victims found that 72% of victims suffered physical damage and 88% psychological trauma. TDC, Final Comprehensive Report, 2020, p422.
[50] See Luke Moffett, Reparative complementarity: ensuring an effective remedy for victims in the reparation regime of the International Criminal Court, *The International Journal of Human Rights*, 17(3) (2013), 368-390.

legal, medical, psychological, social, administrative and all other services to which victims may have a right of access'.[51] This is particular important with regards to ensuring life-long healthcare and medical rehabilitation for victims of rape and sexual slavery discussed in Part III.2.

3. Transformative Reparations

13. Transformative reparations have emerged as a broader and more complex vision of redress that does not simply return victims to their position before the harm, but also addresses the structures of discrimination, marginalisation and the root causes of injustice.[52] Transformative reparations have often been invoked when responding to sexual violence.[53] It is well documented that the stigma of sexual violence can impinge on individual development and erode social fabric by creating new tensions and means for exclusion.[54] Accordingly, a number of commentators and judgments have called for transformative reparations to tackle the structural, cultural and social drivers of exclusion that manifest itself in the stigmatisation of victims of sexual violence.[55] The transformative potential of

[51] Principle 24, 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, A/RES/60/147, 16 December 2005, (UNBPG).

[52] Rodrigo Uprimny Yepes, Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice, *Netherlands Quarterly of Human Rights* 27 (2009), 625-647, p638; and Anne Saris and Katherine Lofts, Reparation Programmes: A Gendered Perspective, in C. Ferstman, M. Goetz, and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff (2009), p93.

[53] See Fionnuala Ni Aolain, Catherine O'Rourke and Aisling Swaine, Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice, *Harvard Human Rights Journal* 28 (2015), 97-146; and Louise Chappell, The gender injustice cascade: 'transformative' reparations for victims of sexual and gender-based crimes in the Lubanga case at the International Criminal Court, *The International Journal of Human Rights*, 21(9) (2017), 1223-1242.

[54] Sanne Weber, *Guidelines on Transformative Reparations for Survivors of Sexual Violence*, Impunity Watch, (2019), p14.

[55] *Case of González et al. ("Cotton Field") v. Mexico*, Judgment 16 November 2009 (Preliminary Objection, Merits, Reparations, and Costs), IACtHR Series C.205, para.450; Ruth Rubio-Marín and Clara Sandoval, Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment, *Human Rights Quarterly* 33 (2011), 1062-1091; the 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, para.3; Article 25, Colombian Victims and Land Restitution Law, Law 1448/2011;

reparations can serve 'to subvert, instead of reinforce, pre-existing structural … inequalities and thereby to contribute, however minimally, to the consolidation of more inclusive democratic regimes'.[56] The attention to transformative justice and reparations, can be all encompassing, and risks promising too much and delivering too little.[57] Indeed, reparation as understood in transitional justice is conceptually and practically rich, [58] and the use of 'transformative' simply 'repackages' obligations on responsible actors under international law.[59] It also risks blurring the line between development or assistance and reparations, diluting victims' rights and replicating programmes that often exist in fragile and post-conflict societies.[60]

14. In the context of the ICC, it is difficult for reparations ordered by the Court to have social impact in the absence of state and civil society action, when the transformative goal is more aspirational than achievable.[61] Moreover, given that the Court does not have the mandate or the capacity to commit to peacebuilding efforts or structural reform in Ituri, assuming that reparations have transformative effects, such a transformative agenda may misrepresent the more modest remedy the ICC can offer.[62] Declaring that reparations for sexual violence ordered by the Court will contribute to transforming gender and social relations may overlook the

---

UN Guidance Note of the Secretary-General Reparations for Conflict-Related Sexual Violence, June 2014, p8-9; and *Lubanga,* Reparations Order, paras.34 and 67.

[56] Ruth Rubin-Marín, The Gender of Reparations in Transitional Societies, in R. Rubin-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, (Cambridge University Press, 2009), 63–120, p66.

[57] Lars Waldorf, Anticipating the Past: Transitional Justice and Socio-Economic Wrongs, *Social & Legal Studies* 21(2) (2012) 171–186, p179-180.

[58] The Future of the Past: Reflections on the Present State and Prospects of Transitional Justice Pablo de Greiff, International Journal of Transitional Justice, 2020, 14, 251–259, p253-254.

[59] Margaret Urban Walker, Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations, *International Journal of Transitional Justice* 10(1) (2016), 108–25, p117-118; and Brianne McGonigle Leyh and Julie Fraser, Transformative Reparations: Changing the Game Or More of the Same, *Cambridge International Law Journal*, 8(1) (2019) 39-59.

[60] Naomi Roht-Arriaza, Reparations in the aftermath of repression and mass violence, in E. Stover and H. Weinstein (eds), *My Neighbor, My Enemy Justice and Community in the Aftermath of Mass Atrocity*, CUP 2004, 121-139, p130.

[61] Durbach and Chappell, (2014), p550.

[62] Cf. ICC-01/04-01/06-2904, para.240. Luke Moffett, Reparations for victims at the International Criminal Court: a new way forward?, *The International Journal of Human Rights*, 21(9) (2017), 1204-1222, p1212.

lived experience of victims, and may even put them at risk.[63] In addition, it risks complicating the reparative narrative of the ICC by introducing new language, concepts and vernacular that is not well understood in the Court or is inconsistently applied on the ground.[64] Due to the distance and selectivity of justice at the ICC in relation of Ituri,[65] where violence is ongoing, care should be taken when using other concepts to convey the vernacular of reparations amongst different actors to ensure there is a consistent meaning and a common understanding that is culturally sensitive.[66]

15. A more modest and feasible approach is concerned with confronting social exclusion by prioritising attention to a participatory process over outcomes and by challenging unequal power relations.[67] For sexual and gender-based violence, a transformative approach to reparations must be cognisant of the impact of harm in socio-economic and cultural contexts as well as how 'gender intersects with other discrimination or identities (i.e. intersectionality) that can amount to different experiences of harm and perceptions on adequate repair'. [68] Gender-sensitive transformation could open up new opportunities, however small, for victims that may contribute collectively to broader social change. [69] However, personal transformation for individual victims through reparations must be distinguished from structural transformation to respect victims' socio-economic and cultural context. Moreover, transformation is a personal trajectory that depends on the

[63] Durbach and Chappell (2014), p555.
[64] Carolyn Hoyle and Leila Ullrich, New Court, New Justice? The Evolution of 'Justice for Victims' at Domestic Courts and at the International Criminal Court, *Journal of International Criminal Justice* 12 (2014), 681-703, p693-696; and Phil Clark, Di*stant Justice: The Impact of the International Criminal Court on African Politics*, CUP (2018), p148.
[65] Luke Moffett, *Justice for Victims before the International Criminal Court,* Routledge (2014), p119.
[66] Independent Expert Review of the International Criminal Court and the Rome Statute System. Final Report, 30 September 2020, para.392.
[67] Paul Gready and Simon Robins, From Transitional to Transformative Justice: A New Agenda for Practice, *International Journal of Transitional Justice* 8 (2014), 339-361.
[68] Gilmore, Guillerot and Sandoval (2020), p15.
[69] Clara Sandoval, Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition, in R. Duthie and P. Seils (eds.), *Justice Mosaics,* ICTJ (2017), 166-201, p180.

quality and length of support to fit an individual's circumstances.[70] As such focusing only on success stories can render invisible those who continue to struggle and face ongoing insecurity and poverty that dominates their daily lives.[71] Lundy and McGovern in locating transitional justice at the community, grassroots level see participatory action as more important in that it involves 'a process that facilitates the permanent ability to identify and analyse problems, formulate and plan solutions, mobilize resources and implement them, to gain control over the processes that affect peoples' lives' which could speak to social rehabilitation and collective reparation measures discussed in Part III.[72]

16. Gender-sensitivity (discussed further below) within the principles, modalities and implementation of reparations is important for a more participatory approach to transformation, which should reflect an understanding of lived social realities and 'adequately respond to women's and men's strengths and challenges' in claiming reparations.[73] However, ensuring gender balance in participatory or decision-making processes may not be sufficient to create a space for some victims to speak comfortably about their suffering and their views and concerns. For example, in Peru, as a rule equal numbers of men and women are required at assemblies on collective reparations, yet despite women's attendance sometimes exceeding that of men, they did not often speak out.[74] Therefore, gender-sensitivity requires consideration of the environmental and other factors that facilitate the choice to articulate perspectives as well as assurances that participation will affect

[70] Gilmore, Guillerot and Sandoval (2020), p16-17.
[71] D. Hilhorst, and N. Douma, Beyond the hype? The response to sexual violence in the Democratic Republic of the Congo in 2011 and 2014, *Disasters*, 42 (1) (2018) 79–98, p80.
[72] Patricia Lundy and Mark McGovern, Whose justice? Rethinking transitional justice from the bottom up, *Journal of Law and Society*, 35(2) (2008) 265–292, p280.
[73] Kristin Kalla, Advancing Justice and Making Amends Through Reparations: Legal and Operational Considerations, in F. Ni Aolain, N. Cahn, D. F. Haynes and N.Valji (eds.), *The Oxford Handbook of Gender and Conflict*, OUP (2018), 253-264, p257. See Article 12(b), Sri Lankan Office for Reparations Act 2018.
[74] Gilmore (2021), [redacted] Similar observances in Kosovo, which has a strong legal ethos on gender-equality. See UN Women (2016).

decisions.[75] In addition it requires those engaging with victims in consultation, delivery and follow-up are trained, educated and comply with internally developed protocols for following a gender-sensitive and trauma-informed approach.[76] Accordingly reparations can modestly contribute to transformation by allowing victims to participate in the proceedings and respecting their agency to choose appropriate reparations for their harm. As such transformation within the ICC reparation system is understood as personal, multi-dimensional and contextual and its full extent goes beyond reparations and the jurisdiction of the Court.

4. Responsibility of convicted person

17. Convicted persons are responsible for reparations before the ICC, by being liable for the cost of reparation orders.[77] Yet given that most convicted persons before the ICC are indigent, it does not affect their liability.[78] Moreover the Court has held that such liability can be mitigated in contributions the convicted person makes to a 'considerable' number of victims, such as demobilisation of child soldiers, that 'reduced the level of harm suffered'.[79] However they should also be encouraged to take ownership of the process of 'making amends' for the suffering of which they have been convicted beyond their resources. Indeed, the *Lubanga* principles from the outset firmly root the justification for reparations at the Court in their ability to

[75] As good practice and to facilitate the type of participation and relationship to decision making should be communicated to victims on a regular basis. For more information, see Gilmore, Guillerot and Sandoval (2020).

[76] Anne-Marie de Brouwer, Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families, *Leiden Journal of International Law*, 20 (2007), 207-237, p224.

[77] *Lubanga*, on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo ICC-01/04-01/06 A7 A8, 18 July 2019, para.3.

[78] *The Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728, 24 March 2017, paras.246, and *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations order, ICC-01/12-01/15-236, 17 August 2017, para.114; and *Lubanga,* Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable, ICC-01/04-01/06-3379-Red-tENG, para. 269

[79] *Lubanga*, Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size if the Reparations Award for which Thomas Lubanga Dyilo is Liable,' ICC-01/04-01/06-3466-Red, 18 July 2019, para.311.

'oblige those responsible … to repair the harm … and … ensure that offenders account for their acts'.[80] This should include information to assist recovery, acknowledgments of responsibility and apologies. Indeed given that one of the victims was a religious person who was killed and his remains have not yet been recovered,[81] information by the convicted person or him calling upon other members of the UPC to provide information to assist in the recovery of his body may be a constructive form of reparations.[82]

5. Efficiency and Prompt Reparations

18. Reparations should be prompt and complex processes should be minimised. Reparation measures should not be so technical, conceptual or legalistic that they become unobtainable or too complex for victims to understand.[83] Efficiency also pertains to the clarity with which the reparations available before the Court in this case are communicated to victims,[84] to prevent the perception that certain crimes confer more benefits or carry more risks than others which can lead to designating

[80] ICC-01/04-01/06-3129-AnxA, 03 March 2015, para.2.

[81] [redacted], see the experience in Northern Ireland in this regard - Sandra Peake and Orla Lynch Victims of Irish Republican Paramilitary Violence—The Case of "The Disappeared", *Terrorism and Political Violence* 28(3) (2016) 452-472; and Lauren Dempster 'Quiet' Transitional Justice: 'Publicness', Trust and Legitimacy in the Search for the 'Disappeared', *Social and Legal Studies* 29(2) 246-272.

[82] Organisations such as [redacted] could be an important intermediary to facilitate such information and recovery. See Luke Moffett, Restorative Sanctions: The Reintegrative Potential of Reparations in Sentencing at the International Criminal Court, (*forthcoming* 2021).

[83] Alina Balta, Manon Bax, and Rianne Letschert, Trial and (Potential) Error: Conflicting Visions on Reparations Within the ICC System, *International Criminal Justice Review* 29(3) (2019) 221-248, p234.

[84] A number of interviewees in this consultation (NGOs, service providers) considered there to be a misunderstanding among victims and the wider public in the DRC on what reparations meant at the ICC. The author was unable to ascertain the exact information on reparations victims received in outreach and education, or on consultation.

themselves as suffering certain crimes over others, over perceived benefits or minimising risks. This also requires consistent and clear communication on the reparations accessible through the ICC. At the same time reparations should be effective and 'should not be conflated with or sacrificed for efficiency'.[85]

6. Gender-sensitive approach to international crimes

19. Any agreed or ordered reparation programme should take a gender-sensitive and inclusive approach to reparations at the design, access and implementation stages.[86] The organs of the Court, the Trust Fund for Victims and the implementing partners should take a gender-sensitive approach to harm. Women and girls can experience harm differently from men and boys, resulting in 'gender-specific injuries', which can shape what constitutes appropriate reparation for each.[87] Socially disadvantaged women and girls also are often left to search for the remains of loved ones and to demand justice.[88]

20. A gender-inclusive approach requires an understanding that women, men and other gender identities must not be excluded or discouraged from coming forward to claim reparations. For instance, women's victimisation is situated within pre-existing social inequalities, which disproportionately compound their suffering. These include social and employment discrimination, cultural conventions regarding women's honour and chastity, lack of access to land and property rights and exposure to intimate or sexual violence.[89] Men and boys, on the other hand, may suffer harm differently as a result of hyper-masculinity resulting in the

[85] Ferstman (2020), p477.
[86] See Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparations 2007; and Reparations for Conflict-Related Sexual Violence; UN Guidance Note of the Secretary-General, June 2014; and Article 29(1), 2020 Law on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War.
[87] Robin West, The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, *Wisconsin Women's Law Journal* 15(1) (2000) 149-215, p150.
[88] Ruth Rubin-Marín, A Gender and Reparations Taxonomy, R. Rubin-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, (CUP 2009), 1-17, p2.
[89] Ní Aoláin, O'Rourke and Swaine, (2015), p102.

destabilisation of gender and sexual identity.[90] At the same time, the physical impact of sexual violence against males can make them unable to live up to the 'hegemonic masculinity expectations' of their families and communities when performing manual labour to provide for their families; thus, the provision of livestock and agricultural tools would enable these victims to improve their quality of life.[91]

21. In Sierra-Leone, the process of registration for reparations was sex-segregated; however, when women came together in large groups, they were asked to publicly identify the harm they had experienced. As a result, many women registered as 'widow' as opposed to 'rape victim' in the belief that by doing so they would receive support for their family and children as well as themselves.[92] Practical and procedural adaptations are therefore required to ensure that victims can not only avail of opportunities to feed into reparation design but also apply and receive reparations in a manner that is appropriate for them. This is particularly pertinent to victims of rape and sexual slavery in this case, for whom stigma is both a harm and a potentiator of other harms by hindering access to support.[93] To illustrate, while the total number of participating victims of rape and sexual slavery in this case is low (88 victims: 4.1%), a higher number is estimated to be affected both as victims of the attacks and as former child soldiers.[94] The preliminary mapping

[90] See Philipp Schulz, The "ethical loneliness" of male sexual violence survivors in Northern Uganda: gendered reflections on silencing, *International Feminist Journal of Politics* 20(4) (2018), 583-601.

[91] Philipp Schulz, Examining Male Wartime Rape Survivors' Perspectives on Justice in Northern Uganda, *Social and Legal Studies* 29(1) (2020) 19–40, p33-34.

[92] Ruth Rubio-Marín, Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue, *William and Mary Journal of Women and the Law* (2012) 19(1) 69-104, p87.

[93] Sunneva Gilmore and Clara Sandoval, Reparations for Sexual Violence, The Lancet Commission for Reparations and Redistributive Justice, *The Lancet* (2021 forthcoming). [redacted]

[94] Sexual violence (rape and sexual slavery) accounts for 88 out of 2132 (4.1%) participating victims. Former child soldiers account for 18 participating victims (8 are victims of rape, 10 are victims of sexual slavery) and victims of the attacks have 70 participating victims (48 are rape victims, 22 are victims of sexual slavery). Of note, victims can be direct or indirect.[redacted]. The Registry's Observations on Reparations in the Ntaganda Case, ICC-01/04-02/06-2475-AnxI, 28 February 2020, p20.

exercise of potentially newly identified potential beneficiaries (non-participating) conducted by the VPRS suggests that there are at least 1,100 new beneficiaries, but does not give details of how this figure breaks down for each crime.[95] That said, there is a perception that female former child soldiers were at significantly higher risk of also being subjected to sexual violence.

22. Furthermore, to the author's knowledge, there are no participating male victims of rape or sexual slavery in this case. This was confirmed in separate interviews with the legal representatives of the victims of the attacks and former child soldiers.[96] However, interviews with NGOs and court officers with experience of interviewing and liaising with victims suggest that male child soldiers were also subjected to rape and sexual slavery, and coded inferences were often made in communications. [97] Therefore, assessment of risk and necessary protection measures, both in advance of and throughout the reparations process, will contribute to efficiency and can be materialised by adopting mindful strategies that reach victims in an appropriate manner. These will entail methods of communication, including via phone and digital technology, which are acceptable to victims, as well as robust in confidentiality measures during the application, design, and implementation phases. Accordingly reparations should be gender sensitive and inclusive in their design, modalities and implementation. This includes understanding the different and intersecting experiences of harm through a gender lens as well as requiring those engaging with victims, determining appropriate modalities and delivering reparations to follow a gender-sensitive and trauma-informed approach.

7. Sexual and Gender Based Violence

23. The considerable international attention paid to conflict-related sexual violence (CRSV) and 'rape as a weapon of war' often obscures the everyday reality of

[95] Annex II, Field Related Activities involving the preliminary Mapping of Authorities and Newly Identified Potential Beneficiaries, 28 February 2020, ICC-01/04-02/06-2475-AnxII.
[96] Interviews 11 and 37.
[97] Such as 'pot' referring to those boys who were trained but did not fight, as they were too young or small, and instead help transport.

victims of sexual and gender-based violence by intimate partners or family members, which is opportunistic.[98] When motivated by ideology, sexual violence can be part of a strategy to attack the 'enemy',[99] upset conjugal or communal norms,[100] or achieve other strategic goals.[101] It can also be used to build social cohesion amongst combatants,[102] reflect a social construction of masculinities,[103] be tolerated due to social interactions,[104] function as entertainment, individual or group pleasure or be used to resolve community disputes.[105] Although there remains a lack of understanding and under-theorisation of male sexual violence, emerging research highlights that it can involve 'power and dominance'[106] and the emasculation of masculine identities[107] as well as sexuality, sexual gratification and opportunism.[108] The framing of CRSV in strategic terms or as a weapon of war neglects victims' lived experience of the sexuality of the violence committed against them and misses an opportunity for policy and judicial decisions to

[98] See Doris Buss, The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law, *Windsor Yearbook of Access to Justice* 25(1) (2007) 3-22; and Jelke Boesten, Analyzing Rape Regimes at the Interface of War and Peace in Peru, *The International Journal of Transitional Justice*, 4(1) (2010), 110–129.

[99] Shana Swiss and Joan Giller, Rape as a Crime of War: A Medical Perspective, *Journal of the American Medical Association* 270(5) (1993) 612-615, p613.

[100] MacKenzie (2012), p100.

[101] Elisabeth Jean Wood, Variation in Sexual Violence during War, *Politics and Society* 34(3) (2006) 307-342.

[102] Dara Kay Cohen, The ties that bind: How armed groups use violence to socialize fighters, *Journal of Peace Research* 54(5) (2017) 701-714.

[103] Chris Coulter, *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone*, Cornell University Press (2009), p133-134; and Sara Meger, Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo, *Journal of Contemporary African Studies*, 28(2)(2010) 119-135.

[104] Elisabeth Jean Wood, Conflict-related sexual violence and the policy implications of recent research, *International Review of the Red Cross* (2014), 96 (894), 457–478, p471.

[105] Boesten (2010), p127; and Sexual Violence Patterns, Causes, and Possible Solutions: An Interview with Julienne Lusenge, Solidarité Féminine pour la Paix Intégral (SOFEPADI), Democratic Republic of Congo, in D. Buss, J. Lebert, B. Rutherford, D. Sarkey, and O. Aginam (eds.) *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts,* Routledge (2014), 58-65, p58.

[106] Sandesh Sivakumaran, Sexual Violence Against Men in Armed Conflict, *The European Journal of International Law* 18(2) (2007) 253-276, p267.

[107] Philipp Schulz, Displacement from gendered personhood: sexual violence and masculinities in northern Uganda, *International Affairs* 94(5) (2018), 1101–1115.

[108] Philipp Schulz and Heleen Touquet, Queering explanatory frameworks for wartime sexual violence against men, *International Affairs* 96(5) (2020) 1169-1187, p1177.

respond to them.[109] Accordingly in the context of the work of the ICC, it is important that a more nuanced approach be adopted that takes the harm such crimes cause into account.

Part II – 1. Scope, extent and evolution of the harm

24. Victims of rape and sexual slavery can suffer a range of physical and mental health harms as well as socio-economic consequences as a result of such crimes. As many of their consequences are pertinent for both victims of the attacks and former child soldiers, this section begins by delineating the harm suffered as a result of rape and sexual slavery, including harm suffered by child soldiers and children born as a result of rape. This section focuses on the physical, mental and socio-economic harm caused by rape and sexual slavery.[110]

25. Physical harms depend on various factors such as the *type of sexual violence* committed (for example, rape and sexual slavery in this case); *individual factors* (e.g. the pre-existing health conditions or health status, age, gender and disability of the victim, brutality of rape (multiple per) and *external factors* (e.g. the availability of healthcare, ongoing stressors, the social and cultural environment,[111] poor sanitation, and hygiene). The Chamber in its judgment and sentence found that those who were sexually enslaved were held in states of 'extreme vulnerability' and 'harsh' living conditions, where threats and other forms of violence were

[109] Chris Dolan, Maria Eriksson Baaz and Maria Stern, What is sexual about conflict-related sexual violence? Stories from men and women survivors, *International Affairs* 96(5) (2020) 1151-1168.

[110] [redacted]

[111] Sarah McIvor Murray, Katie Robinette, Paul Bolton, Talita Cetinglu, Laura Nurray, et al., Stigma Among Survivors of Sexual Violence in Congo: Scale Development and Psychometrics, *Journal of Interpersonal Violence* 33(3) (2015) 491-514; and JT Kelly, TS Betancourt, D Mukwege, R Lipton, MJ Vanrooyen, Experiences of Female Survivors of Sexual Violence in Eastern Democratic Republic of the Congo: A Mixed Methods Study, *Conflict and Health* 5(25) (2011).

common.[112] Indeed the range of harms suffered by victims of rape and sexual slavery is expertly surmised in the sentencing judgment.[113] The purpose of this section is to apply a broad medical analysis of these harms that can inform appropriate reparations for rape and sexual slavery.

26. Prompt, adequate medical care is also critical to treat and/or prevent a number of further harms. According to interviews with the LVRs, the limited number of victims with whom the author spoke to and other stakeholders, many women and girls who suffered sexual violence did not receive much medical assistance, particularly in the days after the event.[114] This may be partly attributed to the victims' distance from major hospitals necessitating travel, perhaps not by road and in the midst of hostilities,[115] as well as health facilities that were poorly equipped.[116]

27. The DRC did benefit from humanitarian assistance during the relevant period on the conflict in Ituri in this case,[117] but the disruption of healthcare in eastern provinces where insecurity was rife had lasting health consequences, as demonstrated by the increased mortality rate (January 2003 – April 2004) relative to other provinces as a result of preventable and manageable conditions.[118] There is also often a significant gap between recommended sexual and reproductive

[112] Judgment, ICC-01/04-02/06-2359, 8 July 2019, para.409; and Sentening Judgment, ICC-01/04-02/06-2442, 7 November 2019, para.110.
[113] ICC-01/04-02/06-2442, paras.97-113.
[114] Interviews 11 and 28, [redacted]. Interview 37, [redacted].
[115] Interview 5, [redacted] and interview 28, medical organisation, [redacted]. [redacted].
[116] Enrico Pavignani, Markus Michael, Maurizio Murru, Mark E. Beesley and Peter S. Hill, Making sense of apparent chaos: health-care provision in six country case studies, *International Review of the Red Cross* (2013), 95 (889), 41–60, p49 and p52.
[117] Pavignani et al ibid. p46.
[118] Benjamin Coghlan et al., Mortality in the Democratic Republic of Congo: a nationwide survey, *The Lancet* 367, 2006, 44–51.

healthcare during crisis and the implementation of guidance, particularly for Human Immunodeficiency Virus (HIV) and post-rape care.[119] Consequently, victims of rape and sexual slavery may not have gained access to preventative, timely and good quality care during and in the aftermath of conflict, when postgraduate healthcare/medical training may have been patchy or incomplete due to conflict demands.[120] While certain time-critical interventions will no longer be beneficial to victims of rape and sexual slavery eighteen years after the crimes were committed, it is worth explaining how the inability to avail of these healthcare measures for a myriad of reasons may have influenced the evolution of harm over time and its impact on victims today. Attacks on healthcare and the lack of short-term medical assistance in a conflict zone have a number of implications for victims. On average, it takes 353.9 days for victims of sexual violence to come forward in the DRC, where facilitates are available, meaning that injuries, infections and other complications can become more chronic and life-threatening.[121]

1.1 Infectious Diseases

28. The first 72-120 hours after a rape or sexual assault is time-sensitive for medical interventions, such as HIV prophylaxis and emergency contraception, and treatments that can be given within a short timeframe after the event, such as vaccination courses for Hepatitis B and tetanus.[122] Although medical responses

[119] The mechanism of humanitarian health delivery rather than geographical inaccessibility can impede sexual and reproductive health care delivery. However populations who are displaced can be an additional obstacle, as well as a lack of strategic development to ensure lesbian, gay and transgender individuals are included. Recovery planning can also fail to prioritise sexual and reproductive health. See Jacqueline Stephens and Jonatan Lassam, Sexual and reproductive health during disasters: A scoping review of the evidence, *International Journal of Disaster Risk Reduction*, 50 (2020), https://doi.org/10.1016/j.ijdrr.2020.101733

[120] Pavignani et al. (2013), p52.

[121] Françoise Duroch, Melissa McRae and Rebecca Grais, Description and consequences of sexual violence in Ituri province, Democratic Republic of Congo, *BMC International Health and Human Rights* 11(5) (2011) 1-8, p4.

[122] Most victims of sexual violence in conflict areas do not seek medical assistance within this critical time period, with the majority coming forward within a year and some also suffering for repeated rapes over a year. Some research also indicates that STIs are more prevalent than HIV (testing dependent on availability) in one study in South Kivu (66% of victims for STIs compared to 1.5% for HIV) – Birthe Steiner, Marie Benner, Egbert Sondorp, K Peter Schmitz,

have become more efficacious over time, some were largely unchanged, such as the early initiation of ART treatment upon diagnosis of HIV positivity.[123] In 2002, many organisations also recommended the use of HIV prophylaxis following rape, even though its effectiveness in such cases had not been fully established, unlike the benefits of prophylaxis therapy in occupational HIV needle-stick injuries in health workers.[124] Secondary to fear or lack of resources, inaccessibility to post-exposure prophylaxis for Human Immunodeficiency Virus (HIV), lack of screening and treatment for other sexually transmitted infections, and an inability to access emergency or urgent medical treatment can lead to long standing physical disability or infertility.

29. Transmission of sexually transmitted infections (STI) is one of the most commonly reported physical complications, as high as 83% in some studies of victims in conflict zones, despite the development of prophylaxis for some infections.[125] Among the most serious infections is HIV. The type of sexual violence impacts on the risk of HIV transmission.[126] Rape, gang rape and sexual slavery are prevalent among victims of conflict-related sexual violence.[127] The increased number of sexual perpetrators involved in these acts increases the risk of HIV acquisition.[128] Concurrent trauma such as mutilation, bodily injury or genital trauma, including penetration of the vagina and anus with sharp instruments or weapons that may be

---

Ursula Mesmer and Sandrine Rosenberger, Sexual violence in the protracted conflict of DRC programming for rape survivors in South Kivu, *Conflict and Health* 3(3) (2009).

[123] Chapter 6, Sexual Violence, WHO (2002).

[124] Ibid, p167. There was a risk reduction by 81%. Case–control study of HIV seroconversion in health care workers after percutaneous exposure to HIV infected blood: France, United Kingdom, and United States, January 1988 to August 1994, Morbidity and Mortality Weekly Report, 1995, 44:929–933.

[125] C. Watts, A. Foss, M. Hossain, C. Zimmerman , R. von Simson, and J. Klot, Sexual Violence and conflict in Africa: prevalence and potential impact on HIV incidence, *Sexual Transmitted Infection* 86(3) (2010) 93-99.

[126] [redacted].

[127] [redacted]

[128] I. Ba and R.S. Bhopal, Physical, mental and social consequences in civilians who have experienced war-related sexual violence: a systematic review (1981–2014), *Public Health* 142 (2017) 121-135.

contaminated with bodily fluids or blood,[129] also influence the risk of HIV and other infections.

30. As described, access to post-exposure prophylaxis (PEP) and screening for sexually transmitted infections in a conflict environment can be limited. Late diagnosis and therefore delayed testing is one of the major contributors to HIV-associated morbidity and mortality.[130] Based on the limited information in this case on the health demographics of participating and new potentially eligible victims, it is difficult to ascertain how many direct victims of sexual violence (and their children) are HIV positive and receiving adequate ART. While there have been significant improvements in life expectancy and quality of life for persons living with HIV, this largely depends on prompt detection and combination antiretroviral treatment.[131] Late diagnosis and/or non-treatment of victims who become HIV-positive as a result of rape or sexual slavery will have contributed to HIV-related deaths in the 17-18 year interim since the crimes.[132] The median survival time is eight to ten years in adults from the time anti-HIV antibodies become detectable (seroconversion), which occurs typically within a few weeks after contraction (although other variables will affect this, such as intravenous drug use and nutritional status).[133] For those with a significant interval from transmission to

[129] Prevention of Transmission of HIV. World Health Organisation, WHO/EHT/CPR 2004 updated 2007 https://www.who.int/hiv/pub/toolkits/HIV%20transmission%20in%20health%20care%20settings.pdf

[130] In the UK, late diagnosis is the most important factor in HIV related morbidity and mortality. UK National Guidelines for HIV Testing 2008. September (2008) Prepared jointly by British HIV Association and British Association of Sexual Health and HIV and British Infection Society https://www.bashhguidelines.org/media/1067/1838.pdf

[131] Sirinya Teeraananchai, Stephen J Kerr, Janaki Amin, Kiat Ruxumgtham, and MG Law, Life expectancy of HIV-positive people after starting combination anti-retroviral therapy: a meta-analysis, *HIV Medicine*, 18(4) (2017) 256-266. Note, a discrepancy in life expectancy exists between countries based on income, with 10 years additional years on average in high income countries, p257.

[132] It is difficult to accurately estimate the age untreated HIV-positive victims of rape may have died at, but seroconversion is on average 8-10 years. Caroline A Sabin, Do people with HIV infection have a normal life expectancy in the era of combination antiretroviral therapy? *BMC Medicine* 11 (2013) 251.

[133] Sabin ibid. See also K. Porter, Johnson AM, Phillips AN, Darbyshire JH. The practical significance of potential biases in estimates of the AIDS incubation period distribution in the UK Register of HIV Seroconverters, *AIDS* 13 (1999) 1943–1951. The projected life expectancy

diagnosis and treatment, there may be particular HIV-related complications that may have been fatal, or that impact the quality of life of those still alive.

31. Future sexual activity of HIV-infected individuals risks further onward transmission and harm to partners, particularly where victims are not informed of preventative strategies or the factors that increase transmission, such as whether their viral load is above negligible levels or the availability of sperm washing, which can impact their decisions to conceive children. Other STIs that may affect victims of sexual violence include Treponema pallidum (syphilis), Neisseria gonococcus (gonorrhoea), genital herpes, herpetic neonatal transmission, hepatitis and other tropical infections, namely lymphogranuloma venereum (LGV). [134] Syphilis may be transferred to the foetus transplacentally leading to congenital disease (defect present at birth), and untreated acquired infection may progress to tertiary syphilis with neurological and cardiovascular consequences.[135] Contracting one STI also increases the risk of contracting others. Genital chlamydia trachomatis may be asymptomatic at presentation, but in cases of delayed or missed treatment,

---

in HIV-positive children less than three years can be as low as 2.8 years. See, , Andrea L. Ciaranello, Kathleen Doherty, Martina Penazzato, Jane C Lindsey, Linda Harrison, Kathleen Kelly, Rochelle P Walensky, Shaffiq Essajee, Elena Losina, Lulu Muhe,; Kara Wools-Kaloustian, Samuel Ayaya,; Milton C Weinstein, Paul Palumbo, Kenneth A. Freedberg, Cost-effectiveness of first-line antiretroviral therapy for HIV-infected African children less than 3 years of age, *AIDS*, 29(10) (2015) 1247-1259.

[134] This list is not conclusive. Note (ano)genital herpes is caused by herpes simplex virus type 1 (HSV-1) or type 2 (HSV-2). Note, Human Papilloma Virus (HPV) can also be sexually transmitted. HPV can be spontaneously cleared from the body or can cause pre-cancerous cellular change or cancer of the cervix or anus after many years. According, to the HPV information centre cervical cancer is one of the most common cancers among women in the DRC, and so it will be difficult to attribute the contraction of HPV to rape and sexual slavery in this case. See, Human Papillomavirus and Related Cancers, Fact Sheet 2018, HPV Information Centre, June 2019 Available at https://hpvcentre.net/statistics/reports/COD_FS.pdf (Accessed 25 October 2020) Certain public health strategies are effective at reducing the HPV related cervical cancers of this common STI (cervical screening and the HPV vaccination). Therefore, it may not be appropriate for the convicted person to be liable for such harm.

[135] Keith Radcliffe, Darren Cousins, Mark FitzGerald, Martin Fisher, Deepa Grover, Stephen Higgins, Margaret Kingston, Michael Rayment, Ann Sullivan. (Members of the Syphilis guidelines revision group), UK national guidelines on the management of syphilis, *International Journal of STD and AIDS* 2015, (3025)1-26

long-term consequences of pelvic inflammatory disease,[136] infertility, pelvic pain and life-threatening ruptured ectopic pregnancy may ensue.[137] Some former child soldiers refer to suffering from STIs and experience their continuing effects.[138] One interview with a medical centre in Ituri also spoke of how STIs in male victims of sexual violence had significant physical and psychological effects.[139]

1.2 Pregnancy

32. Of the many impacts arising from rape and sexual slavery, pregnancy has received the most attention, next to sexually transmitted infections.[140] As a consequence, a woman is not only consigned to the physiological implications of pregnancy and potentially to obstetric and maternal medical problems, but may too be socially consigned to the identity of a mother and society's related discourse. To place the risks of unwanted pregnancy into perspective, if conducted in line with best practice, abortion is safer than childbirth.[141] Furthermore, in 2002, around the time the crimes occurred, the Maternal Mortality Ratio (MMR) in DRC was high at 760 per 100 000 live births,[142] with WHO estimates for that year being even higher in

[136] PID refers to inflammation of pelvic structures (such as fallopian tubes, uterus, ovaries) as a result of spread of untreated infection from the neck of the uterus (cervix). This can lead to adhesions, blocking of the fallopian tubes and infertility.

[137] J. Tscholl, M. Letson, and H. Williams, Sexually Transmitted Infections in Child Abuse, *Clinical Pediatric Emergency Medicine* 17(4) (2016) 264-273.

[138] [redacted]

[139] Interview 38, [redacted] healthcare organisation, [redacted]

[140] Leah Woolner, Myriam Denov, and Sarilee Kahn, "I Asked Myself If I Would Ever Love My Baby": Mothering Children Born of Genocidal Rape in Rwanda, *Violence Against Women* 25(6) (2019) 703-720.

[141] Best Practice in Comprehensive Abortion Care. Best Practice Paper No.2, Royal College of Obstetricians and Gynaecologists, June 2015, p1.

[142] Maternal Mortality in 2000-2017, Internationally comparable MMR estimates by the Maternal Mortality Estimation Inter-Agency Group (MMEIG) WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division DRC. Available at https://www.who.int/gho/maternal_health/countries/cod.pdf?ua=1 (Accessed 18 October 2020).

eastern DRC.[143] In 2008, the DRC was also among six countries accounting for over 50% of global maternal deaths.[144] While these risks pertain to both wanted and unwanted pregnancy, becoming pregnant as a result of rape and the loss of the woman's or girl's right to decide to be subjected to these risks in a conflict situation is an aggravating factor.[145] It is also worth distinguishing between contemporary notions of maternity and motherhood; [146] a maternity need not result in motherhood nor does motherhood require a pregnancy or maternity period.[147] Hence, greater care and clarity is needed when referring to maternal harm to ensure that women's autonomy is not belittled and to avoid gendering harm.

33. A number of child soldiers in their application forms indicated they became pregnant as a result of rape or sexual slavery. Out of 48 victim applications by former child soldiers 9 direct victims explicitly mention becoming pregnant, two indirect victims refer to their daughters returning pregnant, and a further three applications speak in colloquial terms of the girl returning 'fat'.[148] There are accounts of victims of sexual violence rejecting their children born out of rape and difficult intra-familial relationships.[149] Pregnancy after rape can sometimes be a wanted pregnancy and even have positive impacts on the woman's recovery and

---

[143] Democratic Republic of Congo: A forgotten humanitarian disaster https://www.who.int/hac/donorinfo/campaigns/cod/drc/08.html

[144] Margaret Hogan, Kyle Foreman, Mohsen Naghavi, Stephanie Ahn, Mengru Wang, Susanna Makela, Alan Lopez, Rafael Lozano, and Christopher Murray, Maternal mortality for 181 countries, 1980–2008: a systematic analysis of progress towards Millennium Development Goal 5, *The Lancet* 375(9726) (2010) 1609-1623.

[145] Congo, Country Profile, World Health Organisation, WHO Director-General Roundtable with Women Leaders on Millennium Development Goal 5, Available at https://www.who.int/maternal_child_adolescent/events/2008/mdg5/countries/final_cp_congo_18_09_08.pdf?ua=1 (Accessed 18 October 2020)

[146] Rubin's Theories and Philosophy, in R. T. Mercer (ed.), *Becoming a Mother*, Springer (1995), p1.

[147] Jocelyn Marshall, Motherhood, breastfeeding and identity, *The Practising Midwife* 14(2) (2011) 16-18.

[148] [redacted]

[149] [redacted]

sense of purpose, despite difficulties such as inheritance for her children. A study of mothers with children from Rwanda's genocidal rape concluded that motherhood might exert a 'protective factor' despite related social stigma.[150]

34. As the evolution of long-term consequences is an important consideration in this case. It is worth noting that management of unwanted pregnancy through abortion was illegal in the DRC at the time of the crimes (except to save the woman's life),[151] although unsafe and illegal abortion may have occurred.[152] Abortion for restricted indications, including rape, only recently became legalised. In 2018 the national publication of the Maputo Protocol brought the treaty into legal effect, but the Congolese Penal Code must still be adjusted.[153] In addition, challenges remain in the implementation of safe abortion care in the healthcare sector.[154] Humanitarian organisations were not likely to provide safe abortion services in the DRC in 2002-2003.[155] Unsafe abortion may result in death and is a major contributor to maternal

[150] Odeth Kantengwa, How Motherhood Triumphs Over Trauma Among Mothers With Children From Genocidal Rape in Rwanda, *Journal of Social and Political Psychology*, 2(1) (2014), 417-434, p417. This touches upon post-traumatic growth (PTG), which refers to psychological growth and finding meaning in traumatic experiences in the years after the event, including sexual violence. PTG can occur irrespective of whether negative psychological outcomes arise. Therefore, its presence should not be taken as an indicator that psychological support is not required. See Emilio Ulloa, Monica L. Guzman, Marissa Salazar, Cassandra Cala, Posttraumatic Growth and Sexual Violence: A Literature Review *Journal of Aggression, Maltreatment and Trauma* 25(3) (2016) 286-304.

[151] Also indicated to protect the woman's physical and mental health and fetal abnormality.

[152] [redacted].

[153] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), African Commission on Human and People's Rights, 2003. In 2018, it became into legal force in the DRC with the publication of the Maputo Protocol by the DRC in a national gazette.

[154] Interview 37 with a medical professional [redacted] explained that in practice abortions are not allowed for rape except for therapeutic reasons [redacted] See also Naomi Lince-Deroche et al, Unintended Pregnancy and Abortion in Kinshasha, Democratic Republic of Congo. Challenges and Progress, Guttmacher Institute, University of Kinshasa, Department of Population and Development Science, Kinshasa School of Public Health, 2020; and Gillian Burkhardt et al., Sexual violence-related pregnancies in eastern Democratic Republic of Congo: a qualitative analysis of access to pregnancy termination services, *Conflict and Health*, 10(1) (2016), p1-9.

[155] Therese McGinn and Sara E. Casey. Why don't humanitarian organizations provide safe abortion care? *Conflict and Health*, 10(8) (2016) 1-7, p5. Note in in 2004 (after the crimes of 2003-

mortality globally (8-15%),[156] and causing 30-90 deaths per 100,000 in sub-Saharan Africa.[157] Furthermore, where death does not occur, between 435 and 5,298 per 100,000 women experience severe complications.[158] These may range from haemorrhage, anaemia, pelvic infection, sepsis, subfertility or infertility and anaesthetic or surgical risks if hysterectomy is required or another procedure (such as evacuation of retained products of conception in cases of incomplete abortion) and psychological impacts.[159] More studies are required to examine the long-term consequences of unsafe abortion, but recent data reveals that as many as half of the women who undergo an unsafe abortion seek care for complications, highlighting the heightened risk of harms in women and girls who choose this option, and that due to prevailing circumstances and positions of local and international organisations such options may have been limited for women and girls to access a safe termination of pregnancy.[160]

1.3 Gynaecological and other physical complications

35. The physical consequences for victims of sexual violence can include fistulas, genital trauma and severe genital tears.[161] One victim-witness who testified of

---

2003) MSF made a policy decision to provide safe abortion care with a slow expansion into projects due to resistance. See Catrin Schulte-Hillen, Nelly Staderinim and Jean-François Saint-Sauveur, Why Médecins Sans Frontières (MSF) provides safe abortion care and what that involves, *Conflict and Health* (2016) 10:19.

[156] WHO Factsheet on Maternal Mortality, 2019 Available at https://www.who.int/en/news-room/fact-sheets/detail/maternal-mortality (accessed 18 October 2020)

[157] McGinn and Casey (2016), p2. Department of Reproductive Health and Research, WHO. Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008. Geneva, sixth edition: WHO; 2011. https://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241501118/en/ (Accessed 18 October 2020)

[158] McGinn and Casey, ibid.

[159] Facility-based treatment for medical complications resulting from unsafe pregnancy termination in the developing world, 2012: a review of evidence from 26 countries, *BJOG: An International Journal of Obstetrics and Gynaecology* 123(9), (2016), 1489-1498.

[160] Anibal Faundes, Rodica Comendant, Berna Dilbaz, Guyo Jadesa, Robert Leke, Basab Mukherjee, Marina Padilla de Gil, Luis Tavara. Preventing unsafe abortion: Achievement and chhallenges of a global FIGO initiative, *Best Practice and Research Clinical Obstetrics and Gynaecology*, 62 (2020) 101-112.

[161] A. O. Longombe, K. M. Claude, J. Ruminjoc, Fistula and Traumatic Genital Injury from Sexual Violence in a Conflict Setting in Eastern Congo: Case Studies, *Reproductive Health Matters*, 16(31) (2008), 132-141. Studies from victims of sexual violence in conflict zones have

being raped that resulted in a perineal tear to nearly her anus "[redacted]" [163] Younger age is also associated with increased number of genital injuries following rape,[164] which is important to considering former child soldiers were less than 15 years old as well as a number of victims of the attacks.[165]

36. A fistula is an abnormal connection between two body parts such as organs, blood vessels or other body surfaces.[166] Fistulae related to sexual violence involve the genito-urinary and/or intestinal system.[167] This debilitating condition has a profound impact on quality of life and vital body functions and is also subject to complications such as infection.[168] Sexual dysfunction is another common

---

revealed varying rates of rectal and vaginal fistulae ranging from 9%-40.7%. Genital trauma is also prevalent with some studies reporting 28.7% suffering severe genital tears.

[162] [redacted].

[163] [redacted]

[164] Rachel B. Baker and Marilyn S. Summers, Relationship of Genital Injuries and Age in Adolescent and Young Adult Rape Survivors, *Journal of Obstetric, Gynecological and Neonatal* Nursing 37(3) (2008) 282-289.

[165] There are various grades of tears (i.e. depth into muscles) that can weaken the pelvic floor to varying degrees, especially for those with young, still developing bodies. As the pelvic floor provides supports to the bowel, bowel and uterus, this can give rise to urine, faecal or flatus incontinence (particularly if absent care or advice) or even prolapse of pelvic organs over time. Pelvic organ prolapse can arise from other causes that place a strain on the pelvic floor (such as increased abdominal pressure from pregnancy or coughing, tears during childbirth).

[166] [redacted]

[167] For instance passages created between the bladder and the vaginal wall.

[168] N. Dossa, M. Zunzunegui, M. Hatem, and W. Fraser, Fistula and Other Adverse Reproductive Health Outcomes among Women Victims of Conflict-Related Sexual Violence: A Population-Based Cross-Sectional Study, *BIRTH* 41(1) (2014) 5-13.

consequence of this form of physical injury or secondary psychological harm.[169] Fistulae can lead to reduced self-esteem, social and marital rejection and community isolation.[170] The type and extent of acquired genito-urinary or recto-genital fistula will depend on the pathogenesis and mechanism of injury.[171] In conflict situations a fistula may develop from direct vaginal trauma, erosion from a foreign body, a pelvic abscess, an infected vaginal vault haematoma or as a result of an obstetric injury from a pregnancy as a result of rape.

37. Death may have resulted from physical complications arising from sexual violence. Penetrating pelvic trauma, which extends within the bony confines of the pelvis to involve urinary or intestinal organs or vasculature, can lead to life-threatening conditions.[172] It can, for example, cause haemorrhagic shock where emergency haemostasis is not possible, or septic shock, arising from fistula, pelvic abscess, urosepsis, miscarriage or atypical infection from acquired immune deficiency associated with HIV. In addition, pregnancies as a result of rape may have been concealed. Women may have suffered a miscarriage, postpartum (after birth) mental illness,[173] ruptured ectopic pregnancy[174] (with higher rates in cases of pelvic inflammatory disease), and complications from labour dystocia, as women laboured without accessing health services out of fear of stigmatisation. These

[169] Indeed sexual slavery can be characterized as a crime of 'denial of individual autonomy through sexual means', which can extend beyond physical consequences to also mental and emotional harm. See Valerie Oosterveld, Sexual Slavery and the International Criminal Court: Advancing International Law, *Michigan Journal of International Law* 25(3) (2004), 605-652, p650.
[170] Traumatic Gynecologic Fistula: A Consequence of Sexual Violence in Conflict Settings, The ACQUIRE Report, May 2006, p14; Sarah Wilson, Kathleen J. Sikkema, Melissa H. Watt, and Gileard G. Mesenga, Psychological Symptoms Among Obstetric Fistula Patients Compared to Gynecology Outpatients in Tanzania, *International Journal of Behavioural Medicine* 22(5) (2015), 605-613.
[171] M. Stamatakos, C. Sargedi, Theodora S., and K. Kontzoglou, Vesicovaginal Fistula: Diagnosis and Management, *Indian Journal of Surgery* 76(2) (2014) 131–136.
[172] E. Hornez, T. Monchal, G. Boddaert, P. Chiron, J. Danis, Y. Baudoin, J. L. Daban, P. Balandraud, S. Bonnet, Penetrating pelvic trauma: Initial assessment and surgical management in emergency, *Journal of Visceral Surgery* 153(4) (2016), 79–90.
[173] Postpartum refers to the 12 month period after childbirth. See Eleanor Swift, Mathhias Pierce, Holly Hope, Cemre Su Osam, Kathryn M. Abel, Young Women Are the Most Vulnerable to Postpartum Mental Illness: A Retrospective Cohort Study in UK Primary Care, *Journal of Affective Disorders* 277 (2020) 218-24.
[174] Ectopic pregnancy refers to a pregnancy outside the uterus.

factors increase maternal and neonatal mortality.[175] Family members of these victims may have also witnessed the death or resultant disability. Other physical injuries sustained during the sexual assault may include head trauma, intracranial haemorrhage, venous thromboembolism from long bone fractures and self-neglect from depression.[176]

38. In subsequent pregnancies female victims of sexual violence can suffer other consequences such as higher risk of perineal tears due to genital mutilation, psychological impacts of re-experiencing pain in sexual organs, and fears in the first stage of labour.[177] They may also avoid healthcare support in labour or for gynaecological problems, as intimate vaginal examinations may be perceived as invasive and painful, and victims may lack confidence in medical personnel.[178] However, even in the absence of severe physical injuries, sexual violence also increases the risk of developing gynaecological disorders in later life, namely heavy menstrual bleeding and abnormal menstrual bleeding.[179]

39. Subfertility or infertility arising from complications as a result of rape and sexual slavery (e.g. sexually transmitted infections, unsafe abortion) can have a significant

[175] Neonatal refers to the first four weeks of life.

[176] [redacted].

[177] [redacted]

[178] A. Gisladottir, M. A. Luque-Fernandez, B. L. Harlow, B. Gudmundsdottir, E. Jonsdottir, Obstetric Outcomes of Mothers Previously Exposed to Sexual Violence, *PLoS ONE* 11(3) (2016) 1-12.

[179] Tayla Hassam, Emma Kelso, Prathima Chowdary, Engida Yisma, Ben W. Mol, Alice Han. Sexual Assault as a Risk Factor for Gynaecological Morbidity: An Exploratory Systematic Review and Meta-Analysis, *European Journal of Obstetrics and Gynecology and Reproductive Biology*, January 2020, doi:10.1016/j.ejorb.2020.10.038. [redacted]

impact on victims, particularly in DRC communities where reproductive potential is intimately linked with attractiveness, gender roles and marriageability.[180] [redacted].[181]

40. Aside from the potentially pervasive impacts of untreated sexually transmitted infections which has been discussed above, male victims of sexual violence can also suffer genital and perineal injuries.[182] Males are more likely to have ano-rectal trauma than females.[183] This may vary from abrasions and fissures, to abscesses and perforations that can require surgical interventions, and may impact rectal continence and self-esteem in the long term.[184] They may also be particularly susceptible to other violent physical injuries to their limbs, head and abdomen, as well as reproductive consequences such as impotence.[185]

1.4 Mental Health and Psychosocial Impacts

41. Sexual violence causes particular mental health[186] and social consequences.[187] However some long term psychological conditions are not unique to sexual violence and so can occur in other circumstances, such as post-traumatic stress syndrome (PTSD) and its complex variant (CPTSD).[188] However, the latter results

[180] Interview 10, [redacted]

[181] [redacted]

[182] Richard Tewksbury, Effects of Sexual Assault on Men: Physical, Mental and Social Consequences, *International Journal of Men's Health*, 6(1) (2007), 22-35, p26.

[183] Iain McLean, Val Balding, and Cath White, Forensic Medical Aspects of Male-on-Male Rape and Sexual Assault in the Greater Manchester, *Medicine, Science and the Law* 44(2) (2004), 165-169.

[184] L. Kiss, M. Quinlan-Davidson, L. Pasquero, *et al.* Male and LGBT survivors of sexual violence in conflict situations: a realist review of health interventions in low-and middle-income countries. *Conflict and Health* 14, 11 (2020). https://doi.org/10.1186/s13031-020-0254-5

[185] Tewksbury (2007), p27.

[186] Mental health refers to psychological, psychiatric and emotional consequences.

[187] [redacted]

[188] For information on diagnostic criteria of PTSD/CPTSD, see: World Health Organization. (2018), International Classification of Diseases, 11th edition (ICD-11). Geneva, Switzerland: WHO.

from prolonged exposure to trauma as in sexual slavery.[189] Others include anxiety, mood disorders (depression) and substance abuse.[190] These can negatively impact a person's quality of life, with victims suffering emotional distress even without a formal psychological diagnosis.[191] There is a significant amount of information related to mental health, and in particular PTSD on the court record in this case and in other cases.[192] Therefore an in depth discussion is not required but it is worth highlighting certain long-term sequelae as well as delineating other mental health impacts that require consideration.

42. The trauma of rape and other forms of sexual violence, including the use of weapons and violence,[193] along with feelings of shame and stigma can also cause suicidal ideation.[194] Moreover, research conducted in the DRC indicates that the delay in addressing the assault emotionally aggravates the victim's isolation and psychological wellbeing.[195] Family members of rape victims also are at considerable risk of psychological damage, particularly when they have witnessed the sexual

[189] This includes complex PTSD which occurs when a person has prolonged exposure to trauma with no foreseeable recourse to escape, whereas PTSD can occur following a single traumatic event. See YSG Hoffman, ES Grossman, A Shrira, M. Kedar, Ben-Ezra M, Dinnayi M, Koren L, Bayan R, Palgi Y, Zivotofsky AZ. Complex PTSD and its correlates amongst female Yazidi victims of sexual slavery living in post-ISIS camps, *World Psychiatry* 17(1) (2018) 112-113.

[190] Interview 10 [redacted] referred to male former child soldiers as more likely than female former child soldiers to have disorders due to substance use and addictive behaviours; Evelyne Josse, 'They came with two guns': the consequences of sexual violence for the mental health of women in armed conflicts, *International Review of the Red Cross*, 92(877) (2010) 177-195.

[191] [redacted]

[192] [redacted]

[193] Elizabeth Dartnall and Rachel Jewkes, Sexual violence against women: The scope of the problem, *Best Practice and Research Clinical Obstetrics and Gynaecology* 27(2013) 3-13.

[194] Josse (2010), p186; "I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic, A/HRC/37/CRP.3, 8 March 2018, para.100.

[195] N. Dossa, M. Zunzunegui, M. Hatem, and W. Fraser, Mental Health Disorders Among Women Victims of Conflict-Related Sexual Violence in the Democratic Republic of Congo, *Journal of Interpersonal Violence* (2015) 30 (13) 2199–2220.

violence or been forced to participate in the rape.[196] Victims are often raped in front of family members, raising difficult emotions and feelings of shame, guilt, betrayal and powerlessness.[197] Rape and sexual slavery can have a long-term and profound psychological impact on victims that can include persistent fear, shame, avoidance of being seen out in public, dodging situations that trigger memories of the crime, and difficulties in re-establishing intimate relationships.[198] [redacted][199]

43. The relationship of victims to their bodies and their gender identity can be negatively affected by sexual violence.[200] Victims of sexual violence can experience psychosexual difficulties (arising from the act or a health complication, e.g. incontinence), making it difficult to participate in sexual relations.[201] This can be an obstacle to conception even when biological children are part of a person's life plan, which in turn can negatively affect victims' intimate relationships, sexual identity and perceived societal role. For victims of sexual violence who suffer harm that results in permanent physical disability, it is important to appreciate the compounding harm disability can do to their mental health. This is particularly true of those who face stigma as well as chronic health issues. As CEDAW has recognised, such individuals can 'suffer from a double discrimination linked to their special living conditions'.[202]

---

[196] "Now, the world is without me": an investigation of sexual violence in Eastern Democratic Republic of Congo, Harvard Humanitarian Initiative and Oxfam International (2010), p1.
[197] Theidon (2015) s195.
[198] Swiss and Giller (1993), p614.
[199] [redacted]
[200] Inger Skjelsbæk, Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina, *Feminism and Psychology*, 16(4) (2006) 373-403, p395.
[201] Sheraz Ahmad, Adult psychosexual dysfunction as a sequela of child sexual abuse, *Sexual and Relationship Therapy*, 21(4) (2006) 405–418. Fiona Cowan, and Leila Frodsham, Management of common disorders in psychosexual medicine, *Obstetrician and Gynaecologist*, 17(1) (2015) 47–53.
[202] CEDAW General recommendation No. 18: Disabled Women (1991).

44. While medical and healthcare practitioners can be key actors in the documentation of harm from and verification of sexual violence,[203] they may not be sufficiently trained to connect physical injury with psychological harm and victim-related issues of stigma.[204] This underscores the importance of integrating the principle of do no harm and gender-sensitivity into medical rehabilitation, analysed in more depth in Part III.2.

45. Victims of sexual violence may not associate the physical or psychological harm they continue to suffer since the rape, even if it includes vaginal discharge, recurrent urinary tract infections or pelvic pain.[205] Victims whose cultural context dissuades them from speaking openly about their physical and psychological health may not articulate their suffering in psychological terms and instead may experience continued feelings of being 'infected', 'dirty', 'impure' or transmitting 'bad luck'.[206] In some contexts, due to the stigma associated with coming forward, medical personnel have supplied victims with traditional or local ingredients with which to self-treat their rape and 'cleanse' themselves, for example by trying to cause a termination of pregnancy or cutting out the foetus, often resulting in the death of the girl or woman.[207] Conversations with healthcare practitioners and [redacted] suggest that this form of treatment has been informally practiced and often resulted in worse health outcomes for victims.[208]

46. While insecurity and impunity can facilitate sexual violence, its occurrence can reflect more peacetime factors that enable perpetrators to carry out such acts,

[203] Swiss and Giller (1993), p613.
[204] Sunneva Gilmore and Kieran McEvoy, Bridging Justice and Health: Reparations for Conflict-Related Sexual Violence, *The Obstetrician and Gynaecologist* (forthcoming).
[205] Swiss and Giller (1993), p614.
[206] *Psychosocial Adjustment and Social Reintegration of Children Associated with Armed Forces and Armed Groups: The State of the Field and Future Directions,* Psychology Beyond Borders (2008), p27; and Swiss and Giller (1993), p614.
[207] Giulia Baldi and Megan MacKenzie, Silent Identities: Children Born of War in Sierra Leone, in (ed.) R. Charli Carpenter, *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, Kumarian Press (2007), 78-93, p84; and Kimberly Theidon, Hidden in plain sight: Children born of wartime sexual violence, *Current Anthropology* 56(12) (2015) s191-200, s193.
[208] Interviews 29 and 38.

including gender inequality, marginalisation and discrimination against minorities.[209] Indeed, in Ituri the use of sexual violence is permissible in certain cultural contexts.[210] Victims of sexual violence can suffer repeated violations over time, by different actors, including family members. As detailed, rape and sexual slavery cause a range of physical, psychological, economic, and social harms. In the DRC, the myopic attention to sexual violence has simplified the nature of the conflict, leading to discrimination against other vulnerable victim populations, for example by distracting attention away from redress of other international crimes and focusing on women and girls to the exclusion of male victims of sexual violence.[211] Moreover, it implies that the solution to sexual violence is simply providing funding for medical care,[212] without acknowledging the context in which such crimes occur and the impact of time and socio-economic factors on victims.

47. Sexual violence can have a pernicious effect on victims' economic situation, including disruption of their education or job, medical costs, being thrown out of the family home as a result of stigma, and destitution, which can increase the vulnerability of victims and their dependents.[213] For instance for victims of rape or sexual slavery who become pregnant as a result, can place further economic strain on their family as another person to feed in a precarious environment,[214] and victims in this case often spoke about giving up their education to support their

[209] Boesten (2010), p127; and Sara E. Davies and Jacquie True, 'Reframing conflict-related sexual and gender-based violence: bringing gender analysis back in', *Security Dialogue* 46(6) (2015), 495–512.

[210] Sahla Aroussi, Perceptions of Justice and Hierarchies of Rape: Rethinking Approaches to Sexual Violence in Eastern Congo from the Ground up, *The International Journal of Transitional Justice*, 12 (2018), 277–295, p286-287.

[211] Rosemary Nagy, Transitional Justice as Global Project: critical reflections, *Third World Quarterly*, 29(2), 2008, 275 – 289, p287; and Séverine Autesserre, Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences, *African Affairs*, 111/443 (2012), 202–222, p215-216. [redacted]

[212] Autesserre ibid., p216.

[213] Sahla Aroussi, Women, Peace, and Security and the DRC: Time to Rethink Wartime Sexual Violence as Gender-Based Violence? *Politics and Gender* 13(3) (2017) 488-515, p491; and Aroussi (2018), p284.

[214] Fisher (2013), p175.

child.[215] In social terms, sexual violence can cause the 'disintegration of the moral and social fabric' of communities.[216] Attacks on civilians and use of rape often results in the forcible displacement of the civilian population, which can further weaken community protection against rape.[217] This can cause clear tensions within families, whereby victims are rejected by their partners and forced to leave their homes. Male victims of sexual violence can experience greater intolerance in some communities due to homophobia.[218] Victims may be unwilling to identify themselves as harmed from rape and may use alternative language, as evidenced in colloquial phrases such as 'faire du mal' (doing harm) to demarcate the experience of sexual violence.[219] Indeed, labelling a reparation pathway as a measure to address for sexual violence may discourage or further stigmatise victims by making their suffering more visible and subjecting them to competition with other individuals in their community over resources.[220] Some victims of sexual violence turn to prostitution, face being trafficked, or engage in more informal transactional sex that can be less stigmatising in some communities than the others.[221]

48. In addition to suffering other violations as ruled in this case, given their vulnerability and ongoing insecurity, victims of rape and sexual slavery may

[215] Interview 19, civil society actor, [redacted]

[216] Marion Pratt and Leah Werchick, Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo: An assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema, and Orientale Provinces, USAID/DCHA Assessment Report (2004), p7.

[217] Gloria Gaggioli, Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law, *International Review of the Red Cross* 96 (894) (2014), 503–538, p505.

[218] Douglas Page and Samuel Whitt, Confronting Wartime Sexual Violence: Public Support for Survivors in Bosnia, *Journal of Conflict Resolution* (2020) 64(4) 674-702, p692.

[219] As highlighted by victims at the ICC in the *Bemba* case - Public redacted version of "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings", ICC-01/05-01/08-2247-Red, 19 July 2012, para.37 citing the Internal Report of the field interpreters, 29 November 2011, ICC-01/05-01/08-1960-Conf-Exp-Anx2. See also in Cambodia - Katrina Natale, "I Could Feel My Soul Flying Away From My Body" *A Study on Gender-Based Violence During Democratic Kampuchea in Battambang and Svay Rieng Provinces,* Cambodian Defenders Project (2011).

[220] Kalla (2018), p259.

[221] Aroussi (2018), p285.

experience compounding harm from multiple violations and even repeatedly being raped.[222] Indeed, it has been noted in a number of contexts that asking victims to speak only about their experiences of sexual violence can be reductionist given the multifaceted nature of their violence, resistance and everyday struggles,[223] especially for victims who put the care of their family before their own health and well-being.[224] There is also silence around genital mutilation in men and women. Among women who have suffered sexual violence, there is a common narrative that the risks associated with their gender entrench them in the role of 'perpetual victim' who is always in 'need of help' and that this is their 'sole identity'.[225] This clearly gendered understanding of sexual violence can invisibilise and overlook male victims.[226] As discussed below in relation to child soldiers in the *Ntaganda* case, it is apparent that male victims of sexual violence have not been identified. Taking an everyday perspective on how victims experience, survive and use their agency can better reflect the 'complex and messy' lived reality of victims of sexual violence 'rather than replicating the gendered and racialized binaries of war'.[227]

1.5 Children and sexual violence

49. Children can suffer specific physical and psychological harms as a result of sexual violence. Early adolescent pregnancy is associated with a higher rate of adverse pregnancy outcomes.[228] This may be attributed to the biological immaturity of female victims less than 15 years of age and poor antenatal care due to neglect and

[222] Swiss and Giller (1993), p614.
[223] Alison Crosby and M. Brinton Lykes, Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala, *International Journal of Transitional Justice* 5(3) (2011): 456–476, p476.
[224] Rahida Manjoo, Gender Injustice and the South African Truth and Reconciliation Commission, in D. Pankhurst (ed.), *Gendered Peace: Women's Struggles and Post-War Justice and Reconciliation*, Routledge (2009), 137–154.
[225] 'Leaky' Bodies, Connectivity and Embodied Transitional Justice Janine Natalya Clark, *International Journal of Transitional Justice*, 13 (2019), 268–289, p283.
[226] Maria Eriksson Baaz and Maria Stern, *Sexual violence as a weapon of war? Perceptions, prescriptions, problems in the Congo and beyond,* Zed Books (2013), p34.
[227] Crosby and Lykes (2011), p476.
[228] Note that less than 15 years is considered early adolescent. M. Kaplanoglu, M. Bülbül, C. Konca, D. Kaplanoglu, M. Selcuk Tabak, and B. Ata, Gynecologic age is an important risk factor for obstetric and perinatal outcomes in adolescent pregnancies, *Women and Birth* 28 (2015) 119–123.

stigma. In some cases, pregnancy may have been concealed due to fear of its consequences for the woman's marriage prospects. Preterm birth, stillbirth, low birthweight and intrauterine growth restriction (IUGR) are among the perinatal complications of impregnated females aged 13-15 that have been reported in the research. This contributes to a high rate of adverse neonatal outcomes in terms of neonatal morbidity and mortality.[229] The resulting bereavement and loss can compound the trauma of sexual violence. There is also some research on whether victims of sexual violence, including children who are forced to witness sexual violence, experience developmental delays,[230] but the findings are mixed and further research is required.[231] Many of the impacts on children are similar to those experienced by adults, such as chronic pelvic pain and sexually transmitted infections, but early forced sexual contact can amplify the severity of the complications.[232] For former female child victims, the greater the degree of physical injury caused by rape, the more likely labour is to be prolonged or obstructed in subsequent pregnancies. While sexual violence may have occurred over a decade ago, it can have lifetime complications for young victims. These can include fistulas, urogenitary injuries, and urinary and faecal incontinence, which can in turn cause victims to socially isolate themselves from their family and community.[233]

50. There is also a higher prevalence of long term physical health symptomology in children suffering sexual violence namely, gastrointestinal, gynaecological and

[229] S. Tabak and B. Ata, Gynecologic age is an important risk factor for obstetric and perinatal outcomes in adolescent pregnancies, *Women and Birth* 28 (2015) 119–123.
[230] Mental health outcomes of rape, mass rape, and other forms of sexual violence, Stanford University School of Medicine Brief submitted at sentencing phase of ICC Prosecutor v. Jean Pierre Bemba Gombo, April 2016.
[231] E. von Sneidernet al., Association between Adverse Childhood Experiences (ACEs) and Developmental Delay of Preschool Children in a Rural Area of Colombia, *Journal of Child and Adolescent Trauma,* 10(3) (2017), 225-232.
[232] A. C. Kasherwa and J. M. Twikirize, Ritualistic child sexual abuse in post-conflict Eastern DRC: Factors associated with the phenomenon and implications for social work, *Child Abuse and Neglect* 81 (2018) 74–81.
[233] Longombe, Claude and Ruminjo (2008).

pain disorders.[234] A number of explanations have been posited to explain these trends, such as the psychological stress and traumatogenic effects of sexual violence leading to biological dysfunction in later life. Victims of sexual slavery can be further demoralised and their dignity degraded by them being reduced to commodities to be abused, traded and disposed of.[235]

51. Child sexual abuse also has mental health consequences in the short and long term, which are more likely to be pervasive if episodes were recurrent or took place over a long period of time.[236] Other exacerbating factors include a close connection or relationship between the person and their perpetrator. Therefore, children who were sexually enslaved or suffered sexual or reproductive violence within armed groups or families may experience severe negative mental health effects.[237] While the psychological impact on children of being used as soldiers (PTSD, hostility, relationship problems, functional disabilities, and cognitive impairments) is well documented,[238] those who are raped and kept in sexual slavery can suffer short-, medium- and long-term harm. Girls are often neglected in DDR programmes,[239] and those that do cater for them may overly focus on gender-based violence and leave unaddressed the psychological trauma of having committed atrocities.[240] Research on child soldiers suggests that in the medium to long term, girls can experience more psychological and adjustment problems than males, being more

[234] Ahona Guha, Stefan Luebbers, Nina Papalia, James R. P. Ogloff, Long term Healthcare utilisation following child sex abuse: A follow up study utilising five years of medical data, *Child Abuse & Neglect* 106 (2020)104538

[235] Kirsten J. Fisher, *Transitional Justice for Child Soldiers: Accountability and Social Reconstruction in Post-Conflict Contexts*, Palgrave MacMillan (2013), p173.

[236] Kasherwa and Twikirize (2018), p8.

[237] Ibid.

[238] Daya Somasundaram, Child soldiers: understanding the context, *BMJ* 324(7348) (2002) 1268-1271.

[239] S. McKay, M. Robinson and M. Gonsalves, *Girls Formerly Associated with Fighting Forces and Their Children: Returned and Neglected*, Coalition to Stop the Use of Child Soldiers, 2006.

[240] Theresa Stichick Betancourt, Ivelina Ivanova Borisova, Timothy Philip Williams, Theodore H. Whitfield, John Williamson, Robert T. Brennan, Marie de la Soudiere and Stephen E. Gilman, Sierra Leone's Former Child Soldiers: A Follow-Up Study of Psychosocial Adjustment and Community Reintegration, *Child Development* 81(4) (2010), 1077-1095.

vulnerable to depression and PTSD,[241] which may in part be explained by their experience of rape and stigma, although often this is not measured for both males and females.[242]

52. The layers of stigma and rejection faced by former child soldiers who have experienced sexual violence stem not only from their association with an armed group and its atrocities, but also from gender dynamics.[243] This can include returning from the bush with children or sexually transmitted diseases, which pose risks to the communities to which these children return and can be a further source of stigma.[244] The consequences of harm arising from being a child soldier and suffering sexual slavery can depend on the nature, duration and intensity of the violence experienced, witnessed or perpetrated, which can be mediated by the child's age (cognitive maturity) and personal characteristics (degree of resilience, knowledge, skills and abilities), and by the social context of those around them.[245] In communities where marriage is highly valued and can provide economic security and protection for women, for example, this harm may include being rejected or ostracised because they are no longer virgins.[246]

---

[241] Brandon Kohrt, Mark Jordans, Wietse Tol, Rebecca Speckman, Sujen Maharjan, Carol Worthman, and Ivan Komproe, Comparison of mental health between former child soldiers and children never conscripted by armed groups in Nepal, *Journal of the American Medical Association* 300(6) (2008) 691-702.

[242] See Theresa S. Betancourt, Ivelina I. Borisova, Marie de la Soudière, and John Williamson, Sierra Leone's Child Soldiers: War Exposures and Mental Health Problems by Gender, *Journal of Adolescence Health* 49(1) (2011) 21-28. Some research suggests that worse mental health outcomes can be prevalent for male and female combatant who suffer sexual violence, see Kirsten Johnson, Jana Asher, Stephanie Rosborough, Amisha Raja, Rajesh Panjabi, Charles Beadling, and Lynn Lawry, Association of combatant status and sexual violence with health and mental health outcomes in postconflict Liberia, *Journal of the American Medical Association* 300(6) (2008) 676-690.

[243] Myriam Denov, Coping with the trauma of war: Former child soldiers in post-conflict Sierra Leone, *International Social Work* 53(6)(2010) 791–806, p799.

[244] Dyan Mazurana and Susan McKay, *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone, and Mozambique: Their Lives during and After War,* International Centre for Human Rights and Democratic Development (2004), p25-29.

[245] Kitwe Mulunda Guy, Child soldiers as zones of violence in The Democratic Republic of Congo: three cases on medico-legal evidence of torture, *Torture* 19(2) (2009) 137-144, p139-140.

[246] Denov (2010) p799.

1.6 Intergenerational and Indirect Victims

53. There is increasing psychological research indicating the intergenerational harms of gross violations and conflict on victims.[247] Research suggests that the noxious effects of trauma may be psychologically transmitted from one generation to the next, as evidenced for example by the increases in depressive and anxiety disorders found amongst survivors of the Holocaust.[248] This can impact on the structure and mental health of families across generations.[249] In the context of Northern Ireland, studies have found that the transgenerational effect of the conflict can manifest in the form of economic hardship, psychological impact, and carer responsibilities for parents and grandparents of direct victims.[250] While not intending to essentialise the lived experience of suffering of victims of rape or sexual slavery, there are many common factors that resonate from the author's limited engagement with victims and assessment of available application forms.

54. Intergenerational trauma can be explicit when children are born as a result of rape. The term intergenerational is used instead of transgenerational to signify the more proximate nature of the trauma between the parents and child, rather than more indirectly between generations and amongst family members. Children born of rape can often be overlooked in policies and reparations designed to address

[247] See for instance B. Bezo and S. Maggi, Living in 'Survival Mode': Intergenerational Transmission of Trauma from the Holodomor Genocide of 1932-1933 in Ukraine, *Social Science and Medicine* (2015) 134, 87-94; and N. Field, S. Muong and V. Sochanvimean, Parental Styles in the Intergenerational Transmission of Trauma Stemming From the Khmer Rouge Regime in Cambodia, *American Journal of Orthopsychiatry*, (2013) 83(4), 483-494.
[248] P. Fossion, C. Leys, C. Vandeleur, C. Kempenaers, S. Braun, P. Verbanck and P. Linkowski, Transgenerational transmission of trauma in families of Holocaust survivors: The consequences of extreme family functioning on resilience, Sense of Coherence, anxiety and depression, *Journal Of Affective Disorders*, (2015) 171, 48-53; H. Wiseman and J. Barber, Anger, Guilt, and Intergenerational Communication of Trauma in the Interpersonal Narratives of Second Generation Holocaust Survivors, *American Journal of Orthopsychiatry*, (2006) 76:2, 176-184.
[249] ICC-01/04-01/06-1729-Anx1, p3, p25.
[250] *Transgenerational Trauma: Dealing with the Past in Northern Ireland*, WAVE Trauma Centre, March 2014.

sexual violence.[251] While the direct impact of sexual violence against mothers on their children born out of rape is well documented, other researchers have suggested a strong prevalence of transgenerational trauma for all children of victims of sexual violence.[252] In other contexts, this transgenerational trauma manifests itself in psychological problems among children who have watched their mothers being raped or suffering, with mothers themselves experiencing difficulties including struggling to control impulses and tension, behaving aggressively towards their children or being unable to bond with and express emotions toward their children.[253] These difficulties can lead to feelings of shame, guilt, self-blame,[254] identity crises,[255] and frustration at continuing to be labelled a victim of sexual violence nearly two decades after the events. Within families children born as a result of rape are often rejected as having 'bad blood' by husbands of women who have been raped.[256] These children also face stigma and social exclusion that can result in poverty and social deprivation as they are pushed to the margins of society. Combined with the psychological issues these children can face, such factors can lead to poor health outcomes including malnutrition, vulnerability to abuse, and susceptibility to disease.[257]

55. Some girls and women may neglect, reject, harm or kill the child born out of their rape, who can be a constant reminder of the violation and a clear indicator of their suffering.[258] Therefore, children born out of rape can be rejected at multiple levels:

---

[251] Eithne Dowds, Children Born of Sexual and Gender-Based Violence in Conflict: Exploring the Boundaries of International Criminal Law, in W. Aschauer, J. Buckley, H. Embacher, A. Lichtblau, D. Steinert, & G. Prontera (eds.), *Children and War Past and Present*, Volume III.

[252] "We are still alive. We have been harmed but we are brave and strong": Research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina, Medica Mondiale 2014, p36-37

[253] Medica Mondiale ibid., p89-92.

[254] Medica Mondiale ibid.

[255] Ingvill C. Mochmann, Children Born of War - A Decade of International and Interdisciplinary Research, *Historical Social Research* 41(1) (2017) 320-346, p338.

[256] Megan H. MacKenzie, *Female Soldiers in Sierra Leone: Sex, Security and Post-Conflict Development*, New York University Press, (2012), p126. Or 'bad seed' in that their fathers as perpetrators risk passing it down through the family line - Mark Drumbl, *Reimagining Child Soldiers in International Law and Policy*, OUP (2012), p8.

[257] Mochmann (2017), p338.

[258] MacKenzie (2012), p127-128; and Thiedon s193.

First, by their own mothers, second by their own family who may refuse to accept a descendent of the man who committed the rape, and third by their own community.[259] Children born out of rape are often called names that reinforce ongoing stigma.[260] From interviews with local civil society actors, children born as a result of rape in Ituri are often called 'snake' or 'serpent children or the children of serpents', and "grow up in an atmosphere of hate, which is not conducive to their wellbeing." [261] Children can also struggle to reconcile their affection, attachment and loyalty to their fathers with their responsibility in committing atrocities, in particular for sexual violence committed against their mothers.[262] When children born out of rape are preparing for marriage as adults and a potential marriage partner enquires who their parents are, their inability to provide a clear answer can be stigmatising and may lead to problems in their relationships. This can also cause problems in the workplace, when applying for jobs or completing registration forms, for example.[263]

56. Grandparents and other extended members of the family (e.g. uncles, sisters)[264] often take on the roles of caregiver and parent for children born of rape or sexual slavery due to inability of their mother to support the child and/or live in the area due to stigma. Children born out of rape can be abandoned, particularly when their young mothers have few resources; according to some civil society organisations, such children were often cared for by grandparents.[265] The shift of caring responsibilities from parents to extended family members can also be seen

[259] Interview 29 [redacted]

[260] In northern Uganda children were referred to as 'killers', Gilmore (2021). In Colombia for those raped by paramilitaries they are referred to as 'paraquito' - see Tatiana Sanchez Parra, The Hollow Shell: Children Born of War and the Realities of the Armed Conflict in Colombia, *International Journal of Transitional Justice*, 12(1) (2018), 45–63, p53-54.

[261] Interviews 14 and 38.

[262] Myriam Denov and Anaïs Cadieux Van Vliet, Children Born of Wartime Rape on Fatherhood: Grappling With Violence, Accountability, and Forgiveness in Postwar Northern Uganda, *Peace and Conflict: Journal of Peace Psychology* (2020).

[263] Interview 38, October 2020; Sexual Violence Patterns, Causes, and Possible Solutions. An Interview with Julienne Lusenge, Solidarite Feminine pour la Paix Integrale (SOFEPADI), Democratic Republic of Congo, in Buss et al., Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts, Routledge, (2014), 58-65.

[264] [redacted]

[265] Interview 29 [redacted]

among families of victims of other crimes, with relatives providing care for children into their adult years and to the present day.[266]

57. Given their marginalisation and discrimination from employment, children born out of rape can be vulnerable to conscription or voluntarily enlistment in armed groups (or armed forces) to support themselves or with the intention of taking vengeance and seeking retribution.[267] Their decision to do so can also be fuelled by parental rejection and negative feelings towards them. Even when maternal acceptance occurs, however, children can express negative feelings and frustration towards their mother because of her inability to tell them who their father is, particularly in cases of multiple perpetrator rape.[268] This uncertainty and the children's associated resent towards their mothers can lead to family and community tensions. Indeed [redacted] practitioners often referred to these children as a 'time bomb' in Iturian communities, given their marginalisation and risk of being recruited by armed groups.[269]

1.7 Stigma

58. A [redacted] NGO [redacted] described stigma as an ongoing threat.[270] Stigma has the effect of continuing the suffering of rape in a victim's everyday life that degrades their value and dignity. As one victim of rape who was interviewed by the author said, "'People they see me as a woman with no value."[271] While some victims testified before the Chamber that they disclosed to family members and some of those in the community, who were supportive, they often did not tell their husbands or children for fear of being rejected or traumatising them.[272] Victims who have been displaced to other areas

[266] Victim interview 6, [redacted]
[267] Interview 38, [redacted]
[268] Interview 38, [redacted]
[269] Interview 29, [redacted] and roundtable [redacted]
[270] Interview 38, [redacted]
[271] [redacted]
[272] [redacted]

where community members are not aware of their victim status may be stigmatised by that community if access to certain programmes is not discrete and their status is revealed as a consequence.[273] This concern is not unique to reparations, however; it also relates to assistance programmes, particularly those for former child soldiers and victims of sexual violence. There is also a shame in requesting financial support where programmes are not discrete in maintaining confidentiality of a victim having suffered sexual violence.

59. Beyond name calling outlined in the previous sub-section, a child's name can also reflect the difficult experience and circumstances of the mother in giving birth, or having been chosen by the community and reflect social conventions. It can be difficult for reparations to release such children from these culturally thick practices which are intended to be constant reminders of their past.[274] These naming practices can be both formal through the mother and informal through the community, and can affect 'these children's identity, sense of self, and ability to reintegrate'.[275] While some social workers in reintegration centres in Uganda tried to rename these children and thereby distance them from the bad memories of the past towards something more positive, their mothers were reluctant to change their names.[276]

60. Stigma and shame can inhibit victims from coming forward to seek medical support, particularly where travelling and the expense of the journey may put them at risk of being discovered, rejected by family members and thrown out of their home.[277] Some victims can face ongoing intimidation and violence from those responsible or their supporters; they may also be labelled a 'prostitute' or an 'easy

[273] Interview 29, [redacted].
[274] Eunice Apio, Uganda's Forgotten Children of War, in Carpenter (2007), 94-109; and Theidon (2015) s194.
[275] Apio ibid., p101.
[276] Ibid.
[277] Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights, OHCHR 2011, para.74.

woman', which can result in them being fired and left unemployed.[278] In Sierra Leone, former child soldiers who suffered sexual violence were reluctant to come forward to engage with the SCSL or the TRC due to fear that doing so will lead to punishment or upsetting their marriage or family arrangements.[279] There are some harms that victims are very reluctant to speak of, even where they may speak about them being raped, the intimate details are not disclosed, which can complicate efforts to provide appropriate treatment.[280] There are also recurring problems which victims do not openly speak about, such as micturition/urinary dysfunction. Some victims may avoid having children out of shame or fear of the risk of passing infections on to them.

Part III - Appropriate Reparations for Rape and Sexual Slavery

61. While Mr Ntaganda was found guilty of six separate counts of rape and sexual slavery against civilians and child soldiers as war crimes and crimes against humanity, it is better to consider such victims together.[281] Although some victims will have suffered multiple harms and were left with differing degrees of injury, placing the burden on victims to evidence each harm to satisfy a reparation claim may be too onerous for such vulnerable and often stigmatised victims. Providing only collective measures alone to victims may 'cheapen' the effects of reparations, especially when victims want individual measures to be used to alleviate their own personal suffering.[282]

[278] *X v Sri Lanka*, CCPR/C/120/D/2256/2013, para.28.
[279] Coulter (2009), p172-173.
[280] Interviews 29 and 38; Gilmore (2021).
[281] This is concentrate on redressing suffering and to avoid differences between the former child soldiers who come from mainly the Hema community, and victims of attacks against a civilian population who come from mainly the Lendu community (amongst others). Added to this, the number of victims of rape and sexual slavery has yet to be determined.
[282] Diana Odier-Contreras Garduño, *Collective Reparations: Tensions and Dilemmas Between Collective Reparations and the. Individual Right to Receive Reparations*, Intersentia (2018), p326-327.

62. Reparations for victims of sexual violence can help to re-establish their personal dignity, citizenship and reputation.[283] For example, in Uganda, a proposal to provide birth certificates to children born during captivity by the LRA.[284] This is particularly important for children born as a result of rape, who, despite being allowed to return to their communities, have faced practical and legal barriers such as the inability to register the birth and citizenship of their child due to their uncertain nationality and paternal lineage.[285] Having been born in the bush, these children have no citizenship or official legal recognition of their identity, which can prevent them from attending university, obtaining a loan or buying a house.[286] However, efforts to restore a victim's 'good name' may do little to subvert gendered values attached to women, namely marriage suitability, reduced autonomy and reproductive capacity.[287] Nevertheless providing support to groups such as children born as a result of rape with legal documents of identification and citizenship could be an important means of restitution of their rights, and assist in their broader social reintegration and dignification discussed further below.[288]

63. The moral and material damage caused by sexual violence may require a combination of individual and collective reparations.[289] Providing compensation for each victim would be the most appropriate, given the personal harm caused, but complemented by wider collective measures of rehabilitation and symbolic reparations. This section of the report outlines appropriate compensation,

---

[283] Colleen Duggan and Ruth Jacobson, Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation, in R. Rubio-Marin (ed.), The Gender of Reparations, p154.
[284] Carol Natukunda, Gov't to register children born during LRA war, *New Vision*, 12 May 2019.
[285] Virginie Ladisch, *From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda*, ICTJ (2015), p23.
[286] Patrick Ocen, Victims: Front and Centre, Redress and Impunity Watch, The Hague, October 2019.
[287] Duggan and Jacobson (2009), p155.
[288] Such a reparation measure has been ordered in Case 002/02 at the ECCC, see Killean and Moffett (2021).
[redacted].
[289] REDRESS, A Report on Reparations and Remedies for Victims of Sexual and Gender Based Violence, (2016) p9.

rehabilitation measures, and finally symbolic reparations, in particular dignification.

1. Compensation

64. While monetary awards cannot fully quantify a victim's personal suffering, which often fundamentally ruptures their life plan, trust in others and dignity,[290] compensation can give victims the choice and agency to use resources as they see fit.[291] Compensation may take the form of a monthly stipend or a lump-sum payment, which can provide victims who have been stigmatised with the financial independence to start over, i.e. to live elsewhere or find alternative employment.[292] Of course, compensation cannot address all harms suffered by sexual violence and must be complemented with other rehabilitative and assistive measures.[293]

65. The award often reflects a material amount based on the severity of the harm caused as well as what are sometimes referred to as 'moral' or non-pecuniary damages. These can include the damage caused by sexual violence to a victim's dignity and reputation due to stigmatisation or its effect on a woman's ability to marry or access social benefits.[294] The European Court of Human Rights has held that compensation for moral harm is justified as gross violations cause 'evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity'.[295] The quantification of non-pecuniary compensation is intended to be equitable in balancing recognition of the

[290] Brandon Hamber, Repairing the Irreparable, Dealing with the double-binds of making reparations for crimes of the past, *Ethnicity and Health* 5(3-4) (2000) 215-226, p219; and Claire Moon, 'Who'll Pay Reparations on My Soul?' Compensation, Social Control and Social Suffering, *Social and Legal Studies* 21(2) 187–199. See also *Case of Molina Theissen v. Guatemala*, Reparations and Costs. Judgment of 3 July 2004, Series C No. 108, para.66.
[291] Ernesto Verdeja, A Normative Theory of Reparations in Transitional Democracies, *Metaphilosophy* 37(3–4) (2006), 449-469, p460; and Truth and Reconciliation Commission of South Africa Report, (1998) Vol. 5, p179.
[292] UN Guidance Note 2014, p17.
[293] CEDAW, *RPB v the Philippines*, 12 March 2014 Communication No. 34/2011.
[294] Gabriella Citroni, *Between Stigma and Oblivion, A Guide on Defending the Rights of Women Victims of Rape or other Forms of Sexual Violence in Bosnia and Herzegovina*, Trial (2012), p56.
[295] *Varnava and Others v Turkey*, Judgment 18 September 2009, para.224.

seriousness and severity of the 'moral damage', but it is not intended to act as a 'financial comfort or sympathetic enrichment at the expense' of those responsible.[296] Some reparation schemes use fixed rate reparations awards to justify their quantification.[297] Ultimately compensation involves finding a feasible amount that is meaningful to victims, without imposing overly burdensome cost on those responsible.

66. In calculating pecuniary or economic damage, it is important to be aware of the ways in which local gender roles may shape compensation claims. For instance, in many communities, for women who work at home looking after family or who work on family land (where they do not receive any income), appropriate compensation levels cannot be calculated on the basis of income, loss of earnings or the equivalent.[298] Compensation itself can represent a gendered notion in cultures where it is not equated with loss, but rather is perceived as an entitlement or associated with women, who may, for example, be seen as 'prostitutes' taking payment for sexual violence. Schulz found that in Northern Uganda where hegemonic masculinities prevail, a small minority of male victims of sexual violence considered compensation as similar to a dowry or customary payment related to a sexual relationship.[299] Compensation may put some male victims at

[296] *B.J. v Denmark*, Views of 10 May 2000, CERD/C/56/D/17/1999, para.7; *Velásquez Rodríguez*, para.48; and *Varnava and Others v Turkey*, Judgment 18 September 2009, para.224. The Inter-American Court has often used multiplications of the average national wage to determine pecuniary costs, but here this is too low it has used regional averages - see Greiff (2006), p456.
[297] Colombia compensation for disappearance, murder, torture or sexual violence is calculated based on 30 or 40 monthly minimum salaries, depending on the seriousness of the harm ($6,218-$8,290) - Article 149, Decree 2800 of 2011. In Argentina families of those disappeared were awarded a far larger amount of $224,000 based on the highest earnings of public employees, rather than the industrial accidents scheme, so as to distinguish their individual harm as intentional, wrongful acts. In Tunisia the truth commission disbursed compensation for those disabled or persons with special needs through monthly allowances at a 'value not less than two times the minimum wage'. TDC final executive report (2020), p427.
[298] The World Bank, World Development Report: Gender Equality and Development, (2012), Chapter 5.
[299] Philipp Schulz 'Luk pe Coo,' or Compensation as Dowry? Gendered Reflections on Reparations for Conflict-Related Sexual Violence against Men, *International Journal of Transitional Justice*, 12(3) (2018) 537–548.

risk of being perceived as somehow 'feminised' and suggest that a 'relationship' occurred apart from any coercive element.[300]

67. In Guatemala, victims coming forward to claim compensation were sometimes accused by elements of the local community of 'willingly giving sex to the enemy for money'.[301] As in the case of the 'Comfort Women', such allegations, together with competition between victims and even community resentment, left some victims feeling further victimised, stigmatised and silenced by virtue of having claimed compensation.[302] This can be particularly acute in cases of sexual violence during conflict, given the variations in local understanding of the meaning of 'consent'. [303] Accordingly, compensation processes should use 'camouflage' measures for greater discretion and to avoid causing secondary victimisation.[304]

68. The severity of the specific physical violation of sexual violence can be compounded by inequality, destitution, and social dislocation, as well as family separation and isolation. As noted above, sexual violence has long-term ramifications for the economic futures of survivors. For example, research in the DRC and among Ethiopian refugees in Sudan found that agricultural output has reduced because women who were sexually violated were afraid to return to their 'normal' lives.[305] Similarly, a study of male survivors of sexual violence in the DRC found that all of them had abandoned their previous occupations as a result of

[300] Ibid.
[301] Duggan and Jacobsen (2006) p142.
[302] Ethan Hee-Seok Shin, The Comfort Women Reparation Movement: Between Universal Women's Human Right and Particular Anti-Colonial Nationalism, *Florida Journal of International Law* 28(1) (2016) 87-158, p121.
[303] Carlton Waterhouse, The Good, the Bad and the Ugly: Moral Agency and the Role of Victims in Reparations Programs, *University of Pennsylvania Journal of International Law* 31(1) (2009) 257-294, p276.
[304] Gilmore, Guillerot and Sandoval (2020), p33.
[305] See J. Kelly, M. Van Rooyen, J. Kabanga, B. Maclin and C. Mullen, *Hope for the Future Again: Tracing the effects of sexual violence and conflict on families and communities in eastern Democratic Republic of the Congo*, Harvard Humanitarian Initiative (2011).

fear and stigma, with the result that their families lacked 'funds to meet basic household needs such as food, medication, shelter and education for children'.[306]

69. In a number of cases involving compensation for attacks on civilians in which sexual violence occurred, the quantification of awards has often failed to distinguish rape or sexual slavery as a distinct compensable harm.[307] In *Plan de Sanchez v Guatemala*, for example, while rape did not feature in the merits judgment, it did in the reparations decision; nevertheless the Court provided a base rate to all survivors of $20,000 for non-pecuniary damage, with no specific consideration or award for victims of sexual violence.[308] Rubio-Marín and Sandoval have noted that in this case the Court neglected the specific harm that female victims experienced during the massacre.[309] In a sense, their identity as a wife, daughter or sister who survived a genocidal act, in other words as an indirect victim, eclipsed these women's own personal direct sexual victimisation. In the later case of the *Village of Chichupac and neighbouring communities v Guatemala*, rape was recognised in other measures of the Court's reparation order, but it was again not reflected as a separate heading or as an increase in the compensation award.[310]

70. A gender-sensitive approach to compensation would as far as possible consider all the consequences flowing from sexual violence, both pecuniary and moral harms.[311] For instance, in the *Cantu v Mexico* case, Rosendo Cantu, a seventeen-year-old indigenous woman, was beaten and raped by eight government

[306] M. Christian, O. Safari, P. Ramazani, G. Burnham, and N. Glass, Sexual and gender based violence against men in the Democratic Republic of Congo: effects on survivors, their families and the community, *Medicine, Conflict and Survival* 27(4) (2011) 227-246. This was also reflected in many of the interviews and data available to the author on victims' continuing experiences.
[307] Sunneva Gilmore, A medico-legal approach to reparations for sexual violence in times of conflict, (2021).
[308] *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations. Judgment 19 November 2004. Series C No. 116, paras.87-89.
[309] Rubio-Marin and Sandoval (2011), p1072-1073.
[310] *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs, Judgment of 30 November 2016. Series C No. 328, paras.324-328.
[311] *González et al. v Mexico*, para.451.

soldiers.[312] In calculating the non-pecuniary compensation, the judge considered that Rosendo was a child at the time of the rape, the nature and seriousness of the violations, the suffering caused to her and her daughter, how she was treated by the authorities, the time elapsed since the rape, the denial of justice, and the change in their living conditions and other consequences they suffered.[313] As a result the court awarded her $60,000 USD and $10,000 USD for her daughter in compensation for their having to live in exile and the ensuing disruption to her family.[314] This was awarded alongside other forms of reparations, including scholarships to higher education for Rosendo and her daughter.

71. The Inter-American Court has awarded a range of compensation awards based on the nature and context of the sexual violation. For instance, it awarded $10,000 USD for forced nudity,[315] $30,000 USD for penetration of the vagina with a finger, amounting to rape,[316] and $40,000 USD for rape with an object alongside torture in detention.[317] The European Court regularly orders an overall sum without explicitly determining the amount of compensation per violation or distinguishing between non-pecuniary and pecuniary damages, though the Court can be more specific or order other forms of reparations under its 'just satisfaction' provision.[318] While the UN Human Rights Committee does not rule on specific amounts of

[312] *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, paras.72-75.
[313] Ibid. para.279.
[314] Ibid.
[315] *Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 305-307 and 432(h). The European Court awarded $2,000 (6,000 litai) for forced nudity of a male prisoner in front of a female officer - *Valašinas v. Lithuania* (Application no. 44558/98) Judgment, 24 July 2001, para.141.
[316] *Castro Castro,* paras. 309 and 432(g). The European Court of Human Rights awarded £30,000 for ill-treatment for detention and rape of a young woman who was detained by Turkish forces during its a counter-insurgency campaign against the PKK - *Aydin v. Turkey* 23178/94, Judgment (Merits and Just Satisfaction), Court (Grand Chamber), 25/09/1997, para.131.
[317] *Espinoza Gonzáles vs. Peru*, Judgment, Preliminary objections, merits, reparations and costs, Series C. No. 289, 20 November 2014, para.334.
[318] Article 41, ECHR. See James Gallen, The European Court of Human Rights, Transitional Justice and Historical Abuse in Consolidated Democracies, *Human Rights Law Review*, 19 (2020), 675–704, p688. In *D. J. v Croatia*, the court awarded €12,500 for the state's failure to investigate and prosecute a private individual for rape - Application no. 42418/10, 24 July 2012, para.112.

compensation, in its first decision on conflict-related sexual violence in *Sharma v Nepal*, in which the claimant had been disappeared and tortured, including being threatened with rape, the Committee ruled that interim relief payments of 246,000 rupees ($2,500 USD) by the state did not constitute an adequate remedy commensurate with sexual violence.[319]

72. In domestic jurisdictions a range of awards have been made. In the *Marković and Marković* case, for example, the Bosnian court awarded 26,500KM ($14,595 USD) to the victim of rape during the war, reflecting the fact that the victim was 14 years old at the time, continued to suffer mental harm and had to abandon her secondary school studies.[320] In another Bosnian case involving rape and sexual slavery, the victim, who had become pregnant but later terminated the pregnancy, was awarded 30,000KM (approximately $18,000 USD) against the perpetrator.[321] In Peru the amount of compensation for conflict-related rape has been diverse, bringing into question the appropriateness of the amounts awarded and the judicial process through which such amounts were decided.[322] For instance, in one case a victim who was raped by two soldiers and later became pregnant was initially awarded 250,000 soles (€65,000) and on appeal 500,000 soles (€130,000); in another similar case, by contrast, a victim who was raped by two soldiers but did not become pregnant was awarded 50,000 soles (€13,000).[323] In the *Hissène Habré* case before the Extraordinary African Chambers, victim representatives requested 60,000,000 CFA francs (€92,000) for victims of rape, and 75,000,000 CFA francs (€115,000) for victims of sexual slavery.[324] However, the Chambers awarded

[319] *Sharma v Nepal*, CCPR/C/122/D/2364/2014, Human Rights Committee, 25 May 2018, para.9.12.
[320] 20,000KM was quantified for non-pecuniary harm, with the further 6,500KM reflecting her mental pain that diminished her quality of life - Prose*cutor's Office of Bosnia and Herzegovina v. Bosiljko Marković and Ostoja Marković*, Case No. S1 1 K 012024 14 Kri, 24 June 2015, para.242.
[321] However the convicted person was indigent with no identifiable assets. *A v Bosnia and Herzegovina*, 11 September 2019, CAT/C/67/D/854/2017, para.2.5.
[322] Julie Guillerot, *Reparations in Peru – 15 Years Of Delivering Redress*, RRV (2019), p47.
[323] Ibid. El Supremo de Perú condena a un militar por violación como delito de lesa humanidad, EFE, 13 February 2018; and Case No. 37-2008.
[324] Judgment on Reparations, EAC, First Instance Chamber, 29 July 2016, para.60.

20,000,000 CFA francs (€30,600) for those victims who were eligible for compensation under both categories.[325]

73. Domestic reparation programmes offer fixed rates. In Guam $15,000 USD was awarded for victims of rape.[326] In Chile annual pensions of between approximately $2,300 USD and $2,600 USD were awarded to survivors of sexual abuse.[327] Under the Peruvian reparation scheme, a fixed rate of $3,300 USD was awarded to eligible victims who suffered harm that resulted in disability or from sexual violence connected to the conflict, with the same amount to be apportioned amongst the next of kin of those killed or disappeared.[328] In Guatemala compensation for rape or torture was Q20,000 ($2,700 USD).[329] In some cases awards have been made to family members and next of kin for the distress caused by the rape of their family member, without having witnessed the violation.[330]
74. Some domestic reparation programmes provide differentiated amounts for sexual violence. The Tunisian Truth and Dignity Commission (TDC) outlined four categories for compensation, with category 1 being for violations of the right to life (100%) and category 2 being for violations affecting the physical or psychological integrity of the victim, such as rape, sexual violence, torture and injuries sustained during protest resulting in permanent partial disability. Under this scheme,

[325] Ibid., para.62. This was confirmed on appeal. See Nader Iskandar Diab, Challenges in the Implementation of the Reparation Award against Hissein Habré: Can the Spell of Unenforceable Awards across the Globe be Broken?, Journal of International Criminal Justice, 16(1) (2018), 141–163; and Christoph Sperfeldt, Reparations and the Habré Trial in Context, *The President on Trial: Prosecuting Hissène Habré*, in S. Weill, K. Thuy Seelinger, and K. B. Carlson (eds.), Oxford University Press (2020), 340-350, p344.

[326] The 2016 Guam World War II Loyalty Recognition Act, S. 2943, (a)(1)(A) and (c)(2)(A).

[327] See Elizabeth Lira, The reparations policy for human rights violations in Chile, in P. de Greiff (ed.) *The Handbook of Reparations,* Oxford University Press, (2006).

[328] Supreme Decree No. 051-2011-PCM, 16 June 2011. See Guillerot p33.

[329] Claudia Paz y Paz, Guatemala: Gender and Reparations for Human Rights Violations, in R. Rubio-Marin (ed.) *What happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council (2006), 92-135, p111.

[330] For instance in *Espinoza Gonzáles v Peru* the Inter-American Court awarded $5,000 USD to the victim's brother and $40,000 USD to the estate of the victim's mother who had died campaigning for justice for her daughter's rape and torture - *Espinoza Gonzáles vs. Peru*, para.334. In Peru children born of rape are recognised as a separate beneficiary of reparations, enabling them to claim compensation up until the age of 18 and preferential access to education - Artículo 6(c), PIR.

victims of rape qualify for the 70% rate because of 'the severity of the impact it has on victims either physically, socially or psychologically',[331] while victims of torture and injuries resulting in permanent disability are awarded 60% and victims of sexual violence benefit from 35% of the measurement.[332] In Croatia there is a base amount for sexual violence[333] of 100,000 Croatian Kuna (€13,000) alongside a monthly stipend,[334] and 150,000 Croatian Kuna (€19,600) for those who were left seriously disabled or pregnant as a result of sexual violence.[335] According to Clark, who interviewed some of the victims who benefited from this scheme, while the monthly payment is 'helpful and very much needed, it is also a painful reminder of what they went through during the war'.[336] However, drawing on Danieli's work, Clark notes that monthly payments can help to lessen the trauma by transforming victims' suffering through the routine and permanence of the support.[337]

75. In Sierra Leone, victims of sexual violence were prioritised as a vulnerable group by the TRC, which included women and girls subjected to sexual slavery, rape, mutilation and forced marriage, as well as men and boys who suffered sexual

[331] TDC p424.

[332] Ibid. Category 3 for those violations affecting their liberty and security in state detention (eligible for 7-45% depending on time spent in detention from less than three months to over 10 years). Category 4 other right violations including forced divorce and violations for freedom of worship and right to education amounted to 15% - TDC p425.

[333] This includes 'vaginal, anal or oral penetration of a sexual nature by any part of the body or object into the body of another person; injury with serious consequences such as removal, circumcision or other form of mutilation of all or any part of a person's genitals; causing a violent pregnancy; causing abortion; deprivation of a person's biological reproductive ability; sexual enslavement; another form of sexual violence of comparable severity.' This includes war crimes and crimes against humanity as well as criminal offenses against sexual freedom which does not qualify as an international crimes related during the Homeland War - Article 2(1), Law on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War 2015, 64/15, 98/19.

[334] Articles 24 and 26.

[335] Article 25(1) - forced pregnancy or forced abortion as result of sexual violence, birth of a child due to forced pregnancy or sexual violence against a minor.

[336] Janine Natalya Clark, In from the Margins: Survivors of Wartime Sexual Violence in Croatia and an Early Analysis of the New Law, *Journal of Human Rights Practice*, 8(1) (2016), 128–147.

[337] Ibid. citing Yael Danieli, Conclusion: Essential Elements of Healing after Massive Trauma: Some Theory, Victims' Voices, and International Developments, in J. Miller and R. Kumar (eds.), R*eparations: Interdisciplinary Perspectives*, OUP (2007), 307–22, p315.

violence.[338] The Sierra Leone TRC justified the inclusion of victims of rape in the priority group not on the basis of an assessment of their income for the purposes of compensation, but because of the particular stigma that they faced and their inability to sustain themselves.[339] This could be through reduced earning potential due to injuries, ostracisation from their partners who may be the family's primary earners, and even extending to internal displacement. After numerous delays, the Sierra Leone government provided victims with $50 USD in compensation.

1.1 Compensation for victims of sexual violence in the Ntaganda case

76. Due to the ongoing social and medical consequences of rape and sexual slavery, the vulnerability of such victims,[340] as well as to acknowledge the harm caused by such crimes, compensation is an appropriate form of reparations in this case. From the discussion and analysis above on compensation practices for sexual violence in other contexts, it is apparent that in each case what seems to be a fair or equitable amount has been calculated with little quantification or monetising of the suffering of victims,[341] thus placing a heavy burden on them to prove the extent of their harm. In many ways this reflects the seriousness of the violation and the crime of rape and sexual slavery; however, in the context of the *Ntaganda* case, given the passage of time, this may be difficult to conclusively evidence. Moreover, engaging in calculations of pecuniary and non-pecuniary amounts is too individualised a process for the efficient adjudication of reparations for large numbers of victims; moreover, it is time consuming and unnecessarily creates an arbitrary hierarchy of those victims who are able to evidence more harm than others (which can reflect economic and social inequalities), rather than reflecting the seriousness of their

[338] TRC (2004), Vol. 2 Chapter 4, para.95.
[339] TRC (2004), Vol. 2 Chapter 4, para.96.
[340] ICC-01/04-02/06-2474, para.82.
[341] The Inter-American Court for a time used the concept of 'life plan' in its quantification of loss of opportunity caused by gross violations of human rights, it is not a quantifiable heading for compensation given that it is too speculative and in *Loayza Tamayo* the Court refrained from quantifying it (para.153). Moreover in subsequent cases before the IACtHR that focused on loss of educational opportunity (*Cantoral Benavides* and *Barrios Altos*). Indeed more recently the African Court of Human and People's Rights rejected the notion in *Mohamed Abubakari v Tanzania*, Application No. 007/2013, Judgment (Reparations), 4 July 2019, paras.35-36. This should be caveated where it is reference in the *Lubanga* principles (ICC-01/04-01/06-3129-AnxA fn.24).

suffering. [342] Standardised amounts based on type of violation can avoid 'disaggregating' victims and creating discrepancies in the amount of compensation awarded to victims with similar experiences of suffering.[343]

77. It is worth now turning to the *Ntaganda* case and discussing appropriate amounts of compensation for rape and sexual slavery in the context of eastern Congo. Compensation can complement traditional and local cultural understanding of redress in mediating the consequences of sexual violence in eastern DRC.[344] In Ituri there is a well-developed tradition of adjudicating compensation for violations in communities. [345] However such community adjudication is problematic given gender dynamics whereby money is exchanged between families and the perpetrator as a bride price for him to marry the victim.[346] The Congolese military courts have quantified compensation for rape variously, awarding $5,000 USD to 22 victims,[347] $10,000 USD to dozens of victims,[348] and $2,500 - $30,000 USD to 11 victims, which was reduced on appeal to $55 - $5000 USD.[349] In the *Mulenge*/*Lemera* case, seven women were raped, including a blind woman and two pregnant women; each was awarded $50,000 USD.[350] In most cases these awards have been made in solidum between the individual convicted persons and the state; however, in the *Kazungu* case, the lower cost awarded compensation of $700 USD to rape

[342] See Sandoval (2017); and Peter Van der Auweraert, The Potential for Redress: Reparations and Large-Scale Displacement, in R. Duthie (ed.), *Transitional Justice and Displacement*, ICTJ (2012), 139-186.
[343] Pablo de Greiff, Justice and Reparations, in P. de Greiff (ed.), *The Handbook of Reparations*, (OUP 2006), 451-477, p458.
[344] OHCHR 2011, paras.55 and 72; and Aroussi (2018), p286.
[345] Mariana Goetz, Victims' Experiences of the International Criminal Court's Reparations Mandate in the Democratic Republic of the Congo, in Ferstman and Goetz (2020), 415-445, p419.
[346] This is unfeasible in this case and more importantly would be further damaging to victims, akin to further sexual slavery in its own right.
[347] Balumisa case,2009 RP 038 RMP/1427 and RMP1280/MTL/09. This data is taken from Sofia Candeias, Luc Côté, Elsa Papageorgiou, and Myriam Raymond-Jetté, The Accountability Landscape in Eastern DRC Analysis of the National Legislative and Judicial Response to International Crimes (2009–2014), ICTJ July 2015; and *Recueil de jurisprudence congolaise en matière de crimes internationaux*, ASF 2013.
[348] *Fizi I/Baraka case*, RP 043/11 RMP 1337/ MTL/ 2011.
[349] *Mupoke Market* case, 2012, RMP 1868/TBK/KMC/1012 and RMP/1868/KMC/11.
[350] 2009, RMP0933/KMC/10.

victims against the state alone, which was increased to $10,000 USD on appeal.[351] An analysis of compensation awards for sexual violence (rape and/or sexual slavery) found that in nine cases there was an emerging standard of $5,000 being ordered.[352] Awards ranging from $10,000 to $24,000 USD also have been made to family members for the rape and death of a family member.[353] In contrast to more traditional settlements by community leaders over violations, however, these amounts are unrealistic, and payment often does not materialise.[354]

78. To avoid causing further harm to victims and bringing the system into disrepute, procedural protections must be put in place to ensure its efficiency and boost confidence in its legitimacy. Some victims may be vulnerable, in debt or psychologically traumatised, with the result that their money is misspent or misused, particularly where they are unable to manage their own bank account. Financial advice and support should be provided to victims to ensure that they can make the most of their money, but they should not be required to report on how they spent the money. Perpetrating groups that are dissatisfied with the objectives of reparation processes or judicial decisions, can intimidate victims into giving them the money under threat of other, more violent consequences.[355] In other contexts, family or community members have abused the reparation system by making false claims for compensation for sexual violence.[356] [redacted]

[351] 2011, RP 275/09 and 521/10 RMP 581/ TBK/07 and 1673/ KMC/10 (Trial) RPA 0177 (Appeal).
[352] Such as in *Sabin Kizima Lenine* case, 2014, RP 702/11 RMP 1901/ KMC/ 2010; in the *Kavumu* case 39 victims (who at the time of the rapes were between the ages of 18 months and 10 years) were awarded $5,000 each for rape, Batumike et al. (RP 0105/2017), Cour militaire du Sud Kivu, 2017. See Flavia Clementi, Dominique Kamuandu, Elisa Novic et Federica Riccardi, *L'urgence pour la RDC de solder sa dette envers les victimes de crime de masse et revoir sa politique de réparation*, ASF, TRIAL International et RCN Justice & Démocratie, p4.
[353] Martin Ekofo Inganya, La réparation des crimes internationaux en droit congolais: Analyse des pratiques indemnitaires des juridictions militaires au regard du Statut de Rome de la Cour pénale internationale, ASF 2015, p80.
[354] Goetz (2020) p434.
[355] Luke Moffett, Struggling for Reparations in Northern Ireland, in Ferstman and Goetz (2020), 678-709, p694.
[356] In Peru see Gilmore (2021); and in Sierra Leone - Eva Ottendoerfer, Translating Victims' "Right to Reparations" Into Practice: A Framework for Assessing the Implementation of Reparations Programs From a Bottom-Up Perspective, *Human Rights Quarterly*, 40(4) (2018), 905-931, p927.

[redacted]

79. Microfinancing may be another way for victims of sexual violence to pool their money in cooperatives,[357] but given that many of them are scattered [redacted], this may not be feasible or useful for victims. Moreover, with the ongoing insecurity [redacted], microfinancing or community saving initiatives can be vulnerable to attack.[358] In addition they replicate economic assistance programmes without the practical and conceptual distinction of reparations.[359] The experience of Sierra Leone in providing a fixed amount of $50 USD alongside economic support, such as training in weaving and tailoring, produced only short-term economic self-sufficiency among victims, given that the local economy was already saturated with weavers and tailors.[360] This is a common experience in other contexts, such as Colombia, where victims are not physically or mentally able to work or there is little opportunity or market for them to practice or profit from their occupations.[361] This can be problematic, especially where compensation is awarded for the use of approved 'productive projects' from which victims are expected to sustain themselves through individual or collective work.[362] Some research has been conducted in Peru on collective projects, in which the

[357] See Anita Bernstein, Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary Reparations, in R. Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, Cambridge University Press (2009) 291-323.
[358] Aroussi (2018), p284.
[359] Peter Dixon, Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo, *International Journal of Transitional Justice* 10(1) (2016) 88-107.
[360] Anne Menzel, The perils of recognising local agency: a situational concept of agency and the case of victims of sexual violence and the Sierra Leone Truth and Reconciliation Commission (TRC), *Journal of International Relations and Development* 23(3) (2020) 584-606, p602.
[361] Max Counter, Producing Victimhood: Landmines, Reparations, and Law in Colombia, *Antipode*, (1) (2018), 122-141.
[362] Ibid.

money invested by victims is lost completely if environmental or economic circumstances change, leaving them in the same situation as before.[363] However, for victims of sexual violence, compensation can at least provide some financial security in a climate of stigma that limits or inhibits their earning opportunities and may dissuade them from illegal and unregulated sex work, particularly where they have been rejected by their home community and family.

1.2 Proposed compensation scheme

80. In terms of eligibility, victims of who have suffered rape or sexual slavery within the factual matrix of the charges of which Mr Ntaganda was convicted should be eligible to apply for compensation (Category I).[364] Children born as a result of rape should be eligible,[365] but their harm from the rape is more indirect (Category II).[366]

---

[363] Luke Moffett, *Reparations and Conflict*, chapter 1, (2022).

[364] For other measures, such as rehabilitation these will either be as needed (medical rehabilitation) or collective beneficiaries (social rehabilitation and dignification). In terms of evidence - In Peru the victim's sworn statement of rape or sexual slavery is given significant weight to the truthfulness of their claim (Articles 16(2) and 17(2), Reglamento de Inscripción en el Registro Único de Víctimas de la Violencia a Cargo del Consejo de Reparación). Other supporting evidence include personal identification, supporting evidence before the Reparations Board of armed groups in the area at the time of the violation, medical record of the victim's harm, documents or testimony supporting the victim being detained or witness or corroborates their claim (Article 16(3)). In Guatemala a victim's statement is corroborated against records available to the reparation body (PNR) including the truth commission report and other sources on the conflict, then other documents such as church registers provided by the victim. In cases of victims of sexual violence their statement can be corroborated through a sworn affidavit before a public notary - Guatemala PNR, Manual para la Calificación de Beneficiarios del Programa de Resarcimiento, Articles 7-8. However in practice the lack of sensitivity of reparation programme staff has discouraged victims from coming forward - see Gilmore, Guillerot and Sandoval (2020) p40. In Kosovo four recognised NGOs can assist victims in filling in their application forms as well as securing supporting evidence (Gilmore et al. ibid) - [redacted]

[365] For those whose mother's would be eligible under Category I, whether currently alive or deceased. In Peru any document or declaration, even of a witness, is sufficient evidence, provided the Peruvian Registry of Victims (RUV) has previous recognised the mother as a victim of rape. Children born as a result of rape are often forgotten or excluded in reparation programmes, such as in Kosovo - Clara Sandoval, Domestic Reparation Programmes, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019, paras.114-115. Moreover children born as a result of rape should be recognised as 'autonomous' victims in their own right - Julie Guillerot, The gender perspective in transitional justice processes, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/75/174, 17 July 2020, para.29(c).

There should be an evidential presumption that where they are born when their mothers were within the UPC[367] or civilians within 42 weeks since the rape are eligible and should be assisted to apply.[368] This view of children born of rape as eligible victims is consistent with the Court's jurisprudence on causation; given that the child would not have been born 'but for'[369] the rape, it is reasonably foreseeable and therefore proximate.[370] Accordingly, children born out of rape can be distinguished from those born after the Bogoro massacre and suffering transgenerational trauma.

81. Mr Ntaganda was convicted of the crimes of rape and sexual slavery in the following specific circumstances: rape in Mongbwalu and Kilo, in the context of the First Operation, and in Kobu, Sangi, and Buli in the context of the Second Operation, and against children under the age of 15 incorporated into the UPC/FPLC between August 2002 and 31 December 2003 in Ituri; sexual slavery in Kobu and Buli, in the context of the Second Operation, and against children under the age of 15 years incorporated into the UPC/FPLC between August 2002 and 31 December 2003 in Ituri.[371] In evidential terms, eligible victims will need to show

---

[366] Children and adolescents born as a result of a rape can be considered eligible victims in their own right for reparations in Colombia (Article 181, Law 1448/2011) and in Peru they are considered indirect victims (Article 6(c), Law 28592).

[367] In Peru such individuals who are members of armed groups would be ineligible as all members of armed groups are excluded (with the exception of those of self-defence committees - Article 4 and 6(c) of Law 28592), whereas in Colombia only those child soldiers who have demobilised are considered victims (Article 3(2), Law 2011/1448).

[368] 42 weeks is generally the maximum gestation time, but during war it may be difficult to prove or remember exact dates so those born outside this time should have to prove it on a balance of probabilities. Complications of pregnancy increase over 40 weeks see Caughey et al., Maternal Complications of Pregnancy Increase Beyond 40 Weeks' Gestation, *American Journal of Obstetrics and Gynecology*, 196(2) (2007) 155. In evidential terms of presumption of good faith should be used (Article 5, Colombian Victims and Land Restitution Law, 2011/1448) and that marriage to a commander in the UPC shall not be evidence of consent to sexual acts given the coercive environment and age of the victim (Article 38, Victims and Land Restitution Law).

[369] Order for Reparations, ICC-01/04-01/07-3728-tENG, para.162.

[370] Decision on the Matter of the Transgenerational Harm Alleged by Some Applicants for Reparations Remanded by the Appeals Chamber in its Judgment of 8 March 2018, ICC-01/04-01/07-3804-Red-tENG, 01-10-2018, para.17.

[371] The First Operation took place between 20 November 2002 and 6 December 2002, and the Second Operation between 12-23 February 2003 - ICC-01/04-02/06-2359, para.33.

that they fall within their temporal scope and locations identified in the convicted person's charges.[372] That said there should be an evidential presumption that if they can provide a sworn statement confirming that they were raped in the scope of the convicted charges, the Court should consider this sufficient on *prima facie* grounds to consider their application with further supporting information to be located by the Registry.[373] Requiring a corroborating witness or supporting medical evidence may be impossible for most victims, due to stigma, the passage of time and ongoing insecurity.[374] Corroborating evidence could be provided through a supporting letter [redacted].[375] In addition, the Registry could draw upon and request cooperation from third parties [redacted] (reflecting it can often take 6-12 months for victims to come forward) [redacted].[376]

[372] [redacted].

[373] A number of reparation bodies accept prima facie or on the grounds of plausibility, especially where they are for the value of less than $10,000 USD – see Recommendations made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims), S/AC.26/1994/1 26 May 1994, at 34-5. Article 35(2)(b), UNCC Rules; Article 22, Rules of Procedure for The Claims Resolution Process Adopted on October 15, 1997 by the Board of Trustees of the Independent Claims Resolution Foundation. Others simply require a sworn affidavit for claims for compensation for wartime rape - see s.1705(9), Guam World War II Loyalty Recognition Act 2016. Other schemes simply require the provision of the victim's personal identity to be compared to other records – see section 17, Republic of the Philippines, Act 10368.

[374] Bearing in mind that most victims did not come forward soon after the rape, or where held in sexual slavery, or they could not due to attacks on healthcare or stigma, as well as cost and feasibility of obtaining such evidence, this may not exist in such cases and places an onerous burden on victims.

[375] See Gilmore, Guillerot and Sandoval (2020), p36-41.

[376] [redacted] for instance see Article 9(4)(b), Payment scheme Foundation for Individual Compensation for Victims of WWII Transport by NS 2019, and section 13, Sri Lankan Office of Reparations Act of 2018.

82. Some reparation schemes require victims to satisfy certain disability requirements, for instance over 50% in Serbia,[377] which may be difficult to establish for those who suffer sexual violence.[378] In Kosovo victims of sexual violence are exempted from having to demonstrate a degree of disability or invalidity.[379] It has been accepted that rape in times of war can cause permanent disability, including psychological trauma.[380] In the *Ntaganda* case, it would not be necessary for victims to establish such disability given the gravity of these crimes. Moreover, due to the lack of data, it is difficult to determine the extent of disability for those who have suffered rape or sexual slavery without medical assessment. However, some victims may be left permanently injured due to the seriousness of their physical and/or mental harm, and as such may be dependent on a carer (Category III).[381] Verification should be required only once during reparations application processes and efforts should be made to maintain records to avoid reverifying victims.[382] In light of the discussion on the harm and consequences of sexual violence above and in appreciation of the passage of time and of the vulnerability of such victims, the aim of Category III is to provide an equitable solution for those who find themselves in such circumstances.

---

[377] Article 2, Law on Civilian Invalids of War, Official Gazette of RS, No. 52/96. See Humanitarian Law Centre (2014) Administrative reparations in Serbia - an analysis of the existing legal framework, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative_reparations_-in_Serbia_an_analysis_of_the_existing_legal_framework.pdf Similarly in Bosnia social protection for civil war victims is only available to those victims who suffer at least 60% disability or deceased as a result of the war - Article 54, Bosnia (1999) law.

[378] Elizabeth Agnew, Comparative compensation schemes, RRV (2019), p8.

[379] Article 7, Law No. 04/L-172 20 March 2014.

[380] The UN Committee against Torture relied upon reports of an expert in the domestic court that diagnosed a victim of a war time rape as suffering 'permanent personality disorder symptoms and chronic post-traumatic stress disorder' that qualified her as 25% permanent disability for compensation and a pension. See *A v Bosnia and Herzegovina*, CAT/C/67/D/854/2017, 22 August 2019, para.2.3.

[381] Under the Victims' Payment Regulations 2020 a carer is defined as a spouse, partner or someone who is 'regularly and substantially engaged in caring for the beneficiary' (Regulation 9(3)). In the case of victims of rape and sexual slavery caring responsibilities may include looking after the direct victim's children or providing them support and meeting their daily needs. In such cases where a carer is applying on behalf of a direct victim this should be captured in the application form.

[382] Menzel (2020), p19.

83. The final category (IV) covers victims who suffered rape or sexual slavery but subsequently died before they were able to apply under Category I, given that some witnesses who testified before the Court and victim applications mention their family members who were raped and were subsequently killed or died from their injuries.[383] [redacted] should be in addition to this amount to reflect the gravity of the rape of their family member and likely social implications from their death, such as caring responsibilities for any children.[384]

84. While the other experts have suggested a compensation package for victims of attacks in general, a more graduated approach is taken here for victims of rape and sexual slavery (Categories I-IV), with [redacted] being the appropriate amount in line with the military court decisions and within the range offered by other courts and domestic reparation programmes. This amount is more than the compensation package recommended by the other experts for victims of attacks, and reflects the aggravating circumstances of victims of sexual violence.[385] Moreover, while victims in their applications indicated that they would like to support their own or children's education or start a small business,[386] providing compensation to victims gives them the flexibility to spend or invest it in how they see fit,[387] but also allow them to save their money given ongoing insecurity. The use of a monthly pension also allows them to respond to ongoing conditions

[383] [redacted]

[384] The amounts in Category I-IV should not affect victims' eligibility for compensation for other crimes, given that they are separate and do not amount to double compensation.

[385] Focusing resources on those who have suffered the gravest crimes and are the most vulnerable is often practiced in domestic repartition programmes to maximise resources and avoid diluting benefits. See Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014, para.26.

[386] ICC-01/04-02/06-2474, para.71.

[387] Anne-Marie de Brouwer, Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families, *Leiden Journal of International Law*, 20 (2007), 207-237, p216.

of stigma and difficulties in accessing livelihoods, especially given the COVID-19 pandemic.[388]

85. While in the *Bemba* reparation experts' report have stated that victims who are HIV positive as a result of the crime of rape should have access to twelve months of food support to assist in supporting medical treatment,[389] the ICC is not an aid agency, reparations should support victim agency rather than make them dependant, and given that ARV treatment is lifelong, twelve months is insufficient. In addition providing a larger compensation amount to victims of rape and sexual slavery compared to other victims in the case should cover such expenses as well as affirm their agency and dignity, but also reflect that victims may suffer other STIs and comorbidities that require an adequate nutritional intake. From data available to the author from victim application forms of former child soldiers, most victims who suffered from infections only one stated they had HIV and it may be difficult to identify those who had HIV from the rape Mr Ntaganda is convicted of and not subsequent contracted.[390] In light of the Independent Experts Review, the use of compensation can overcome some of the capacity weaknesses identified by them in the delivery of collective or symbolic measures, as well as minimising administration costs in organisations providing collective measures.[391]

86. For Category I victims (those who directly suffered rape or sexual slavery), [redacted][392] [redacted]

[388] Julie Guillerot, The gender perspective in transitional justice processes, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/75/174, 17 July 2020, para.34.
[389] ICC-01/05-01/08-3575-Anx-Corr2-Red, paras.168-169.
[390] Out of 48 application forms, ten stated they had suffered STIs.
[391] Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report 30 September 2020, para.883.
[392] This amount is modest to be discrete but useful enough for victims. The Court may want to have modifiers (25-50% increase) on this amount or the monthly payments to reflect aggravating factors that caused some victims more harm, such as those who suffer disability, multiple rapes/sexual slavery or under the age of 15 at the time of the crime. This author has not done this for the purposes of having a streamlined system, and to allow these aggravating

[redacted][393] The total award for Category II victims (children born as a result of rape) [redacted].[394] For Category III victims (those who suffered sexual violence which left them permanently disabled[395] and/or lacking capacity), [redacted].[396] For

---

factors to be more appropriately addressed through rehabilitative measures as well as the difficult of victims establishing these factors and providing supporting medical evidence. In addition, this could create an imbalanced system, that while some civilian victims of rape or sexual slavery were under the age of 15, all the eligible child soldiers will fall under this category and risk creating a hierarchy of victimhood for those who suffered rape or sexual slavery that is distinguished not only on crimes but also community background.

[393] Using the DRC minimum inter-professional wage guaranteed under Congolese law, the daily minimum is $80 USD per month ($960 USD per annum), [redacted]. Ordonnance n° 08/040 du 30 avril 2008 portant fixation du salaire minimum interprofessionnel garanti, des allocations familiales minima et de la contre-valeur du logement, Journal Officiel de la République Démocratique du Congo, 10 mai 2008. The Colombia 2011/1448 reparation programme operates on 30 minimum monthly payments to quantify, but these are for sexual violence during conflict, not the graver crimes here in this case of war crimes and crimes against humanity.

[394] Each child born of rape would be entitled even from the same mother. In Colombia direct victims of rape and children born as a result are equally entitled to the same compensation amount, but given limited resources in this case, the Croatian approach of having an additional 50% for those who are pregnant is used, but instead given directly to the victim. [redacted]. Providing such reparation to a child also taps into more development studies and the ecological environment in support their personal development - see Eithne Dowds, Children Born of Sexual and Gender-Based Violence in Conflict: The International Criminal Court, Ecological Environments and Human Development, *Children and Society*, 33(3), 226-238

[395] In Bosnia a carer is for those victims who are 100% disabled - Article 56, Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children 1999. Under the Northern Ireland Victims' Payment Scheme 2020 permanent is defined as 'following appropriate clinical management of adequate duration, an injury has reached a steady or stable state at maximum medical improvement', with disablement as 'damage, disfigurement and loss of physical or mental capacity resulting from injury' (Regulation 2) - injuries are limited to the temporary, geographical and 'Troubles-related incidents (Regulation 5).

[396] This would be on top of the compensation package for the direct victim and to complement the pension component time period. This is consistent with reparation programmes in other contexts after conflict for those left permanently disabled - see Article 62, Bosnian Law 1999;

Category IV (compensation to the family of those deceased), an award [redacted] is appropriate to acknowledge the loss of their family member and the violation of their personal integrity.[397]

87. For Category IV beneficiaries, apportionment amongst family members should take a gender-sensitivity approach.[398] The Court may want to allow on the death of a victim who has died subsequently in Category I after receiving their lump sum, for the remaining monthly payments to be made to the victim's family. The Court in consultation with victims and their legal representatives could consider whether or not it is appropriate to allow victims in Categories I-III to exercise the option for the full amount rather than monthly payments. Moreover, victims who are displaced [redacted] should be eligible. With regards to apportionment amongst family members the Chamber should be gender sensitive and the lessons from Morocco and Tunisia may be instructive, but the judges should consider victims' views in this regard to determine what is appropriate. In Morocco the reparations were apportioned on equal basis between men and women, deviating from Sharia inheritance law.[399] Whereas in Tunisia preferential amounts were given to women, so for instance on death of a victim if they were single, 60% would go to their mother and 40% to their father.[400] This seems an

---

Article 14(6), Kosovo Law 2011; Regulation 9, NI Victims' Payment Regulations 2020. In human rights courts' jurisprudence there is a general assumption of harm for family members that make them eligible, see *Atenco*, para.371.

[397] This amount should be on top of the economic package suggested by the other experts to reflect their gravity of the violation of sexual violence.

[398] Male victims of rape and sexual slavery will be eligible under Category I, [redacted]. The Chamber may want to consider including the death of a child born as a result of rape to be included as a further sub-category for the mother as the direct victim under Category IV.

[399] Julie Guillerot, *Morocco: Gender and the Transitional Justice Process*, ICTJ (2011), p.10-11

[400] TDC, p427. The TDC also increased the amount of compensation by 5% where if at the time of the violation they were a child or woman, p426.

equitable and gender-sensitive approach that the Court should consider in adopting in this case.[401]

Category	Description	Total Amount	Payment
I	A victim of rape or sexual slavery during the First or Second Operation or a UPC soldier within the relevant period.	[redacted]	[redacted]
II	A child born as a result of a rape that would be eligible under Category I.	[redacted]	[redacted]
III	A carer of a victim who is eligible under Category I and suffers a permanent disability.	[redacted]	[redacted]
IV	A family member, next of kin or dependent of a victim who is eligible under	[redacted]	[redacted]

[401] For a single victim it should be divided between the parents (60% mother and 40% father), for mother who died evenly split between her children, and if she had no children to her spouse.

	Category I, but who is now deceased.		

88. Compensation should be prioritised for victims of rape and sexual slavery in line with the principle of prompt reparations. This should include specific service delivery times for decision-making. In Colombia, the Victims Unit is bound by law to reach a decision on an application within 60 days of receipt.[402] In order to expedite payment, compensation should be provided directly to victims through the most accessible means possible. [redacted][403] [redacted].[404] [redacted].[405]

[402] Article 156, Victims and Land Restitution Law 2011/1448.

[403] [redacted]

[404] [redacted]

[405] [redacted]

89. Care must be taken to respect victims' agency, for example, by engaging a financial advisor to offer advice on how to use the allocated compensation,[406] and avoid paternalistic conditions attached to the receipt of compensation.[407] Instead, such a service should be optional, [redacted].[408] [redacted].[409] [redacted].[410]

90. In terms of the liability of Mr Ntaganda, he was convicted on the counts for rape and sexual slavery as an indirect co-perpetrator. In the *Katanga* case, the Court found that the victims' psychological harm from a family member or relative being killed in the Bogoro massacre amounted to $4,000-$8,000 USD, but only awarded

[406] ICC-01/04-02/06-2474, para.81.

[407] Such as the need for the victim to account for what they spent the money on. Alina Balta. *What's Law Got to Do with It? Assessing International Courts' Contribution to Reparative Justice for Victims of Mass Atrocities through their Reparations Regimes*. Tilburg University, 2020, p117. *Katanga*, Observations Relatives Au Projet De Plan De Mise en œuvre déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/04-01/07-3751-Red), ICC-01/04-01/07-3763-Red, 13 September 2017, paras.43 and 56.

[408] [redacted]

[409] While the Congolese Family Code 1987 used to prevent women from owning a bank account, reforms in the past few years have eliminated the need for married women to have their husband's permission to engage in legal acts, such as opening their own bank account and applying for loans. Law 87-010; and Law 16-008, 2016. See OECD Gender Index DRC 2019, p6.

[410] Gilmore, Guillerot and Sandoval (2020), p34. [redacted]

$250 USD, which created confusion and frustration amongst victims.[411] In light of ongoing insecurity and given that many of the victims in Bogoro are unable to benefit from collective measures, it is best to place most of the money in individual compensation awards. While it is constructive that the Court was transparent in its quantification of compensation awards and is legally logistical in terms of the principle of being proportionate, it is perhaps best to provide a single quantification of compensation, rather than differing amounts. This indicates that the Congolese military court's judgments do not make such distinctions, nor do domestic reparation programmes. Therefore, the amounts provided above represent final amounts based on Mr Ntaganda's liability as an indirect co-perpetrator. With regards to Mr Ntaganda's contribution to compensation, while he is likely to be indigent, he could, through his remuneration for work during detention, demonstrate an effort to compensate victims, which in turn would have significant benefits for the purposes of early release.[412] The total cost of compensation for victims of rape and sexual slavery would not be prohibitive given the numbers of victims before the Court.[413] In addition, given that the Court

[411] One victim said it was an insult – see Goetz (2020) p437. Interview 36 with [redacted] civil society actor, [redacted].

[412] This is €25 per week Regulation 163(3), Registry Regulations; and Rule 223(d), ICC RPE. See Luke Moffett, Restorative Sanctions: The Reintegrative Potential of Reparations in Sentencing at the International Criminal Court, (*forthcoming* 2021).

[413] Category II-IV beneficiaries are unlikely to be a large universe of victims and given their increasing remoteness from the rape or sexual slavery have reduced amounts than the direct victim. The Chamber in its final judgement held that at least 21 individuals were raped and two suffered sexual slavery as part of attacks on the civilian population and three for rape and two for sexual slavery against former child soldiers (ICC-01/04-02/06-2442, paras.98, 101 and 108), but given this was the trial and having a higher evidential burden of beyond reasonable doubt, it is likely that a larger group of victims of rape and sexual slavery will be able to claim reparations on the lower burden of proof of a balance of probabilities (ICC-01/04-01/06-3129-AnxA, para.65). In terms of quantification based on data available to the author – going by the VPRS analysis in their March 2020 report, there are 88 victims of rape or sexual slavery (going by the application forms there are a few who are indirectly participating i.e. Category IV), so for the sake of simplicity if we quantified these victims as Category I then the total would be [redacted] with perhaps a further 30 individuals in the child soldier application forms [redacted]) we could estimate a further third coming forward with current application forms, this could perhaps amount to a further 40 individuals with a total cost of [redacted] for 158 individuals. In terms of Category II victims, going by the application forms of child soldiers alone, there are between [redacted] children born as a result of rape that fall within the crimes Mr Ntaganda was convicted of, meaning that this would amount to [redacted]

does not have any financial liability clauses that it can impose on a convicted person's estate upon their release, as was seen with Mr Lubanga and Mr Katanga's release, it is arbitrary for victims that the total amount is a token value.[414] Indeed, in light of the Court's more recent reparation decisions, individual awards should be 'real, rather than symbolic compensation'.[415]

91. The scheme proposed here for victims of rape and sexual slavery is consistent with the Court's jurisprudence that such measures should be 'expeditious and cost effective as possible and thus avoid unnecessarily protracted, complex and expensive litigation.'[416] The Court should learn from the experience in the *Katanga* case of individual assessments that cause undue delay and ensure that the process is efficient.[417] Some reparation programmes have kept their application deadline open beyond six months from the date of application process being opened.[418]

2. Rehabilitation

92. According to the 2005 UN Basic Principles on Reparations, rehabilitation covers 'medical and psychological care as well as legal and social services'. The UN Committee Against Torture has outlined that rehabilitation should be 'holistic' and be aimed at the,

> 'restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the

[redacted] However with accurate data these are all estimates, but demonstrate that such a compensation awards are not in relative terms that expensive.

[414] In addition, the Trust Fund for Victims would be able to engage with State Parties to provide funding to cover without too much difficulty, given that a number of states have often provided earmarked amounts for sexual violence assistance projects. The TFV received €5.2 million between 2008-2014 earmarked for SGBV - TFV Financial Information available at https://www.trustfundforvictims.org/en/financial-information accessed 19 October 2020.

[415] ICC-01/12-01/15-273-Conf, paras 72-73; and ICC-01/12-01/15-324-Red 04-03-2019, para.26.

[416] *Katanga*, ICC-01/04-01/07-3778-Red, 8 March 2018, para.64.

[417] Lorraine Smith van Lin, *No Time to Wait: Realising Reparations for Victims before the International Criminal Court*, REDRESS (2019), p26.

[418] ICC-01/04-01/07-3551, para.42. In some cases this is open for years, such as five years under Regulation 8, The Victims' Payments Regulations 2020.

person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.'[419]

93. Such rehabilitation may need to look beyond initial assistance for serious violations such as sexual violence requiring long-term medical care.[420] The African Court of Human and People's Rights' General Comment on Torture goes further by requiring states to take measures to ensure 'adequate documentation...[and provide] unimpeded and regular access to comprehensive healthcare, including sexual and reproductive health-care services, physical rehabilitation, psychological and psychosocial support, and socio-economic support'.[421] The WHO defines rehabilitation as 'the combined and coordinated use of medical, social, educational and vocational measures for training or retraining the individual to the highest possible level of functional ability'.[422] However, it distinguishes rehabilitation as the third phase in medicine after prevention and curative care where possible. For the Tunisian truth commission, rehabilitation is 'a comprehensive process aiming to assist individuals in regaining their adaption capability in all areas of life' and a means to 'help victims to overcome the sense of exclusion and marginalization through regaining self-confidence and trust ... leaving behind the status of victim and growing a sense of belonging to the community'.[423]

94. Rehabilitation delivered as reparations has grown to encompass all three phases of medicine,[424] as well as social, legal and economic rehabilitation. In order to identify

[419] General Comment No. 3 of the Committee against Torture, 19 November 2012, CAT/C/GC/3, para.11.
[420] Ibid. paras.13-14.
[421] General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), Adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia, para.61.
[422] Disability prevention and rehabilitation, WHO 28 April 1976, A29/INF.DOC/1, p.13.
[423] TDC (2020) p423.
[424] These include prevention, curative and rehabilitative.

those who may have been potentially injured and to mitigate consequences of their harm, reparations have included diagnostic testing, prophylactic therapy (especially when implemented in situations of ongoing post-conflict violence or insecurity, e.g. Colombia) and curative treatments such as pelvic floor reconstruction or genital fistula repair.[425]

95. The Inter-American Court of Human Rights has ordered states responsible for gross violations of human rights to deliver appropriate medical treatment and medications to victims free of cost,[426] or provide compensation to cover the costs for those victims living abroad.[427] The Court has ordered treatment to be provided for as long as necessary or on a permanent basis to ensure adequate attention is given to the suffering of victims of sexual violence in a reparation measure.[428] Where appropriate, this also includes expenses for services that are essential to treatment such as transportation and interpretation.[429] The Court has also ordered states to ensure priority access and to provide financial support to cover transport and other directly related costs, with treatment based on the needs of the victim following an individual assessment.[430] Where the state is unable to provide such services for victims in a timely manner, the Court has required it to use specialised private or civil society institutions.[431]

96. In terms of sexual violence, the Inter-American Court has ordered rehabilitation measures where the state already had in place a multi-disciplinary team to provide

---

[425] A. Pinel and L. Kemunto Bosire, Traumatic fistula: the case for reparations, *Forced Migration Review* 27 (2007), p18-19. L. Lombard, de St. Jorre, J., Geddes, R., El Ayadi, A M., Grant., L. Rehabilitation experiences after obstetric fistula repair: systematic review of qualitative studies, Tr*opical Medicine and International Health* 20(5) (2015) 554-568.
[426] *Castro Castro,* para.449.
[427] *Castro Castro,* para. 450; and *García Lucero et al. v. Chile,* Judgment, 28 August 2013, para.233.
[428] *Véliz Franco et al. v Guatemala*, Judgment, Preliminary Objections, Merits, Reparations and Costs, Series C No. 277, 19 May 2014, para.280; *Cantú et al. v México*, para.252; and *The Massacres of El Mozote and Nearby Places v El Salvador*, Judgment, Merits, reparations and costs, Series C No. 252, 25 October 2012, para.352.
[429] *Fernández Ortega et al. v Mexico*. Judgment, Preliminary Objection, Merits, Reparations, and Costs, Series C No. 215, 30 August 30 2010, para.251.
[430] *Atenco,* para.341.
[431] *Cantú,* para.253.

medical treatment, assistance and reintegration of victims of sexual violence into the community, including training programmes in indigenous communities on women's rights and preventing sexual violence.[432] In some cases the Court has ordered the state to establish a health centre in the victims' community;[433] in others, it has required only that the state ensure provision of specialist treatments for victims of sexual violence through an existing local centre.[434]

97. This section outlines two main forms of rehabilitation that would be appropriate for victims of rape and sexual slavery: medical and social.

2.1. Medical Rehabilitation

98. The International Criminal Court has a more limited reparations scope for awarding reparations in comparison to the Inter-American Court of Human Rights, given its jurisdiction over states. As such, this section outlines what appropriate reparations could look like at the ICC, including taking into consideration the health context in Ituri, as well as the role of medical rehabilitation in responding to the harm suffered by victims of rape and sexual slavery. This section goes into a substantive amount of detail that will help shed light on some of the challenges involved and appropriate modalities, but also inform measures to be implemented through TFV partners.

2.1.1. Health context

99. It is worthwhile explaining that harm arising from sexual violence and other crimes may be compounded by the difficulties associated with attaining and affording medium- and long-term care in the DRC health system in the years after the crime occurred, particularly the absence of the State and deterioration of the healthcare system during times of conflict.[435] Furthermore, it is important to situate

[432] *Cantú*, para.234-238.
[433] *Plan de Sanchez*, para.110.
[434] *Cantú*, para.260.
[435] For more information on the specific dysfunctions and inefficiencies in the DRC health system, see Hyppolite Kalambay Ntembwa and Wim Van Lerberghe, Improving Health

medical rehabilitation for these victims within the health system of the DRC, thereby acknowledging the tensions in providing care to other victims of sexual violence (and victims of other crimes in this case)[436] who are not eligible for reparations in this case. A set of health reforms were launched in 2005 in the DRC known as the Health System Strategy (HSSS), consisting of complex health responses and resulting in some progress. However, in 2011, central government expenditure on health remained low, contributing only 11% of the total, with households (40%) and multilateral cooperation (26%) accounting for the majority of input.[437] That said, the total national budget on health has increased from 7% in 2016 to 8.5% in 2018,[438] although this continues to fall short of the 2001 commitment to contribute 'at least 15%' of annual national budgets to enhancing the healthcare system.[439]

100. While the national budget for the public medical sector remains under-funded, the private medical sector is one of the most significant contributors to healthcare.[440] Nonetheless, many profit and non-profit centres can be unregulated and their workforce inefficient due to the lack of training.[441] Nevertheless, the private

System Efficiency: Democratic Republic of the Congo, Improving aid coordination in the health sector, World Health Organisation, Health Systems Governance & Financing, 2015, p29.

[436] Such as health consequences as a result of persecution, attempted murder and intentionally attacking civilians.

[437] Hyppolite Kalambay Ntembwa, Wim Van Lerberghe WHO 2015, p7.

[438] Democratic Republic of Congo, Global Financing Facility, Supported by the World Bank Group (2019). https://www.globalfinancingfacility.org/sites/gff_new/GFF-annual-report-2019/drc/ (Accessed 15 October 2020) See National Health Development Plan (PNDS) and reviewed in 2018.

[439] Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Diseases. African Summit on HIV/AIDS, Terberculosis and Other Related Infectious Diseases. Abuhja, Nigeria, 24-27 April 2001, OAU/SPSABUJA/3. Para 26. https://au.int/sites/default/files/pages/32894-file-2001-abuja-declaration.pdf (Accessed 15 October 2020).

[440] Democratic Republic of Congo Private Health Sector Assessment, ShopsPlus,USAID, World Bank Group, August 2019, p4. The health system is comprised of four sectors: public medical sector (MoH); private medical sector (for profit or non-profit, including faith based); private pharmaceutical sector and traditional medicine. These sectors have been described by the National Health Development Plan (2016-2020).

[441] Democratic Republic of Congo: Improving Aid Coordination in the health sector. WHO, 2015 p32-33. Shopsplus (2019) report also highlights that, 'On paper, the DRC's private health sector is closely regulated by the MOH.' (p5) However the reality is different going by interviews with local healthcare practitioners.

healthcare sector is more likely to have better infrastructure and operational capacity than its public sector counterpart, but deficiencies, for example in infrastructure, remain in both sectors[442] The need for better collaboration between the private and public medical sectors to improve the provision of healthcare has been recognised by the DRC Ministry of Health, which is responsible for the latter.[443] Poverty in the DRC is prevalent,[444] and the cost of timely, quality healthcare to meet their long-term needs is a challenge for victims in this case, one which has only been compounded by inaccessibility. As stated in the harm section (Part II), some victims will have died, leaving behind bereaved family members, anguished by their inability to help, and sometimes with caring responsibilities for children born out of rape. Given the circumstances and challenges that all medical sectors face, measures are required to ensure that staff in facilities delivering healthcare receive medical and ethical training, including on gender sensitivity. In other private facilities, health and human rights organisations have provided medical training but often end up also providing ethical training on the provision of dignified care and ensuring patients' bodily and information-related privacy is respected.[445]

101. Gender-sensitive approaches should be integrated into all types of services, including healthcare.[446] Therefore, health rehabilitation programmes in this case present a vital opportunity to incorporate gender sensitivity in all forms of care that victims would benefit from,[447] and in particular mental health, given the long-term impact of these crimes. For the victims of Mr Ntaganda's crimes, this will

[442] Shopsplus, USAID, World Bank, 2019 p6.
[443] WHO (2015), p15.
[444] Shopsplus (2019) p1.
[445] Organisations such as Physicians for Human Rights have provided forensic training to hospitals. [redacted]
[446] Prabha S. Chandra, Gayatri Saraf, Aakash Bajaj and Veena A. Satyanarayana. The current status of gender-sensitive mental health services for women—findings from a global survey of experts, *Archives of Women's Mental Health,* 22(6) (2019) 759-770.
[447] Health taken in the broadest sense, and refers to social and economic measures that improve health and wellbeing.

likely be in a limited capacity and does not guarantee that the long-term sequalae of sexual violence (as observed in this case) will be mitigated or prevented for other victims of sexual violence, unless combined with assistance, increased government expenditure, strategies on health (and a dedicated reparation budget) and programming on preventing SGBV.[448]

102. The following sub-sections consider what measures should be included in medical rehabilitation and its methods of delivery, in the context of the DRC. Insecurity is also discussed as well as the humanitarian investment, attention and policy that has been generated in relation to conflict-related sexual violence. Each rehabilitation measure discussed is accompanied by an explanation as to which harm is being redressed as a result of the crime and the compounding passage of time. Furthermore, a gender-sensitive and intersectional approach is integrated throughout in order to illustrate more precisely how it can be applied in rehabilitative reparation.

2.1.2 Collective Rehabilitation with Individualised Components

103. As the crimes occurred nearly two decades ago, there is a need for reparations to consider the medium and long-term impact, outlined in Part II, of such sexual violence on victims.[449] Due to the plurality of harms associated with sexual violence and its consequences, a dual approach to reparations should be taken, one which recognises that certain needs are more readily dealt with on a collective basis,

[448] In the Addendum to the Joint Communiqué on sexual violence linked to the conflict between the Democratic Republic of Congo and the United Nations, signed on December 3, 2019, the Government undertook to accelerate the adoption of the law creating a national fund for victims of conflict-related sexual violence (VSLC). [redacted] addendum needed to be approved by CSOs, and legislative procedures including legislation passed through parliament would be needed for a reparations fund. [redacted]

[449] [redacted]

whereas others can only be addressed on an individual basis.[450] Collective reparation in the form of medical rehabilitation for victims who have suffered harm as a result of rape and sexual slavery can have individualised benefits.[451]

104. While treatments for HIV are available, as outlined in Part II, 18 years on from the crimes of which Mr Ntaganda was convicted, it is highly likely that victims who contracted the virus as a result of those crimes are now deceased, if they have not been receiving adequate treatment. While other experts in the *Bemba* case suggested HIV testing,[452] in light of the passage of time and in the interest of making reparations feasible, this may not be appropriate in this case. To improve health and reproductive outcomes for victims of sexual violence and their children, the provision of appropriate medications to treat STIs and anti-retrovirals for HIV, including highly active retroviral therapies (HAART), can reduce vertical transmission from mothers to their child; small outreach or nurse-led teams can provide acute care; and educational initiatives may limit transmission rates. These interventions provide opportunities to protect and promote sexual and reproductive health beliefs among victims and as such contribute to the restoration of functioning and self-sufficiency. This is elaborated further in the section on rehabilitation for HIV-positive victims of rape and sexual slavery (Part III 2.1.7). Moreover some victims spoke of being unable to have children after the rape(s), including some who existing children were killed. In such cases if reparations are intended to remedy the harm caused, sub-fertility or infertility (e.g. as a result of STIs) could be redressed through measures of assisted reproductive technology (ART).[453]

---

[450] ICC-01/04-02/06-2477-Red, para.54.

[451] UNSG 2014 Report, p7.

[452] ICC-01/05-01/08-3575-Anx-Corr2, p75.

[453] This is possible in the DRC, but in the UK ART can cost over £5,000 per IVF cycle. The TFV suggested it is $450, [redacted]. While crimes were committed almost two decades ago, many victims may still be of reproductive age. Where appropriate, care can be given for sub/infertility, such as ART in tubal infertility or psychosexual counselling for some forms of psychosexual disorders.

105. With regard to physical injuries caused by rape or sexual slavery, medical rehabilitation will depend on the nature of the continuing injuries a victim suffers from[454]. One consequence that has received attention is traumatic gynaecological injuries, and in particular fistula. With fistulas, a thorough diagnostic evaluation is required to determine classification according to anatomical structures, size and site. A specialised team can then manage the fistula based on conservative or surgical interventions, with surgical repair being the mainstay of treatment (often delayed by 3-6 months to allow swelling/oedema to subside). [455] Current infrastructure for essential surgery and chronic care is inadequate in eastern Congo,[456] with specialist services only available in Bunia, but with a number of fellowships and fistula surgeons in training supported by donors.

[454] Treatment will also depend on what is acceptable to the victim and the nature of the medical condition. To illustrate the range of cost that can be incurred, the cost of repairing one consequence to the extent that is feasible is explained. [redacted] However, the author does not have information on all the specific harms of victims to estimate a maximum total cost for medical rehabilitation. Therefore, this approach could be used as a guide until more information becomes available, including during implementation, and can be complemented by assistance programmes if other costs are incurred.

[455] R. Pal et al., Role of conservative management of genitourinary fistula: review of literature, *International Journal of Reproduction, Contraception, Obstetrics and Gynecology* 5(10) (2016) 3280-3282; and Stamatakos et al.

[456] Kouo-Ngamby, F.N. Dissak-Delon, I. Feldhaus, C. Juillard, K. A. Stevens and M. Ekeke-Monono, A cross-sectional survey of emergency and essential surgical care capacity among hospitals with high trauma burden in a Central African country, *BMC Health Services Research*, 15 (2015) 478.

106. Due to the limited case information, it is unknown how many victims were diagnosed with a traumatic gynaecological fistula as result of rape and sexual violence, or with obstetric fistula (more common in general) as a result of obstructed labour in a pregnancy resulting from rape. However, referral to donors or partner organisations reportedly took place.[457] Spontaneous healing (although uncommon) may have occurred with suboptimal results. Stigma can also ensue from having a fistula, with a resultant impact on identity, particularly in a society where sexual and reproductive health is closely entwined with societal roles (as in the DRC). [458] As part of rehabilitative reparations, these patients may benefit from follow-up to reduce fistula-associated morbidity (including recurrence) if not done previously and if the patient has concerns,[459] while obstetric education will enhance maternal and foetal wellbeing. The patient may also require education, physical therapy, mental health programmes, cognitive coping mechanisms and contraceptive advice.

107. The International Federation of Gynaecology and Obstetrics, the International Society of Obstetric Fistula Surgeons and the Fistula Foundation have devised a competency-based obstetric fistula training programme. [460] Funding may be allocated to hospital services specialising in survivors of fistulae and complications from genital trauma. This may involve funding fellowships, including visiting ones, training programmes or scholarships, and lengthy, fixed-term medical positions. In rural areas, healthcare centres unable to facilitate complex cases require education on referral pathways to specialist centralised services.[461]

---

[457] Interviews with NGOs [redacted].
[458] Hannah M Degge, Mary Laurenson, Emeka W. Dumbili, Hayter, Mark, Reflections on Identity: Narratives of Obstetric Fistula Survivors in North Central Nigeria, *Qualitative Health Research*; 30(3) (2020), 366-379.
[459] Traumatic Gynecologic Fistula: A Consequence of Sexual Violence in Conflict Settings May 2006, ACQUIRE Report, https://www.engenderhealth.org/files/pubs/maternal-health/tf-report-english.pdf (Accessed 19 October 2020)
[460] S. Elneil, Provision of fistula Services and Programmes, *RCOG International News*, September 2012.
[461] R. B. Singh, S. Satish Dalal, S. Nanda, and N. M. Pavithran, Management of female uro-genital fistulas: Framing certain guideline, *Urology Annals* 2(1)(2010) 2–6.

2.1.3 Education and Training: Medical Competencies and Gender Sensitivity

108. Gender-sensitive approaches need to be integrated into all types of services, including mental healthcare, given the time interval from the crimes.[462] Human rights jurisprudence has also established criteria for ethical (or good practice) on rehabilitation; for example, instructing that psychological healthcare should be provided in a gender-sensitive way to victims of sexual violence.[463] The medical profession may require education and training on sexual violence, gender-sensitivity, and a trauma-informed approach when treating sensitive patient interactions or delivering rehabilitation programmes, whether in community settings or in hospitals.[464] Moreover, with victims of sexual violence, it is important to ensure that healthcare practitioners' attitudes and perceptions are challenged so as to avoid causing discrimination or stigma.[465] Towards this end, care should be taken in the use of language and stereotypes at every stage and in all cases.[466] This includes former child soldiers who may be 'doubly stereotyped' as victims of sexual violence and by virtue of being associated with an armed group, which can impede access to reparative justice, including all forms of rehabilitation.[467] In the *Gonzalez v. Mexico* case, which involved the torture and rape of three girls by military personnel, the Inter-American Commission of Human Rights (IACtHR) affirmed that the conduct of medical staff treating victims must always conform to 'the highest ethical standards'.[468]

---

[462] Prabha S. Chandra, Gayatri Saraf, Aakash Bajaj and Veena A. Satyanarayana. The current status of gender-sensitive mental health services for women—findings from a global survey of experts. *Archives of Women's Mental Health*, 22(6) (2019) 759-770. See also Gilmore (2021). *Sexual Violence, Trauma, and Neglect: Observations of Health Care Providers Treating Rohingya Survivors in Refugee Camps in Bangladesh*, Physicians for Human Rights, October 2020, p18.

[463] *Gonzáles et al. ('Cotton Field') v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment, IACtHR Series C No. 16 November 2009, para.549.

[464] See Article 39, Mexico Victims' Law.

[465] CEDAW, *TPF v Peru*, 4 November 2011, Communication No. 22/2009; and Inter-American Commission on Human Rights, *Jessica Lenahan (Gonzalez) v US*, Report No. 80/11 Case 12.626.

[466] P. XVI/2015 (10a.), Supreme Court of Justice, Mexico, September 30, 2015, p38.

[467] SU599/19, Constitutional Court of Colombia, 11 December 2019, para.66.

[468] *Ana, Beatriz and Celia Gonzalez vs. Mexico*, Inter-American Commission of Human Rights, Report 53:01 - Case 11565, 4 April 2001, para.39.

109. As in the case of *Espinoza Gonzáles v. Peru*, the IACtHR also emphasised that health professionals treating sexual violence must give due weight to potential psychological and physical conditions.[469] This requires a minimum level of knowledge but also conscientious efforts to take seriously these consequences and refer those persons who wish to avail of this care. As such, informed consent of the victim is core to avoiding re-victimisation, but this requires access to the appropriate information on available care and communication pathways.[470] Guidelines, clear local protocols and monitoring of compliance when treating victims of sexual violence who have come into contact with healthcare are essential for gender-sensitivity and victim-centred care by professionals and for confidence in their decisions.

110. There are also non-specialised services for victims of sexual violence in which healthcare professionals and outreach by community workers may contribute to the delivery of care. For example, [redacted] health workers with similar skills to those of a paramedic, working under the auspices of an NGO in [redacted], assisted in the identification of victims who appeared to be struggling with their health, including victims of sexual violence, and were able to refer them to private clinics for medical assessment and treatment, also covering costs.[471] The Constitutional Court of Colombia recognised that a lack of knowledge among women's and victims' organisations in relations to accessing reparations impeded collective reparations.[472] However, this gap may also extend to knowledge on potential harm and medical care that could encourage their constituents to apply for collective reparations with an individualised component such as in healthcare.[473] Therefore, awareness raising and education on the procedure of application for new, potentially eligible victims could be given to such

[469] *Espinoza Gonzáles vs. Peru*, para.34.
[470] The consent of the victims must be obtained in order to avoid re-victimisation; *Espinoza Gonzáles,* para.179.
[471] [redacted], - Gilmore (2021).
[472] T-718/17, Constitutional Court of Colombia, 11 December 2017, para.178.
[473] Based on doctoral field research 2017-2020. Gilmore (2021).

organisations, as well as basic education on potential harms to look out for in victims. That said, victim organisations could also inform reparations at both the design and the implementation stage, as they may observe unprecedented needs as a result of the harm.[474]

2.1.4 Modalities of learning and appraising

111. As with the delivery of healthcare, technology is increasingly having a role in education, with an acceleration of in-person courses and materials being delivered in alternative formats (e.g. device applications, e-learning courses, webinars) during COVID-19. [redacted][475] [redacted][476] [redacted].

[474] T-718/17, Constitutional Court of Colombia, 11 December 2017, para.179 - explains how channels of participation between reparation programmes and women's and victim organisation are important to taking a gender focus. Of note, if victims do not wish to be part of women's or victims' organisations this should be respected, but this can provide an opportunity to receive gender-sensitive care as part of reparations.

[475] While not identical, a trust can be likened to what is referred to as a health zone in the DRC

[476] Such as with COVID-19. See K.D. Clement et al., Communication tools in the COVID-19 era and beyond which can optimise professional practice and patient care, *BMJ Innovations* (2020) doi: 10.1136/bmjinnov-2020-000465

2.1.5 Delivery

112. It is important to emphasise that many victims of sexual violence do not require care at centralised centres and a prolonged period of institutionalisation. Indeed time away from the community to be admitted for long-periods of hospital admission can have several disadvantages and actually perpetuate further harm. Interviews with impoverished victims of sexual violence in rural communities indicate that while a centralized 'one-stop' centres (OSCs) may be beneficial to some as it offers a haven in which to explore a variety of rehabilitative mechanisms, in many cases it is inappropriate for meeting victims' needs or wishes.[477] However, as this model was raised in a number of interviews, it and other care models for delivering reparations are discussed below.

113. OSCs are integrated models of care that aim to provide a co-ordinated and interagency response for sexual and domestic violence catering for the medical, social, psychological and legal issues in one venue.[478] Most OSCs are based in hospital tertiary care facilities,[479] but others are stand-alone centres delivering more basic care with a referral pathway to specialised services.[480] If one-stop centres are based in hospitals, then victims who attend them could in theory be perceived as

[477] Focus Group with SGBV civil society actors, [redacted] – RRV Project.
[478] OSCs for sexual violence (as well as for medical conditions such as HIV/AIDS) have been established over at least the past three decades. Their origins can be traced to the multidisciplinary sexual assault response teams and referral centres that were introduced in some domestic jurisdictions from the 1970s and have continued to evolve. Malaysia is one of the first known countries to implement the OSC approach for sexual assault in an Emergency department at Kuala Lumper Hospital in 1993. From the late 1990s, various other versions of one stop centre care emerged for victims of sexual violence, including in the DRC and other parts of Africa.
[479] Tertiary care refers to a more specialised level of care for a region. There are generally three or 4 levels of care in a healthcare system: primary (first contact); secondary; tertiary (where more specialised treatment carried out regionally) and quaternary (highly specialised and may only be for certain conditions).
[480] Rose McKeon Olson, Claudia Gara-Moreno, Manuela Colombini, The implementation and effectiveness of the one stop centre model for intimate partner and sexual violence in low- and middle-income countries: a systematic review of barriers and enablers, *BMJ Global Health* 5(3) (2020), p2; and J. Keesbury and I. Askew, *Comprehensive responses to gender based violence in low-resource settings: lessons learned from implementation*, Population Council, (2010).

patients or even as visitors.[481] Furthermore, this would reduce the physical distance between the various professionals who provide co-ordinated care to victims, including paralegal or police liaison personnel who often are available, but not necessarily based on site. However, if OSCs and in particular care for sexual violence are only located in hospital then this would require significant travel on roads that are in poor condition and in times of insecurity for a service that may be delivered locally.[482]

114. There are other lessons to be drawn from the implementation of care associated with these centres, and these should be kept in mind in delivery of medical rehabilitation to ensure adequate and accessible reparation for victims of sexual violence. A recent systematic review of OSCs in 42 low- or middle-income countries concluded that there were a number of barriers to achieving the aim of quality multidisciplinary and multi-sectoral care.[483] Therefore, before scaling up services, a more thorough examination of existing OSCs is called for as well as strategic investment to overcome barriers that are affecting care.[484] While OSCs can provide high-quality care,[485] there are advantages and disadvantages of various models for sexual violence. In light of a number of concerns, including the cost of OSCs[486] and their appropriateness in certain contexts, other co-ordinated models beyond hospital based one-stop centres are to be considered, particularly where

[481] OSCs aligned with legal or police services can dissuade some victims in coming forward to receive care, this could be logically applied to facilities that are located in rebel controlled or aligned areas. There are similar findings in Yabwile Mulambia, Aaron J. Miller, Geraldine MacDonald and Neil Kennedy, Are one stop centres an appropriate model to deliver services to sexually abused children in urban Malawi? *BMC Pediatrics* (2018) 18:145e.

[482] *Espinoza Gonzáles vs. Peru*, Inter-American Court of Human Rights, 20 November 2014, para.315.

[483] McKeon Olsen et al (2020). p33.

[484] Ibid.

[485] Mulambia et al. (2018). In addition, some OSCs may only provide care for up to 6 months, which can be unsuitable for victims with long-term needs, such as the Panzi model. See Denis Mukwege and Marie Berg, A Holistic, Person-Centred Care Model for Victims of Sexual Violence in Democratic Republic of Congo: The Panzi Hospital One Stop Centre Model of Care, *PLoS Med* 13(10) (2016) 1-9.

[486] OSCs can be more expensive to implement than other models of care. For more information see J. Keesbury, W. Onyango-Ouma, C. Undie, A review and evaluation of multi-sectoral response services ("one-stop centers") for gender-based violence in Kenya and Zambia, Population Council, 2012. McKeon Olsen et al. (2020), p32.

resources are limited.[487] In line with jurisprudence, other options require consideration so that treatment is accessible and can be provided as close as possible to victims' place of residence, in which case, an OSC may not be the best choice.[488] In addition, there are concerns that the focus on OSCs may reduce funding for a wider range of healthcare services,[489] where gender-sensitive approaches are required and for other discrete potential entry points for victims seeking care. Based on context-specific consultations for this report as well as past research related to reparations and healthcare approaches, a number of additional considerations have come to the fore.

115. A mapping out of pre-existing public and private services, as well as participatory input from official medical organisations and specialist medical bodies (e.g. FIGO), will provide valuable insights on the reservoir of healthcare professionals and the facilities at their sites of medical practice. Victims may receive funding for transport links to healthcare centres and community crèche or respite services for their dependents. Innovative strategies are required to encompass victims in rural areas. Using mobile units to provide visiting clinics in regional health centres on an interval basis (e.g. fortnightly) may pose a solution to poor follow-up rates.[490] This continuity of care may reduce physical complication rates and help dispel the social stigma of attending larger specialised centres. Local services can be sustained to an extent by technology, such as the availability of an on-call physician to answer queries and offer advice. Likewise, victims can be informed of investigation results and consulted on care plans at a local centre and by video-link or via telephone consultations. Electronic notes (via secured access) ensure teams are aware of progress at review meetings and may provide a useful synopsis from various professionals when a new specialist is asked to contribute to care. In

[487] M. Colombini, C. Dockerty and S. Mayhew, Barriers and facilitators to integrating health service responses to intimate partner violence in low- and middle-income countries: a comparative health systems and service analysis, *Studies in Family Planning* 48 (2017) 179–200.
[488] *Espinoza Gonzáles vs. Peru*, para.315.
[489] M. Colombini, S. Mayhew, and S. Ali, An integrated health sector response to violence against women in Malaysia: lessons for supporting scale up, *BMC Public Health* 12 (2012) 548.
[490] A. Kohli, A Congolese community-based health program for survivors of sexual violence, *Conflict and Health* 6(1) (2012), 1752-1505.

addition, the use of telemedicine may be useful in providing consultation or follow-up care without the patient having to travel. There are challenges relating to mobile data coverage, cost and connectivity, but technology could offer a more efficient solution that could allow serious cases to be referred to regional or local centres. Such practices are already being used during the COVID-19 pandemic around termination of pregnancy services to allow more telemedicine to address these patients while minimising their risk of exposure.

116. Another option is to support the appointments of sexual assault (or violence) advisors that can act as a co-ordinator for care and 'provide seamless support to survivors' for victims in a defined health area.[491] These advisors are closely associated with sexual assault referral centres in other domestic contexts, but do not necessarily need to be based in only SARCs and an advisor or expert may be available in health centres covering a certain population area, with links to an OSC. They have been used in other post-conflict contexts (where domestic and sexual violence can remain prevalent) and also have a repository of knowledge on community services.[492] That said, all clinics (local or regional) providing care to victims of sexual violence should consider the benefit of integrating medical and psychological support on one site. A recent study by MSF found that clinics offering integrated medical and psycholgical care specifically for victims of sexual violence rather than other non-specialised clinics necessitating disclosure of sexual violence may be preferred by victims themselves, particularly men and boys.[493] Another possibility could be through a mobile clinic branded as a clinic for

[491] Public health functions to be exercised by NHS England. Service Specification No. 30. 2018 Sexual Assault Referral Centres, p11.

[492] [redacted]

[493] Anaïs Broban, Rafael Van den Bergh, Wynne Russell, Guido Benedetti, Séverine Caluwaerts, Philip Owiti, Anthony Reid, and Eva De Plecker, Assault and care characteristics of victims of sexual violence in eleven Médecins Sans Frontières programs in Africa, What about men and boys? *PLoS ONE* 15(8) (2020).

women's health, could provide basic treatment and monitoring for victims of seuxal violence as well as referral pathways for treating more specialist issues.[494]

117. One assistance project in the DRC provided support to teenage mothers that were formally connected to armed groups. During this project certain consequences emerged in the years that followed. For instance, former female child soldiers who had a child out of rape would sometimes intentionally conceive another pregnancy. This time through a consensual relationship and not with a soldier in an effort to be reintegrated into their family and society.[495] Thus, providing greater financial and personal security. This was successful at increasing social inclusion and family reconciliation in some cases.[496] However, this can also hinder return to education where this is an aspiration,[497] and runs the risk of the link not being restored, that enables them to reconnect with their family.

2.1.6 Monitoring: How to ensure effectiveness?

118. Because of the paucity of high-quality research studies on health/medical outcomes of conflict-related sexual violence,[498] policy on reparation-based frameworks requires a mechanism for monitoring and a periodic review panel to ensure effectiveness and make adjustments if required. This administrative component of the reparation programme may be necessary to measure how effectively it is delivering redress to victims. Such a review panel can be composed of one or more healthcare professionals who assess the injury and/or degree of disablement.[499]

---

[494] See Danielle Deboutte, Cost-Effectiveness Analysis of Emergency Obstetric Services in a Crisis Environment, PhD Thesis, University of Liverpool, p104.

[495] Interview 19, [redacted].

[496] Interview 19, [redacted].

[497] [redacted].

[498] Ba and Bhopal 2017 (one of the only systematic reviews on health outcomes following CRSV, but only on civilians and not former combatants).

[499] See Article 10.2, Kosovo 2011 Law No. 04/L-054; Article 2(2), Iraq Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, 2009; Section 27, Zimbabwe War Victims Compensation Act 1980; in Spain Article 28(2), Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014; and in Northern Ireland Section 13, the Victims' Payments Regulations 2020.

2.1.7 Reparations for HIV as a result of sexual violence

119. **(i): Testing.** Given the life-expectancy of untreated HIV, testing of direct victims of sexual violence is unlikely to be necessary (unless the chamber decides to include victims of sexual violence who have been engaging in high-risk sexual activity such as prostitution as a result of limited economic prospects and to support their families). Rather, testing will likely be more applicable to the next generations where HIV may have been vertically transmitted.[500] Firstly, in relation to children born out of rape who are HIV positive and still living, their diagnosis will most likely be known as they are now seventeen to eighteen years old. If not already performed, testing of their children and their sexual partners may be offered to mitigate HIV-related risks. However, a limit on the extent of testing is required, particularly as HIV may have been contracted through other means in the interim.[501] In addition, HIV screening and PEP kits are free for patients and are provided by the Ministry and/or with the support from other humanitarian agencies. [502] According to consultations related to this work, testing and prophylaxis are more easily available compared to long term ART.[503]

120. Other victims in this case may have erratic treatment regimens due to unintended interruptions of their ART. Interviews with medical professionals, humanitarian organisations and healthcare facilities suggest that supply of ART has become increasingly difficult to maintain.[504] Most centres the author consulted upon that specialise in sexual violence were providing free ART to HIV-positive victims, however treatment has since become interrupted (where not medically indicated),[505] and some victims have been lost to follow-up.[506] It is unknown

---

[500] Interviews with a number of stakeholders that women and girls undertook sexual prostitution in an effort to contribute towards living costs of the family given financial hardships.

[501] Interview 14, [redacted]

[502] Interview 37, [redacted] Such as The United Nations Population Fund. See https://www.unfpa.org/sites/default/files/CD_UNFPA_Results_07_27.pdf

[503] Interview 20, [redacted]

[504] Interview 20, [redacted] and Interview 38, [redacted]. Over the past six months there have been supply difficulties that is being impacted upon by the COVID-19 pandemic.

[505] In well-controlled HIV positive patients with an adequate immune system and monitoring, treatment interruption may be a therapeutic strategy to increase overall compliance and

whether these victims have been able to access other ART, but this is deemed unlikely in many cases.[507] As such, suboptimal treatment regimens pose a higher risk of transmitting HIV to others, and if the period of non-treatment is prolonged, compliance after reintroduction may be more difficult.[508] Therefore, the victims' situation should be approached with sensitivity, and follow-up measures should be established to increase adherence by victims who wish to recommence ART.

121. **(ii): Appropriate care, treatment and monitoring**. The DRC Ministry of Health has a national programme for HIV/AIDs which includes free treatment.[509] According to several doctors I consulted, where a diagnosis of HIV-positivity is confirmed, support is often only for an initial or short period of time and the availability of specialised care will depend on the level of care at the hospital.[510] Where coverage is free, there can be a subsidy for the cost of care.[511] It was difficult to ascertain the financial amounts of these subsidies and the average length treatment could be provided for. It is worth noting that humanitarian and partner organisations seek to complement the work of the national HIV programme to ensure access to free ART, as well as screening and prevention.[512] This case should be cognisant of the

---

reduce drug associated toxicity. However, where this is not medically indicated, unintended interruption to ART may lead to complications from HIV as well as increasing transmission risk to others. See Georgui Dubrocq and Natella Rakhmanina, Antiretroviral interruptions: impact on HIV treatment and transmission. *HIV AIDS*, 10 (2018) 91-101.

[506] Interview 20, [redacted] doctor, [redacted] and interview 37, [redacted] doctor, [redacted].

[507] The availability of ART medicines for HIV/AIDS in health care facilities 2014 was 66% for public sector and 69% for private sector. However, it is unknown the extent to access is granted to patients, particularly in this case. See Indice de disponibilité et de capacité opérationnelle des services de santé: République Démocratique du Congo (SARA), Ministère de la Santé Publique (MOH), p7.

[508] A. Jiamsakul, et al. TREAT Asia HIV Observational Database (TAHOD) Effects of unplanned treatment interruptions on HIV treatment failure – results from TAHOD, *Tropical Medicine and International Health* 21(5) (2016) 662–674.

[509] Interview 20, [redacted] and Interview 37, [redacted].

[510] Ibid.

[511] Interview 20, [redacted].

[512] The DRC Ministry of Health has established partnership to ensure HIV activities are carried out in health zones, as well as humanitarian Aid Programmes delivering HIV care U.S. Centre for Disease Control (CDC) partnership with the DRC's Ministry of Health from 2002. CDC Division of Global HIV & TB Country Profile. Available at https://www.cdc.gov/globalhivtb/where-we-work/drc.pdf (Accessed 22 October 2020)

financial barriers (such as care costs) to attaining free ART and supply issues and consult with humanitarian agencies.[513]

[513] [redacted]

122. Providing lifelong ART (first, second, and third line where required) to all victims affected by HIV as a direct consequence of rape and sexual slavery is crucial;[514] however, the author recognises that children born out of rape who are HIV positive as a result of maternal-child transmission and whose mothers initially contracted HIV through rape or sexual slavery also require lifelong HIV healthcare.[515] As with direct victims of rape who have HIV as a result of the crime, care for these children should take the form of lifetime review with an infectious disease or genitourinary specialist with an interest in HIV or a HIV specialist, alongside ART and other specialist care as required. This should include monitoring the effectiveness of ART, toxicity and complications related to treatment or the effect of HIV on body systems (such as cardiovascular), opportunistic infections,[516] HIV-associated malignancies and vaccination against other infections.[517] Yet, such multidisciplinary specialist care can only be provided at some hospitals, necessitating travel if the victim desires this care.[518]

123. There are particular gendered elements to providing ART for female HIV-positive children of rape who are young adults now and wish to become pregnant, the risk

[514] Note, there are very few circumstances where ART is not required in HIV positive individuals but this will not be relevant in this case, particularly if there have been difficulties in attaining medical care and a suppression of viral load. Generally, ART is required throughout a person's life course. [redacted] NGO spoke of how they recently were finding it difficult to maintain any ART to offer free drug treatment to their patients. NGO Interview, [redacted]. See, Consolidated Guidelines on The Use of Antiretroviral Drugs For Treating and Preventing HIV Infection, Recommendations For A Public Health Approach, Second Edition, World Health Organisation, 2016. Available at https://apps.who.int/iris/bitstream/handle/10665/208825/9789241549684_eng.pdf?sequence=1 (Accessed 24 October 2020)

[515] These individuals are likely to be aware of their diagnosis, as noted above.

[516] Such as oral candidiasis (yeast infection), oesophagitis (inflammation of the oesophagus) and ulceration due to infections such as of Herpes Simplex Virus (HSV), which can impede oral food intake and affect nutrition. British HIV Association guidelines on the management of opportunistic infection in people living with HIV: The clinical management of gastrointestinal opportunistic infections 2020 https://www.bhiva.org/file/5f4625b5b191b/OI-guidelines-gastrointestinal.pdf (Accessed 19 October 2020) If opportunistic infections are present, medical costs will likely be higher.

[517] BHIVA guidelines on the use of vaccines in HIV-positive adults 2015. It is important to ensure HIV positive individuals are protected against vaccine-preventable infections. Depending on the level of immunodeficiency, HIV-positive individuals may also avail of live (replicating) vaccines and will depend on the specifics of each case.

[518] Interview 37, [redacted]

of transmission can be significantly reduced (to less than 2% in optimal conditions) through highly active anti-retroviral therapy (HAART), appropriate management of delivery and supporting the most appropriate method of infant feeding.[519] Managing the intergenerational impacts of infectious diseases through infant care methods such as use of PEP and close monitoring for early detection of HIV is vital, as it can lead to a normal life expectancy (although it should be noted that high-income countries have recorded greater improvements).[520] As HIV increases the likelihood of co-infections, these can also be tested for and managed.[521] For instance, maternal hepatitis B virus (HBV) in pregnancy can also be screened for and the neonate can be given immunoprophylaxis against HBV.[522] Therefore, a pregnant HIV-positive person is ideally managed within a multidisciplinary team for pre-conception care, pregnancy and postnatal care.

124. Many healthcare teams may be used to managing patients with HIV on a regular occurrence and will require routine skills and competency training. This training need may be reflected in the uptake of treatment regimens during pregnancy. While ART treatment of adults with HIV has greatly improved, accessing antiretroviral medicine for pregnant women with HIV and early infant diagnosis

[519] Note that in many high income countries women with HIV are advised for feed their infants with formula milk and this is factored into the less than 2% overall risk (see BHIVA 2020, p88 and FIGO, Ethical Issues in Obstetrics and Gynecology, 2015, p100). However in low and mid, which means that the estimated risk will be higher but breast feeding will provide numerous other advantages (e.g. protection from gastrointestinal diseases) where there are higher rate of infant morbidity and mortality. Therefore, WHO advises exclusive breastfeeding for 6 months with cART, and advise to continue to do so until 12-24 months unless it is safe to do so before (i.e. supply of appropriate foods). See, World Health Organization. Updates on HIV and infant feeding. Guideline. 2016. Available at: www.who.int/maternal_child_adolescent/documents/hiv-infant-feeding-2016/en (Accessed 13 October 2020). It is also worth noting that the postnatal risk of transmission will still overall be low (0.5-3%) where there is suppression of maternal viral load and infant prophylaxis. See Laura Byrne, Ade Fakoya and Kate Harding, HIV in pregnancy: an international perspective, *The Obstetrician and Gynaecologist* 14 (2012), 17-24 p21.

[520] Sirinya Teeraananchai, Stephen J Kerr, Janaki Amin, Kiat Ruxumgtham, MG Law. Life expectancy of HIV-positive people after starting combination anti-retroviral therapy: a meta-analysis, *HIV Medicine*, 18(4) (2017), 256-266 (10 years higher on average in high-income countries, p257).

[521] Other examples include Hepatitis C infection (HCV).

[522] Hepatitis B vaccine with or without immunoglobulin, known as HBIG. See Byrne, Fakoya and Harding, (2012).

have been less successful in the DRC.[523] According to UNAIDS data, the majority of pregnant women do not access ART to prevent transmission (56%), despite women being disproportionately affected by HIV in the DRC (71%). In summary, victims in this case should be assessed to ensure that they have access to ART and specialist care; furthermore, women should be offered the choice of specialist HIV antenatal care that can mitigate some of the long-term and transgenerational consequences of HIV as a result of the crime. This may require medical training and information sessions for medical teams as well as community members to ensure timely referral.

125. There are also particular challenges to antenatal screening for HIV (and hepatitis), providing access to specialist antenatal care for HIV-positive women and even supplying low-cost drugs[524] when implementing a reparation programme for victims of sexual violence amid health pandemics and insecurity. It is pertinent to highlight that HIV can carry its own stigma, as do some of the measures used to reduce child transmission. This includes replacement feeding, which carries a stigma in all countries irrespective of income, and birth through caesarean section in the case of women with high viral loads.[525] Women's decisions should be fully informed and their autonomy respected, with all necessary precautions taken for the mode of delivery and method of infant feeding they select. Therefore, here lies an opportunity to fully support HIV-positive, direct and indirect female victims in their decisions through maternal care (ideally beginning pre-conceptually) and adopt a gender-sensitive approach.

---

[523] According to UNAIDS, only 44% of pregnant women who are HIV positive accessed ART to prevent transmission to their baby. While this prevented approximately 2300 neonatal infections, the majority of women did not avail of this care and therefore the potential to reduce further transmissions was lost. However, 81% of persons with HIV are on treatment in the DRC and 73% of all HIV persons are virally suppressed. UNAIDS, Country Factsheet, Democratic Republic of the Congo 2019. Available at https://www.unaids.org/en/regionscountries/countries/democraticrepublicofthecongo#:~:text=Democratic%20Republic%20of%20the%20Congo%20%7C%20UNAIDS&text=In%20the%20Democratic%20Republic%20of,of%20all%20ages%20was%200.21 (Accessed 13 October 2020).

[524] Bryne et al (2012).

[525] Surgical risks of caesarean section (particularly where not performed frequently) may outweigh the decision to choose this mode of delivery in HIV-positive women. As such, vaginal delivery may be preferred.

126. Pre-exposure prophylaxis (PrEP) is a relatively recent intervention that has been advocated for specific uses by medical bodies, such as the World Health Organisation and the British Association for HIV, to reduce transmission in high-risk situations for those who satisfy the criteria.[526] According to the WHO, oral PrEP 'should be offered as an additional prevention choice for people at substantial risk of HIV infection as part of combination HIV approaches'.[527] Therefore, ensuring the victim's (and their partner's) sexual and quality of life is 'restored', or as far as possible repaired, could arguably include the (male and female) partners of direct victims of sexual violence receiving PrEP. Further still, the downstream consequences of sexual violence may be reduced, with important public health benefits.

2.1.8 [redacted] Reparations: Healthcare for Victims of Sexual Violence

127. The [redacted] need for reparations has only been exacerbated by the recent COVID-19 pandemic. Those suffering with certain untreated co-morbidities (such as the immunosuppressed) have a higher risk of poor outcomes,[528] and there are worrying trends that supply chains for ARV medications are being interrupted.[529]

---

[526] Indications for PrEP include, serodiscordant (in a sexual partnership, one person has HIV and the other does not), heterosexual, HIV-negative men and women, HIV-negative trans people and HIV-negative men having condomless anal sex. For more information see BHIVA/BASHH Guidelines on the use of HIV pre-exposure prophylaxis (PrEP) 2018 https://www.bhiva.org/file/5b729cd592060/2018-PrEP-Guidelines.pdf [redacted].

[527] WHO Implementation Tool for Pre-Exposure Prophylaxis of HIV infection, July 2017,https://apps.who.int/iris/bitstream/handle/10665/255890/WHO-HIV-2017.19-eng.pdf?sequence=1 (accessed 18 October 2020).

[528] Yang, Jing, Ya Zheng, Xi Gou, Ke Pu, Zhaofeng Chen, Qinghong Guo, Rui Ji, Haojia Wang, Yuping Wang, and Yongning Zhou, Prevalence of Comorbidities and Its Effects in Patients Infected with SARS-CoV-2: A Systematic Review and Meta-Analysis, *International Journal of Infectious Diseases* 94 (2020) 91–95.

[529] WHO: access to HIV medicines severely impacted by COVID-19 as AIDS response stalls, 6 July 2020. https://www.who.int/news/item/06-07-2020-who-access-to-hiv-medicines-severely-impacted-by-covid-19-as-aids-response-stalls (Accessed 19 October 2020) In response: WHO

It is unknown whether HIV-positive persons are particularly susceptible to COVID-19 as information continues to be collected and analysed. However, where there is immune impairment (CD4<200), they may be at risk of severe disease that could be fatal. Interruption to existing HIV services and rationalising healthcare can also lead to an increased number of deaths in this victim group.[530] The passage of time as well as structural and socioeconomic obstacles to care means that HIV-positive victims of sexual violence who may not have been able to access adequate healthcare are at risk of COVID-19 and also other infectious outbreaks in the DRC (e.g. measles). It is particularly important for [redacted] reparations [redacted] that this group of HIV-positive victims receive adequate care and advice in a setting with COVID-19 infection precaution measures, or with safe delivery mechanisms of medication to minimise contact.[531]

128. Aside from HIV, some victims may require other forms of [redacted] support in the form of assistance or reparation on account of other harms. For instance, [redacted] protocol could be created for victims of sexual violence who have been rejected by their family, are homeless and experiencing financial hardship. These victims may be flagged in the sampling and application stage for reparation.[532] Following identification, victims can be directly referred to support organizations (such as CSOs specialising in sexual violence)[533] that assist with temporary or permanent accommodation/refuge, food aid as well as referring to partner medical organisations if there are symptoms of potentially severe disease. Although the

---

guidance report, Maintaining essential health services: operational guidance for the COVID-19 context interim guidance, June 2020, WHO/2019-nCoV/essential_health_services/2020.2

[530] Britta L. Jewell, Jennifer A. Smith, Timothy B. Hallet, Understanding the impact of interruptions to HIV services during the COVID-19 pandemic: A modelling study, *The Lancet*, (2020) 26.

[531] Initiation of antiretroviral treatment (ART) during the coronavirus pandemic, BHIVA interim ART guidelines COVID-19 v2 07082020. Available at https://www.bhiva.org/file/5f56057450cc3/BHIVA-interim-ART-guidelines-COVID-19.pdf (Accessed 19 October 2020)

[532] This allows [redacted] protocol to be enacted where a victim has been identified as particularly vulnerable through a reparation process, allowing the court to mitigate any secondary harm.

[533] [redacted].

COVID-19 has caused some disturbance, organisations continue to carry out essential welfare and health care given the nature of their work.

2.1.9 Delivery of Rehabilitative Healthcare

129. A one-size-fits-all approach will not deliver effective reparation for all victims of sexual violence. The additional considerations of the COVID-19 pandemic as well as Ebola Virus Disease (EVD) outbreaks and insecurity mean that other types of response teams will be particularly vital to enable victims to avoid attending a healthcare facility/hospital where patients may be being treated for infectious disease. While some barriers will cut across many services for victims of sexual and gender-based violence, OSCs will require political will and sustained funding for future victims in order to support their set up. If reparations strive to be as prompt as possible, then barriers to access, and in particular the potential impact of the COVID-19 pandemic and necessary protective measures, will need to be considered.[534]

130. According to the vast literature on impacts on sexual violence over time, information on harm in this case file and interviews related to this consultation (see Part II), there is a need to provide psychological care. The level of care will depend on the needs of the individual (some may benefit from a General Practitioner, psychiatrist, clinical psychologist or a counsellor).[535] When providing mental health care, humanitarian programmes have involved the community in the delivery mechanisms to ensure culturally-sensitive care. [536] This includes providing training in counselling and ethical conduct, while also ensuring access to the care in the

[534] Odette R. Sánchez, Diama B. Vale, Larissa Rodrigues, and Fernanda G. Surita, Violence against women during the COVID-19 pandemic: An integrative overview, *International Journal of Gynaecology and Obstetrics*, 151(2) (2020) 180-187.

[535] [redacted]

[536] Interview 32, [redacted].

closest proximity. On account of the pervasive stigma around sexual violence, some victims may prefer individuals not from their community to deliver mental health care. When it comes to medical needs, several proposed frameworks have been discussed which make the most of the current health infrastructure in the DRC, while also fulfilling the right to appropriate and adequate reparation.

2.2 Social rehabilitation

131. Social rehabilitation aims to enable a victim to be reintegrated into society or a community, coexist with others and live a dignified existence. Sensitisation initiatives play a key part in social rehabilitation and for victims of sexual violence they have two main aims. First, they strive to remove the social barriers (like stigma) to seeking help, while simultaneously ensuring service provision such as in the form of medical rehabilitation.[537] Therefore, sensitisation can act a precursor to accessing reparations, encouraging victims to come forward and engage in the process.[538] Second, they may contribute to social rehabilitation and inclusion within families and broader society, also generating greater socio-economic opportunities for victims. The harm section has elucidated the layered or cascading impacts of stigma related to sexual violence. While sensitisation programmes attempt to mitigate these negative effects through education and challenging discriminatory beliefs, changing the structures that shape these social relationships require a multi-sectoral and multi-agency co-ordinated response. This section considers sensitisation strategies to tackle stigma associated with sexual violence to alleviate the impact of stigma for victims of this case (and other cases).

132. Sensitisation campaigns related to sexual violence that occurs during conflict have aimed to provide a more positive narrative. Women and girls who were raped

[537] Imogen Tyler and Tom Slater, Rethinking the sociology of stigma, *The Sociological Review Monographs* 66(4) (2018), 721-743, p726.
[538] ICC-01/04-02/06 para.14, In relation to crimes of SGBV suggested experts provide information on the 'modalities of engagement with such victims, including victims' identification and verification.'

during the Bangladesh war of 1971 were referred to as 'Birongona', which translates to "brave woman" to the extent that they were considered war heroines.[539] Such rehabilitation of social identity through a narrative that offers victims the opportunity to be reintegrated (or 're-membered') into society, particularly where the numbers of victims of sexual violence are significant. Despite transgressing sexual norms, these victims were considered as 'battling' with their bodies and contributing to the war for independence. This view was endorsed by the government and some religious leaders, and may even have assisted in shifting families from ostracising these victims to believing that they should be encouraged to seek medical help where it would be beneficial.[540] As such, public storytelling and remembrance activities that aim to socially rehabilitate victims as well as other activities, such as medical and psychological, contributed to the re-socialisation of victims of sexual violence.[541] Rehabilitation was also complemented with domestic skills-based training to appeal to prospective husbands and occupational training in a range of selected professionals (e.g. nursing, secretarial), which many victims of sexual violence were keen to take up. This sensitisation which renegotiating women's role in the conflict drew criticism for its gendered assumptions and simplified dichotomies (men fought with weapons, women with their bodies); it also ignored men who suffered rape and women who were combatants in hostilities. Moreover, associating women's victimhood with patriotism and heroism rather than the inherent wrongfulness of the act of rape to protect their marriage and job prospects, could be considered a short-term solution that mitigate further social and economic harm but does not address the root causes of discrimination that contributed to the crimes. Therefore, a public sensitisation campaign involving State actors, community and religious leaders or chiefs and civil society should be culturally sensitive and also avoid perpetuating gender norms that may be harmful

[539] Nayanika Mookherjee, *The Special Wound. Sexual Violence, Public Memories, and the Bangladesh War of 1971*, Duke University Press, (2015), p134.
It is worth noting that the term 'birongona' featured in other texts, such as the wives of prophets, Mookerjee ibid. p135.
[540] Mookherjee ibid. p130.
[541] This connects to the symbolic measures discussed below, in particular dignification.

to victims of sexual violence who are not considered 'linked' to the conflict. This requires a degree of harmony among the actors enacting a sensitisation campaign.

133. A sensitisation campaign that dwells heavily on the trauma of rape and sexual slavery may also impede the social inclusion of victims. Clark considers the 'trauma model' to be widely adopted by NGOs, posing a risk of overshadowing alternative and resilient discourses. She states that female survivors of sexual violence 'are often portrayed as "finished" products – as women who will always be deeply traumatised because they were raped'. [542] Consultations related to this work have uncovered similar views among some NGOs, but others have been able to describe how some victims have created a new life path. Care also needs to be taken with labels, with an emphasis that identities are a personal choice. While the label of 'victim' can have negative connotations, it has a particular legal meaning that is suitable for the purposes of this report and clear as to who is being referenced. However, other public sensitisation campaigns and third parties have employed 'survivor' discourses to counteract the 'passivity' implied by the victim label and convey the strength of these individuals. However, this runs the risk of downplaying those victims of sexual violence who have died and the gravity of the potential spectrum of harms.[543] Forgetting these victims and the rippling impact on family members was a recurrent concern in interviews related to this work. In other situations, because of the widespread use of the term "survivor" in the context of other traumatic events and its over-association with resilience narratives, it has been deemed too universal, obscuring the wrongdoing of sexual violence and denying women their humanity.[544]

134. Sensitisation measures in this case can be informed by the actions of other societal leaders in dispelling taboos against openly confronting crimes of a sexual nature and encouraging a model of compassion towards victims thereof. A number of

[542] Clark (2018), p805.
[543] Interview 29, [redacted] Interview 38, [redacted].
[544] Régine Michelle Jean-Charles. Toward a Victim-Survivor Narrative: Rape and Form in Yvonne Vera's *Under the Tongue* and Calixthe Beyala's *Tu t'appelleras Tanga, Research in African Literatures*, 45(1) (2014) p39-62, p45.

interviews with an array of stakeholders indicates that the role of community leaders and persons considered notables in the DRC are integral to sensitisation efforts and the social rehabilitation of victims of rape and sexual slavery.[545] While each context is different, it is important to consider the lessons learnt from other strategies involving leaders and the elements that may be essential to promoting social and other forms of rehabilitation.

135. For victims of rape and sexual slavery who are alive, the persistence of social suffering has led to the creation of (private) sensitisation and awareness campaigns for specific groups. That said, awareness raising activities among certain groups can have particularly positive effects for victims' rehabilitation. This would include but are not limited to: victim organisations; the healthcare sector; and intra-familial sensitisation. Research related to such smaller scale sensitisation in the DRC revealed a number of activities with reported positive outcomes. For instance, one women's organisation spoke of an initiative in the immediate years after the conflict that aimed to encourage female victims of sexual violence to meet each other.[546] Despite a difficult start, over time women came together to speak and share their experiences evoking a social solidarity. In this situation a snowball effect was observed, in these group sessions women spoke about what had helped them and they encouraged each other to seek treatment that would benefit them. This also led to an informal outreach network in victims could be referred to the group and then to relevant health or other support services (e.g. housing). Other programmes included, sensitisation within families, such as between husbands and wives, to foster familial acceptance of wives who had been raped.[547] Programmes in other parts of the Great Lakes Region, sensitisation has a preventative function, focusing on attitudes and harmful norms related to gender roles that may lead to further violence through psychosocial activites.[548] Finally,

[545] Some include: Interview 29 [redacted], Interview 18 [redacted], Interview 11 [redacted]
[546] Interview 38, [redacted]
[547] Interview 29, [redacted]
[548] Interview 16, [redacted]

there is also a need to ensure sensitisation campaigns extend to male victims of sexual violence, which have largely been void in the DRC.[549]

136. A successful sensitisation campaign that can contribute to social reintegration of victims of sexual violence has three key elements. First, that is involves endorsement from the DRC government, community and religious leaders or notables, local and international NGOS, victims (only if they wish to) as well as providers of care.[550] The strongest denominator appears to be community leaders as they are respected and deviating from their instruction is scorned upon.[551] This can include a number of measures such as public statements from community leaders to encourage acceptance of all victims of rape and sexual slavery, but this needs to include children born out of rape and families of victims.

137. Second, is the use of social media which has been used by some CSOs more than others, as well as through monitored radio broadcasts provide information to normalise victims of sexual violence as victims and members of the community. There more subtle and platforms that can reach larger audiences such as radio. Sensitisation is also connected to education and training and while these elements have been discussed in the medical rehabilitation, they need to involve more sectors of society, including those involved in the process of assisting victims. [redacted] healthcare provider explained, even those that provide transport for victims or deliver medications require sensitisation. This may have a modest transformative in a society where sexual violence (conflict and non conflict related) is prevalent. At the core of any sensitisation programmes should be designed with care with victims and civil society.

[549] L. Kiss, M. Quinlan-Davidson, and L. Pasquero, Male and LGBT survivors of sexual violence in conflict situations: a realist review of health interventions in low-and middle-income countries. *Conflict and Health* 14 (2020) 11. https://doi.org/10.1186/s13031-020-0254-5

[550] Interview 31 with human rights NGO, [redacted] Interviewee explained that local chiefs are revered and some communities believe that by not following their teaching and instruction will negatively impact upon their lives.

[551] Interviews 17, 29, 31, 38, victim interview 7.

138. Third is identifying community referral points where victims can go to for confidential support in their local area who can signpost them onto more specialist services or respond to a stigmatising incident. [redacted]

3. Symbolic measures

139. While most reparation measures and processes can be considered symbolic given their inability to fully repair the harm caused,[552] this section concentrates on measures of satisfaction and guarantees of non-recurrence. Symbolic reparations can serve an important expressive value in communicating values and meanings that vindicate victims' suffering as wrongful and that echo the finding of responsibility of the responsible actor. Symbolic measures of reparations, such as apologies and memorials, can help to distinguish other measures of reparations as forms of justice.[553] Accordingly, symbolic reparations can play an authoritative role in recognising certain harms over others.[554]

140. Symbolic reparations for sexual violence can be important in awakening society to the consequences of such violations and in turn 'facilitate the process of victims' psychological and social rehabilitation'.[555] While a fine balance has to be struck in protecting victims' privacy, measures of satisfaction publicise the wrongful nature of rape and try to engender social solidarity with the victims' plight. Symbolic measures can help to restore the dignity of victims by publicly acknowledging the

[552] Hamber (2000), p220.
[553] Diana Contreras-Garduño, Defining Beneficiaries of Collective Reparations: The experience of the IACtHR, *Amsterdam Law Forum* 4(3) (2012) 40-57, p48.
[554] See Peter J. Dixon, Reparations and the Politics of Recognition, in C. Stahn, C. de Vos and S. Kendall (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, (CUP, 2015), 326-351.
[555] Rubio-Marín (2009), p114; and Brandon Hamber and Richard Wilson, Symbolic Closure through Memory, Reparation and Revenge in Post-conflict Societies, *Journal of Human Rights* 1(1) (2002) 35-53.

wrongfulness of the harm they have suffered and affirming their rights as human beings. In the *Gonzáles et al. ('Cotton Field') v. Mexico* case involving femicide, the IACtHR ordered a monument of 'commemoration of the victims of gender-based murder', on the basis that it was 'a way of dignifying them and as a reminder of the context of violence they experienced, which the State undertakes to prevent in the future'.[556] However, such monuments have been criticized as failing to take into consideration more social and cultural practices through 'multilayered strategies for honoring victims, and advancing justice and social reconciliation'.[557]

141. In terms of apologies, they can serve as important public or private pronouncements of responsibility, remorse and recognition of victims' suffering. Yet while they can satisfy symbolic objectives of reparations, they are often insufficient in themselves and without material reparative measures to complement them they can appear as 'cheap talk'.[558] Although the Japanese government made a number of remorseful statements for its use of sexual slavery ('Comfort Women') during the Second World War, victims have rejected this and subsequent overtures, pointing to the failure of the Japanese government to provide compensation to each of them.[559] Apologies have more legitimacy and reparative impact when they are linked to other reparation measures or

[556] Para.471.

[557] Robin Adèle Greeley, Michael R. Orwicz, José Luis Falconi, Ana María Reyes, Fernando J. Rosenberg and Lisa J. Laplante, Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights, *International Journal of Transitional Justice,* 14(1) (2020), 165–192, p167.

[558] Christopher Kutz, Justice in Reparations: The Cost of Memory and the Value of Talk, *Philosophy and Public Affairs* 32(3), 277-312, p303.

[559] The Japanese government has made at least 8 apologies for the Comfort Women - Brandon Hamber and Ingrid Palmary, Gender, Memorialization and Symbolic Reparations, in R. Rubio-Marin (ed.), *The Gender of Reparations*, Cambridge University Press (2009), 324-381, p369. The statement in 1993 acknowledges sexual slavery was an organised government policy that caused misery to victims, and that 'Undeniably, this was an act, with the involvement of the military authorities of the day, that severely injured the honor and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women.' Statement by the Chief Cabinet Secretary Yohei Kono on the result of the study on the issue of "comfort women", 4 August 1993. See Ruben Carranza, Cristián Correa and Elena Naughton, *More Than Words: Apologies as a Form of Reparation*, ICTJ (2015), p8.

institutional reform or policy changes. For example, Sierra Leonean President Ernest Bai Koroma on International Women's Day apologised to the 'women of Sierra Leone for the brutalities they had suffered during the armed conflict' and launched the National Gender Strategic Plan.[560] A victim-centred approach to apologies should see them as a means to facilitate victims' rights to truth, justice and reparations, not a substitute for them.[561] A gender perspective on apologies should distinguish gender-based violence from other violations so as to avoid obscuring them, reinforcing silence or leaving stigma unaddressed.[562]A successful apology is timely, sincere, and its content is developed through dialogue with victims (or their representatives). The key components of an apology include 1) acknowledgement of the wrong; 2) acceptance of responsibility; 3) expression of regret; 4) assurance of non-repetition; and 5) an offer of repair or corrective action.[563]

142. As MacLachan points out, gender can complicate how an apology is perceived and received, which may in certain cultures push women to be more compassionate or forgiving.[564] Apologies also have a performative value in terms of how they are expressed, their intonation and language, the rank or official capacity of those who deliver them, their gender and their role in the violations. Recognition has three elements: 'women victims are named as moral interlocutors, gendered and sexual harms are identified as significantly wrongful, and the state takes wider social responsibility for cultures of impunity around sexism and sexual violence'.[565] In cases involving sexual violence, an official apology in a private ceremony between the responsible actor and the victim can be appropriate in certain circumstances.[566] In the *Ntaganda* case an apology may be appropriate, but will require engagement

[560] ICTJ p8-9; and McEvoy et al (2019), para.29.
[561] para.6.
[562] Ibid. para.7.
[563] Anne-Marie McAlinden, *Apologies and Institutional Child Abuse*, Apologies, Abuses and Dealing with the Past project (2018) p7.
[564] Alice MacLachlan, Gender and Public Apology, *Transitional Justice Review* 1(2) (2013) 126-147, p135-136.
[565] MacLachlan ibid., p139.
[566] *Fulmati Nyaya v Nepal*, CCPR/C/125/D/2556/2015, 11 June 2019, para.9.

with victims as to what this will need to contain and how it should be delivered.[567] Moreover for sexual violence it may be an important measure to allow the dignification of victims.

143. While memorials, monuments or statues can serve as 'physical reminders in public spaces, confronting society to recognise the moral harm caused to a group by the destruction of its culture', they can 'become sites of contestation by celebrating the instigators or leaders of armed conflict, marking the victims as martyrs of one part of the conflict while neglecting others'.[568] Viejo-Rose notes that monuments can continue the violence of the past on a symbolic and/or ideological level, their ability to perpetuate divisions within societies underscored by the element of choice around what is rebuilt and who is excluded.[569] For Greely et al., symbolic reparations go beyond individual remedying of the victim's harm; they help to guarantee non-repetition of crimes because they are 'designed simultaneously to share out their moral and social values among the wider community and to connect individual victims and the rest of society.'[570] To be effective, symbolic reparations such as memorials should be designed in dialogue with the victims, involve the audience for such measures (victims, society) as active participants in 'creating meaning' in their engagement with them, and be a critical, living memorial or monument that speaks to the past and future.[571]

---

[567] Apologies are appropriate in Hema culture, see Legal Representative's observations on the reduction of sentence of Germain Katanga, 18 September 2015, ICC-01/04-01/07-3597-tENG, para.54. Mr Ntaganda should keep in mind that contribution to redressing victims harm is a consideration for early release.

[568] Luke Moffett, Dacia Viejo Rose and Robin Hickey, Shifting the paradigm on cultural property and heritage in international law and armed conflict: time to talk about reparations?, *International Journal of Heritage Studies*, 26(7) (2020), 619-634, p627.

[569] Dacia Viejo-Rose, Reconstructing Heritage in the Aftermath of Civil War: Re-Visioning the Nation and the Implications of International Involvement, *Journal of Intervention and Statebuilding* 7 (2) (2013), 125-148, p136.

[570] Greely et al. (2020), p188.

[571] Greely et al. p189.

144. Victims of sexual violence are often neglected in monuments or memorials designed to remember victims of the past.[572] This may reflect the stigma, silence or shame experienced by victims of sexual violence and the broader community attitudes that reinforce them. Although there are exceptions, the majority of statues that do commemorate women in conflict (as victims or as heroines) have been designed by men, and overwhelmingly depict women as nurturers or caregivers, self-sacrificing, passive and agentless.[573] At the other extreme, where women are included in statues and memorials portraying gender-based or sexual crimes, there can be a sensationalising of traditional gender roles or notions of passivity and suffering.[574] There is a monument in the centre of the village of Shabunda in South Kivu that depicts the despair of a woman, intended to symbolise the suffering of women during the conflict, including victims of sexual violence, widows and those who died leaving orphans.[575] In other contexts, statues and memorials have been erected to commemorate sexual violence to ensure that it remains in the public consciousness and to encourage its non-repetition.[576] Monuments and statues can also be used as a form of resistance and to counter the silence of those responsible,[577] as inn the case of the Comfort Women Statue depicting a young girl and an empty chair.[578] Similarly, in Colombia, sculptor Doris Salcedo worked with victims of sexual violence to transform 37 tonnes of FARC weaponry into tiles to be

---

[572] Such as Holocaust memorials, which despite their proliferation since the 1970s the experiences of women and sexual violence is often missing - Sonja M. Hedgepeth and Rochelle G. Saidel, *Sexual Violence Against Jewish Women During the Holocaust,* Brandeis University Press (2010), p2.

[573] Hamber and Palmary (2009), p366; and Rothschild p460.

[574] Amy Rothschild, Victims versus Veterans: Agency, Resistance and Legacies of Timor-Leste's Truth Commission, *International Journal of Transitional Justice*, 11(3)(2017), 443–462, p456.

[575] OHCHR 2011, para.43.

[576] In 2023 Budapest will have a statue commemorating rape used during the Second World War - Fanni Kaszás, Budapest to Erect Statue Commemorating Wartime Sexual Violence Victims, *Hungary Today*, 30 January 2020. https://hungarytoday.hu/budapest-to-erect-statue-commemorating-wartime-sexual-violence-victims/

[577] In 2019 a sculpture memorialising the Lai Dan Han (mixed heritage caused by sexual violence committed by Korean troops during the Vietnam War) was unveiled of a mother and her child trapped in entwined vines to commemorate victims of sexual violence and children born of rape. See Jack Straw, We must strengthen justice and increase accountability to end sexual violence in conflict for good, *The Telegraph*, 5 August 2019.

[578] Sierra Rooney, The Politics of Shame: The Glendale Comfort Women: Memorial and the Complications of Transnational Commemorations, *de arte*, 53(2-3) (2018), 86-102, p96-99.

used in the floor of an art centre as part of an 'anti-monument' titled Fragmentos. For some, destroying the weapons deflected from any memorialising of suffering and instead reflected a more performative, resistant remembering unlike more passive and gendered depictions.[579] For others, the process of modifying the metal with other victims provided a way to express their pain and, symbolically at least, stand above the destroyed guns and display their resilience.[580]

145. Other research on appropriate reparations for victims of sexual violence in eastern DRC has found was some support for symbolic measures including memorials, but there was a stronger preference for tangible reparations to address victims' needs to which a symbolic component could be added (such as the renaming of a hospital or school).[581] In interviews with victims in the *Ntaganda* case and in the limited data available within the Court on victims' views on reparations, there was little support for symbolic reparations for victims of sexual violence. [redacted] civil society actor suggested that a memorial would be too identifiable in the community risking it being destroyed.[582]

146. Dignification may be more important to victims in raising public awareness and officially acknowledging victims' experience and to counter the cultural, moral and social practices and justifications that led to their occurrence. In Guatemala dignification is intended 'recognize and promote broader societal awareness of the suffering of women survivors during the armed conflict and de-stigmatize survivors by acknowledging that this violence was not their fault'.[583] Such dignification measures are intended to vindicate victims' dignity and to contribute to the 'regenerating of the social fabric and strengthening social relations of

[579] L. Lengel, Mediated memory work and resistant remembering of wartime sexual violence, 1992-1995, *Feminist Media Studies*, 18(2) (2018), 325–328.
[580] Interviews with victims and professionals revealed that there has been less traction and interest in the anti-monument since the new government in Colombia. See Gilmore (2021).
[581] OHCHR 2011, paras.62 and 150.
[582] Interview 14, [redacted]
[583] Alison Crosby, M. Brinton Lykes and Brisna Caxaj, Carrying a heavy load: Mayan women's understandings of reparation in the aftermath of genocide, *Journal of Genocide Research*, 18(2-3) (2016), 265-283, p274.

coexistence'.[584] They include remembrance activities at the community, regional and national levels, historical memory events and documentation of survivors' experiences, commemoration of national day of the dignity of victims each year, construction of headstones and mausoleums, psychological accompaniment, building of public parks in memory of victims, and renaming public spaces with victims' names.[585] In many ways these are comparable to measures of satisfaction, but they are centred on victims' dignity, increasing awareness of victims' experiences, reaffirming moral and social values, and as such contributing to non-repetition. However, dignification measures can seem hollow when victims face ongoing discrimination and inequalities, in particular in communities where basic social services and infrastructure are lacking.[586]

147. Art may also be useful in facilitating some dignification measures. In Cambodia one of the reparation projects approved in Case 002/02 was a dance production (*Pka Sla Krom Angkar*); designed to reflect the forced marriage experience of women, it drew on the oral stories of victims during the Khmer Rouge as well as those who testified and participated before the ECCC.[587] While a dance production is problematic for ensuring effective redress if it is the only form of reparations for victims,[588] and the experience of men was missing,[589] traditional culture can be an apposite means of using traditional cultural dance in publicly promoting the dignity of victims and widening understanding of their experience. In Kosovo 5,000 dresses donated by victims and supporters were displayed on a clothesline in a football stadium in the capital to symbolising the transition from being in a private closet to exhibited in a public display ('symbolically "airing out the

[584] Artículo 39, Resolución de la Comisión Nacional de Resarcmiento, Número CNR-001-2015.
[585] Artículo 40.
[586] Sanne Weber, Trapped between Promise and Reality in Colombia's Victims' Law: Reflections on Reparations, Development and Social Justice, *Bulletin of Latin American Research*, 39(1) (2020) 5–21, p16.
[587] Rosemary Grey, Yim Sotheary and Kum Somaly, The Khmer Rouge Tribunal's first reparation for gender-based crimes, *Australian Journal of Human Rights*, 25(3) (2019) 488-497.
[588] See Rachel Killean and Luke Moffett, What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia, *Melbourne Journal of International Law* (2021 - forthcoming).
[589] Grey et al. (2019) p494.

laundry" of the unspeakable and unspoken crime of wartime rape in Kosovo').[590] This demonstrated the role of art in memorialising rape, which contributed to making the 'victims visible' while preserving their anonymity, and increased the inclusion of sexual violence in the history and public discourse of the conflict.[591] However, it is important to note that this initiative was carried out after mobilisation of victims with different civil society and government actors alongside other community sensitisation and education efforts.

148. Rwandan children born of out of genocidal rape, who are held out in official narratives as examples of reconciliation, in their everyday lived experience wanted a community forum in a public space to share their experience and confront their ongoing 'community stigmatization and marginalization, identity issues, and desire for recognition'.[592] Such an event would help to sensitise families and communities to their needs as well as build their own agency.[593] In addition to receiving other reparation measures, victims of rape and sexual slavery should be consulted on what dignification projects can look like. The *Al-Mahdi* implementation plan provides some good insights into incentivising victim participation in the design and production of such measures.

149. In order to widen dignification measures and to address stigma, community and religious leaders should be involved in changing the culture of silence and recrimination that surrounds sexual violence. Religious organisations are often involved in providing support to victims during conflict when there is nowhere else to go.[594] In Timor Leste, for example, the Catholic Church was proactive on

[590] Anna Di Lellio, Feride Rushiti and Kadire Tahiraj, "Thinking of You" in Kosovo: Art Activism Against the Stigma of Sexual Violence, *Violence Against Women* 25(13) (2019) 1543–1557, p1547.
[591] Ibid., p1545.
[592] Myriam Denov and Sara Kahn, 'They Should See Us as a Symbol of Reconciliation': Youth Born of Genocidal Rape in Rwanda and the Implications for Transitional Justice, *Journal of Human Rights Practice*, 11(1), (2019), 151–170, p166.
[593] Ibid.
[594] They can also be complicit in violations. See Ioana Cismas, Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability, in *Justice Mosaic*, ICTJ (2017), 302-343.

justice for victims, including advocating for reparations for those women who had been raped, and campaigned against the idea that those raped were 'sinful or impure'.[595] Similarly the REMHI report by the Archbishop of Guatemala's Office for Human Rights documented victims' experience of sexual violence and highlighted the military strategy of using rape against indigenous communities.[596]

150. In August 2014, the Yazidi spiritual leader Baba Sheikh made a televised declaration stating that victims of sexual violence remained 'pure' Yazidis; a signed religious edict followed in 2015.[597] These actions facilitated acceptance of victims and survivors back into their community (reinforced with a re-baptism ceremony), breaking with Yazidi culture that disallows sexual relations between Yazidis and non-Yazidis.[598] While Baba Sheikh's display may be interpreted as a form of genocidal resistance,[599] it also recognises the importance of traditional and religious values to a person's quality of life, and the potential for cultural or religious flexibility. That said, this capacity of acceptance and reconceptualising of religious purity did not extend to IS-Yazidi children born out of rape, as the Supreme Yazidi Spiritual Council prohibit the admission of children of IS terrorists into their community or bloodline.[600] Consequently, Yazidi women can still face a difficult choice between their desire to raise their child/children and their religious values. As this example illustrates, a sensitisation programme that does not fully confront the gendered and transgenerational implications of rape and sexual slavery will grossly limit the potential for redress and reparation.[601] Religious bodies can

[595] Susan Harris Rimmer, Orphans or Veterans? Justice for Children Born of War in East Timor, in Carpenter (2007), 53-77, p67.
[596] El Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REMHI), 1998, Vol.1, 203–237. The role of the church in communities had a strong relationship of trust that enabled victims to come forward, compared to the UN Commission for Historical Clarification which struggled to document such violations. See Emily Rosser, The Messy Practice of Building Women's Human Rights: Truth-telling and Sexual Violence in Guatemala, *Latin American Policy* 16(1) (2015) 68-88, p77.
[597] Gina Vale, Liberated, not free: Yazidi women after Islamic State captivity, *Small Wars and Insurgencies,* 31(3) (2020), 511-539, p528.
[598] Ibid Vale, (2020) p528.
[599] Ibid.
[600] Supreme Yazidi Spiritual Council, "Clarification".
[601] The same is true of programmes that are not uniform, even within a single institution.

continue to perpetuate their own theology and discrimination, such as excluding women from leadership, reiterating their place in the home, refusing to baptise babies born of rape or confessions from their mothers, and their own role in sexual abuse.[602]

151. The church is influential in Congolese society as a provider of social services and communal safe space, especially in rural areas given the absence of the state and ongoing insecurity.[603] The Catholic Church has already spoken out in demanding reparations for victims before the ICC,[604] and the Anglican Church of Congo has also carried out workshops on how better to address sexual violence.[605] This follows publication of the Tearfund report, *Silent No More*, which found that the Congolese church has for too long remained quiet on the issue of sexual violence allowing it to continue unchallenged and resulting in the isolation of victims.[606] Despite these positive developments, challenges remain in getting the churches to mobilise around sexual violence and related issues, including women's health, homosexuality, and the provision of sexual and reproductive healthcare, rather than simply maintaining the patriarchal and conservative status quo.[607] Some religious bodies continue to perpetuate their own theology and discrimination, for example by excluding women from leadership, dictating their place in the home and refusing to baptise babies born of rape or accept confessions from their mothers.

---

[602] Rimmer (2007), p68; and James Gallen, Jesus Wept: The Roman Catholic Church, Child Sexual Abuse and Transitional Justice, *International Journal of Transitional Justice* 10(2) (2016) 332-349.

[603] Elisabet le Roux, The role of African Christian churches in dealing with sexual violence against women: The case of the Democratic Republic of Congo, Rwanda and Liberia, PhD Thesis, Stellenbosch University (2014) p101; and Ayo Whetho and Ufo Okeke Uzodike, Religious Networks in Post-conflict Democratic Republic of the Congo: A Prognosis, *African Journal on Conflict Resolution* 8(3) (2008) 57-84.

[604] Whetho and Uzodike ibid. p74.

[605] The Anglican Church of Congo commits to take action against sexual violence, 5 September 2011, ACNS https://www.anglicannews.org/news/2011/09/the-anglican-church-of-congo-commits-to-take-action-against-sexual-violence.aspx

[606] Elisabet le Roux, *Silent No More*, Tearfund (2011).

[607] Roux (2014) p102.

152. While it can be only one component of the dignification of victims, moral and communal leadership can help to change views or run programmes that can support victims of sexual violence.[608] Towards this end, community and/or religious leaders could introduce dignification measures such as making public statements condemning rape and stigma of victims, being supportive of such victims as well as children born as a result of rape, having annual days of prayer and remembrance for victims, changing practices on the recognition of children born of war, and/or providing private spaces for victims to meet and share their experiences with other, similarly situated victims.[609] While the Court does not have jurisdiction beyond the convicted person in terms of imposing responsibility for reparations, when implementing reparations to tackle stigma, it should consider the role of community and religious leaders in their programming.

153. Accordingly symbolic measures will complement and may to some extent overlap with social rehabilitation. For victims of sexual violence measures may include an apology and measures of dignification, though it seems a memorial would be inappropriate.

Part IV Attacks on Healthcare

154. This final section of the report outlines the general impact of attacks on hospitals and health centres have on healthcare provision, before discussing the particular impact in the *Ntaganda* case and appropriate reparations. Although protected under international humanitarian law,[610] hospitals and healthcare facilities are often easy targets in times of war. Armed groups often attack healthcare facilities

608 [redacted]

609 This will require sensitivity, consent and confidentiality that may be better provided through victim or women's groups that victims trust.

610 Article 19, 1949 Geneva Convention I; Article 18, 1949 Geneva Convention IV; Article 12, 1977 Additional Protocol I; and Article 11, 1977 Additional Protocol II. See S/RES/2286 (2016), 3 May 2016.

to obtain access to services, supplies or medicines,[611] including for economic purposes (i.e. with the intention of selling these items on the market), to deny treatment to enemy forces[612] or to collectively punish or forcibly displace civilians by destroying local healthcare services.[613] While the physical damage can be apparent, the effects of attacks on healthcare are more latent and worth spelling out to provide some context before discussing appropriate reparations. Attacks on healthcare often result in the suspension, closure or relocation of healthcare facilities and services, compounding the harm for victims by being unable to access services to treat or alleviate their suffering. Such attacks also cause the loss of healthcare staff leading to shortages that must be covered by junior or under-qualified or non-specialist staff, reducing the capacity and quality of service provision, and can affect the availability of essential medication or basic necessities such as clean water, electricity and fuel to carry out programmes and care.[614] The impact of conflict on the supply of healthcare creates further pressures not only from increased demand for medical care due to violence,[615] but also from the increase in chronic illness and communicable diseases in the absence of the civilian infrastructure needed to ensure clean water and vaccination coverage.[616]

---

[611] The Trial Chamber in Ntaganda found that in relation to the Mongbwalu hospital that UPC/FPLC soldiers looted medical equipment it - ICC-01/04-02/06-2359, fn.1525 p237, [redacted] but there was insufficient evidence to find Mr Ntaganda liable.

[612] Or to capture or kill enemy wounded combatants. See Xavier Crombé and Joanna Kuper, War Breaks Out: Interpreting Violence on Healthcare in the Early Stage of the South Sudanese Civil War, *Journal of Humanitarian Affairs* 1(2)(2019), 4-12, p9-10.

[613] *A Grave New World*, Merlin (2010) p6. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/A89DF4CB011BB6FE492577A9002703B6-Full_Report.pdf Accessed 4 October 2020. Simon Rushton and Bhimsen Devkota, Choosing not to weaponize healthcare: politics and health service delivery during Nepal's civil war, 1996-2006, *Medicine, Conflict and Survival*, 36(3) (2020), 212-231, p225; Leonard S Rubenstein and Melanie D Bittle, Responsibility for protection of medical workers and facilities in armed conflict, *The Lancet* 375 (2010) 329–40, p332.

[614] Hassaan Afzal and Anisa Jabeen Nasir Jafar, A scoping review of the wider and long-term impacts of attacks on healthcare in conflict zones, *Medicine, Conflict and Survival*, 35(1) (2019), 43-64, p47-49; and Armstrong (2016); and Leonard Rubenstein, S*yrian Medical Voices from the Ground: The Ordeal of Syria's Healthcare Professionals,* Center for Public Health and Human Rights 2015, p7.

[615] Afzal and Jafar (2019), p49.

[616] Afzal and Jafar (2019), p51-53; and Justin Armstrong, *Changes in medical practice in Syria Dilemmas and adaptations in medical facilities continually threatened by attack*, MSF (2016), p19.

155. In the DRC, some healthcare workers have expressed that even though they face risks, no one listens or helps their situation, and instead they tend to get on with their duties in service of the community.[617] In other attacks on healthcare facilities, Congolese healthcare practitioners have been killed, assaulted and suffered sexual violence.[618] This has impacted upon healthcare provision in eastern DRC. Many healthcare workers have left their posts in insecure and remote areas, where they were often subject to attack and received little pay. They can face stress and family separation by remaining at their post or displaced with the local civilian population.[619] The circumstances in which they work have clear mental health impacts on healthcare practitioners, including severe stress, depression and lack of self-care, which can affect their provision of care. Conflict also has a detrimental effect on the training and professional development of healthcare workers, particularly for junior staff, by limiting opportunities to gain knowledge and experience in specialist areas and new advances.[620]

156. Attacks on healthcare facilities can also have a gender dynamic or reinforce local cultural stereotypes around gender, for example, where only males are employed as healthcare staff, and there are no mixed-gender teams that open the profession up to women.[621] Healthcare-seeking behaviour can also have gendered dimensions. Men, for example, can be less likely to report to healthcare facilities owing to economic pressures to provide for their families by working during the day and to avoid travelling after dark in case they are perceived as being associated with an armed group and targeted.[622] In certain cultures women must be accompanied by a male family member,[623] or pregnant women leave hospital hours after giving birth,

[617] Merlin (2010) p7. Interviews with three doctors in Ituri.
[618] Merlin ibid. p6. See also *Healthcare At Risk: Violence Against Healthcare*, Safeguarding Health in Conflict Coalition (2019), p11 and p23.
[619] Merlin 2010 p13 and p14. Interviews with healthcare practitioners in Ituri.
[620] Afzal and Jafar (2019) p54; and Rubenstein and Bittle (2010), p331.
[621] Jessica Cadesky, *Examining Violence Against Health Care from a Gender Perspective,* ICRC (2015), p11.
[622] Cadesky (2015), p12.
[623] Cadesky ibid.

which can increase the risk that postpartum (birth) complications may not be diagnosed or that mothers and new-borns do not receive appropriate and adequate care.[624]

157. The lack of adequate health services has driven up the mortality rate for pregnant women in eastern DRC during the conflict.[625] Access to basic supplies such as clean water and trained healthcare practitioners can significantly reduce maternal mortality rates, even during armed conflicts.[626] Conflicts also increase the incidence of infant mortality, to an average of 13% during a five-year conflict.[627] While there is a distinction between the impact of conflict on healthcare and targeted attacks on healthcare, these are interconnected to an extent and both can induce long-term consequences.

158. In general, attacks on healthcare can alter civilians' healthcare-seeking behaviour; they may, for example, take a longer route to a health facility to avoid fighting, wait to see if the security situation improves before travelling or minimise the time they spend at the facility to reduce their exposure to attack.[628] A gender-sensitive approach to attacks on healthcare is apparent in the impact of the crime on women in the *Ntaganda* case. [redacted]

[624] Armstrong, (2016), p16.
[625] Higher maternal mortality was noted in eastern DRC (1174 deaths per 100,000 live births) compared to the west of the country (811 deaths per 100,000) - Benjamin Coghlan, Richard J Brennan, Pascal Ngoy, David Dofara, Brad Otto, Mark Clements, and Tony Stewart, Mortality in the Democratic Republic of Congo: a nationwide survey, *The Lancet* 367 (2006) 44–51, p48. See Bernadette A M O'Hare and David P Southall, First do no harm: the impact of recent armed conflict on maternal and child health in Sub-Saharan Africa, *Journal of the Royal Society of Medicine* 100 (2007) 564-570.
[626] Larissa Fast and Christina Wille, To Stay or Go? The Complexities of Providing Healthcare in Insecure Environments, *World Health and Population* 16(4)(2016), 38-42, p39. This can include the provision of soap and clean instruments that allow deliveries to be carried out in an aseptic environment and carry out episiotomies with sterilised razors to minimise the risk of vaginal tears - see Working Against All Odds to Improve Maternal Health in DRC, UNFPA, 19 September 2011 https://www.unfpa.org/news/working-against-all-odds-improve-maternal-health-drc
[627] These can still be high (11%) after five years of conflict. See Collier P, Elliot VL, Håvard H et al. *Breaking the conflict trap: Civil war and development policy*, World Bank and Oxford University Press, (2003), p23-24.
[628] Afzal and Jafar (2019), p52-53. EECC, Eritrea Final Award, para.215.

[redacted].[629]

159. People who are discouraged from accessing healthcare due to insecurity often turn to alternative medicines to treat their ailments, which may only exacerbate the situation.[630] Thus, attacks on healthcare diminish trust in such facilities as safe spaces for patients to come forward for treatment, impacting on the ability of healthcare staff to readily treat injuries or illness in good time before patients deteriorate.[631]Furthermore, this interruption can impact public health initiatives, such as vaccination programmes, and other public health campaigns in emergencies situations.[632] These consequences have been felt in the DRC during the recent infectious disease pandemics. For the broader community, the loss of a healthcare clinic can damage the social fabric in communities, disenfranchise local people and increase competition over scarce resources.[633]

1.1 Attack on healthcare in the *Ntaganda* case

160. Mr Ntaganda was convicted of Count 17, attacks on a protected object. Although the attack on Saïo represents a small part of the victimisation in this case, it speaks to broader patterns of attacks on healthcare that exacerbate the vulnerability and suffering of the civilian population. Moreover, it highlights the way in which reparations can also serve an expressive function to promote certain values,

[629] [redacted]

[630] Changing Behaviour Tackling Violence against Health Care in Niger, the Central African Republic and Nigeria, ICRC 2018, p6.

[631] Afzal and Jafar (2019), p53.

[632] Safeguarding Health in Conflict Coalition, Report, (June 2020), p13.

[633] Jason-Louis Carmichael and Mohammad Karamouzian, Deadly professions: violent attacks against aid-workers and the health implications for local populations, *International Journal of Health Policy Management* 2(2) (2014), 65–67, p66.

especially in light of ongoing attacks on healthcare in Ituri.[634] There is the potential for reparations for other attacks against protected objects as a war crime. Note the Appeal by the Prosecution in part to include the church at Saïo and the hospital at Mongbwalu.[635]

161. It is worth outlining the impact of the attack on the Saïo health clinic, in particular the gendered harm.[636] The health clinic and neighbouring buildings came under attack from heavy UPC/FPLC weaponry.[637] Many healthcare staff had fled from Mongbwalu to the Saïo health centre to assist with the injured.[638] The Chamber held that at least one projectile was fired at the health centre, but it was not able to find that it had destroyed or damaged the building. In terms of physical damage according to [redacted].[639]

162. The attack in Saïo health centre had a 'severe impact on the welfare and/or lives of any patients present at the centre at the relevant time'.[640] This is apparent with the witness testimony accepted by the Trial Chamber, in that the attack caused two individuals within the health centre to flee, leaving behind three seriously injured men as well as a Lendu woman and her two-year old child who were at the clinic for treatment.[641] [redacted]

634 DRC: 200,000 people flee attacks on villages and health care centers in Ituri province, MSF, 5 June 2020 available at https://www.doctorswithoutborders.org/what-we-do/news-stories/news/drc-200000-people-flee-attacks-villages-and-health-care-centers-ituri

635 Prosecution notice of appeal. ICC-01/04-02/06, 9 September 2019, para.6.

636 [redacted].

637 The Trial Chamber was unable to determine the extent of the damage or even if the health centre was destroyed or hit during the attack, but that was intentionally made the object of the attack. ICC-01/04-02/06-2442, para.153. [redacted].

638 T-68, p18.

639 [redacted]2.

640 ICC-01/04-02/06-2442, para.144.

641 ICC-01/04-02/06-2359, para.506 and fn.1477.

[redacted].[642] [redacted]

[redacted].[643] [redacted]

[redacted],[644] [redacted][645]

While the Chamber was unable to determine the fate of the three injured men, it did hold that the Lendu woman was killed as a result of the UPC/FPLC attack on the clinic, but not her child.[646] The killing of [redacted] and her child represent the vulnerability of civilians, in particular mothers, at the time of attack and their proximity to the health centre in order to seek treatment.

1.2 State Practice on Reparations for Attacks on Healthcare

163. UN Resolution 2286 (2016) on attacks on healthcare during war calls upon responsible actors for violations to take 'remedial action' to prevent similar incidents and to identify and to hold to account those who commit such acts.[647] Most examples of attacking parties paying compensation reflect the efforts of states to remedy unintentional collateral damage or mistaken location that resulted in the damage or destruction of healthcare facilities. In the case of the US attack on the MSF hospital in Kunduz, the US paid out 'condolence payments' to 170 individuals of $3,000 USD for those injured and $6,000 USD to the families of those killed. A total of $5.7 million USD was also provided for reconstruction of the hospital, although all of these payments were made ex gratia. The US military also released

642 [redacted]
643 [redacted]
644 [redacted]
645 [redacted]
646 [redacted]

647 S/RES/2286 (2016), 3 May 2016.

declassified materials and after action reports detailing what had gone wrong, what investigative action it had taken and its efforts to prevent recurrence, including training on targeting.[648] Even those victims who accepted the monetary award thought it was insufficient in comparison to compensation made to civilians of other attacks, nor did it cover the cost of losing a loved one or being seriously disabled as a result of the attack.[649] The failure of senior members of the US military to meet directly with families reinforced their frustration.

164. There have been other, similar cases. Saudi Arabia's JIAT, for example, recommended that the coalition pay 'appropriate assistance' or 'compensation' in 12 attacks on civilian property, two of which were hospitals.[650] The US also settled claims arising from the bombing of a mental institution, which had been occupied by Grenadian revolutionary forces who had departed before the attack, including compensation to those injured and the families of those killed as well as reconstruction of the hospital through USAID.[651]

---

[648] US CENTCOM p5. US President Barack Obama also provided a personal apology to the victims and MSF for the attack.

[649] Danielle Moylan, How Much For Your Child? Afghan Condolence Payments Draw Scrutiny, Newsweek, 9 April 2016, https://www.newsweek.com/2016/04/22/afghanistan-condolence-payments-kunduz-doctors-without-borders-airstrike-us-446017.html

[650] *Hiding Behind the Coalition Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen*, HRW (2018), p76.

[651] 17 patients were killed and over 30 injured when the facility was hit three times within an hour by US aircraft - Congressman Louis Stokes, The Grenada Diary, US House of Representatives, 16 November 1983, p33220, available at https://www.govinfo.gov/content/pkg/GPO-CRECB-1983-pt23/pdf/GPO-CRECB-1983-pt23-6-3.pdf The US had created a specal compensation commission that required the victims to come forward, but given the mental incapacity of those injured they were unable to apply hence the claim before the Inter-American Commission. See David Weissbrodt and Beth Andrus, The Right to Life During Armed Conflict: Disabled Peoples' International v. United States, *Harvard International Law Journal* 29(1) (1988) 59-83, p64-65. See *Richmond Hill v. United States*, Case 9213, Inter-Am. C.H.R., Report No. 3/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996). However this was accompanied by a statement "the United States' Government considers it important to note for the record its longstanding position that its actions were entirely in conformance with the law of armed conflict, and that therefore the U.S had no legal liability for any damages claimed. For these reasons, the U.S categorically rejects as inaccurate and misleading petitioners' statement as an alleged settlement of this case and compensation paid in this matter."

165. In relation to the targeting for destruction of the 50-bed regional Senafe hospital by Ethiopian forces, the Eritrean-Ethiopian Claims Commission (EECC) found Ethiopia to be 90% liable for both the cost of repairing the damage caused and the cost of a temporary hospital, as well as 75% liable for looting amounting to $2,575,000 USD.[652] In addition, $1,500,000 USD was awarded in compensation for harm caused to civilians due to 'loss of access to healthcare on account of damage to or destruction of Eritrean hospitals and other medical facilities and loss of medical supplies'.[653] The EECC awarded $2,375,000 USD for the looting and burning of the Teseney Mother and Child Health Center.[654] In some contexts hospitals and health clinics have been renamed after those killed in and around them. For instance, in the conflict in South Ossetia, a rocket attack by a Russian helicopter killed a doctor on the roof of a hospital marked with the Red Cross emblem; the hospital was later renamed after him.[655]

1.3 Appropriate reparations for the Saïo health centre

166. One option would be to rename the health centre in Saïo after the woman and child who were killed outside it,[656] but this would likely require permission of the centre's administrators, local government and leaders.[657] Moreover, renaming the clinic in this way might associate it with the killing of these two individuals, and not the three seriously injured Lendu men whose fate remains unknown or the numerous individuals killed in the vicinity, which would seem arbitrary. Moreover, according to [redacted]

[652] EECC, Final Award to Eritrea, paras.125-128.
[653] Final Award to Eritrea, para.216.
[654] Final Award to Eritrea, para.147-148.
[655] Dr Giorgi Abramishvili - See Gori Military Hospital named after deceased doctor, *1st Channel Georgia*, 11 August 2013; and *Up In Flames Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, HRW (2009), p95.
[656] A more modest approach could be to name a ward after [redacted] and her child in consultation with the Saïo health centre and her family.
[657] [redacted]

[redacted].[658] Given the contested history in Ituri, explicitly naming a clinic after Lendu victims may overly associate the clinic with one community over another. A more modest approach could be to install a plaque in the centre listing the names of those 27 individuals killed plus [redacted] and her child. Alternatively thought could be given to such memorialisation be represented in art form, such as a mural, to be more visually engaging.

167. Ultimately all memorials, monuments and plaques involve some form of selectivity and may reinforce a hierarchy of victims by instilling in the public consciousness and in physical space the remembrance of some victims over others. Moreover, overly associating memorialisation with one community may also undermine the neutrality and independence of the health centre, limiting its ability to provide care to all patients in the community. A further difficulty is that ongoing insecurity in Ituri may discourage the Congolese government or international medical organisations from reinvesting in a health facility or at least in specialist services and supplies.[659] It may be appropriate for memorial spaces to be built near the Saïo health centre or Bambu hospital to commemorate the killing of patients nearby.[660] A memorial garden with trees planted in the memory of the victims by their families along with the attacks reparation package suggested by the other experts could be an appropriate form of reparation that does not overly identify the hospital with one community or certain victims over others.[661] [redacted]

[658] [redacted].
[659] Crombé and Kuper (2019), p8.
[660] ICC-01/04-02/06-2359, para.587.
[661] This may be accompanied with annual memorial prayers services on the site as commemorative practices beyond reparations ordered in this case.
[662] T-37, p55, line 23.

168. [redacted].[663] According to the TFV, the estimated cost of a new health clinic is $50,000 USD.[664] Given that the Chamber was unable to determine whether the Saïo health centre was destroyed or damaged by the UPC/FPLC it would be inappropriate and disproportionate for Mr Ntaganda to be liable for the full cost of a new health centre. The attack on health centre in Saïo in reparation submissions so far in this case sees it as a property crime or loss of infrastructure,[665] but built infrastructure does not correspond to the harm caused or the level of service provision. Indeed, attacks on healthcare can have a devastating impact on the civilian population.[666]

169. From engagements with healthcare practitioners in the area, including those in the health zone of Saïo, they see the impact of the attack on healthcare service. [redacted].[667] [redacted].[668] [redacted]

[663] [redacted]

[664] A similar estimation was given for a new school - ICC-01/04-02/06-2476, p46. It is unclear where this estimate comes from, but assumes that the centre is destroyed.

[665] ICC-01/04-02/06-2476, para.90 and p46.

[666] The TFV notes the impact of attacks on the health centre access to healthcare was aggravated by the attack on the Saïo health centre ICC-01/04-02/06-2476, para.90.

[667] Interview 37 with healthcare practitioner, [redacted].

[668] [redacted].

[redacted].[668]

[redacted].[669]

170. [redacted][670] [redacted],[671] [redacted].[672] I[redacted]; [673] [redacted]. As such, the impact of conflict on

[redacted]

[669] [redacted], [redacted].

[670] For more information on the network of health centres and district referral hospitals in the DRC and other countries see Jean-Pierre Unger and Bart Criel, Principles of health infrastructure planning in less developed countries, *International Journal of Health Planning and Management*, 10 (1995) 113–128. For an overview of healthcare in Ituri see Deboutte (2011).

[671] Saïo health clinic received some of those injured in the attack on Mongbwalu - ICC-01/04-02/06-2359, paras.476 and 495.

[672] For example in Plan de Sanchez – drawing from interviews in working paper by Clara Sandoval and Luke Moffett, 'Life after Reparations: The Massacre of Plan de Sanchez', RRV project (2018).

[673] Interview 37, [redacted].

through a narrow lens has led to implementation difficulties in previous court cases and raised expectations where a service could not be provided.[674] Although the *Plan de Sanchez* case did not involve an attack on a health centre, reparations ordered included building a healthcare centre in the village, even though a regional hospital was in the town below and without considering the long-term staffing capacity.[675] [redacted],[676] [redacted].

171. In light of the OTP's appeal to include the attack on Mongbwalu hospital, if it is successful then reparations for the hospital may have potentially beneficial effects for the health centres that fall within the Mongbwalu health zone, including the Saïo health centre.[677] Irrespective of the forthcoming appeals decision whether or not the decision to exclude Mongbwalu hospital is upheld, to provide reparations to [redacted].[678] [redacted]

[674] Sandoval and Moffett (2018).
[675] Sandoval and Moffett (2018).
[676] Interview 37, [redacted].
[677] [redacted] Interview with [redacted] healthcare provider, [redacted].
[678] Interview 37 with [redacted] healthcare provider, [redacted].

[redacted][679][redacted],[680][redacted].

172. Reparations must go beyond restoration of medical supplies to appropriate application of them. This may include training and the provision of dedicated healthcare practitioners to operate them, such as a radiographer, which would increase the amount of the reparation awarded. At a minimum, training should be provided to healthcare practitioners in the health region of Saïo. This will require specialist training by those familiar with the equipment as well as provision of protocols on their use to guide future application. Some of this training could be provided through online tutorials and virtual Q&A with trainers, but effective use of equipment often requires supervised practice to build the confidence and capacity of users. There is a need to ensure supply chain pathways are established and locally adapted beyond the initial provision of equipment.[681] It is difficult for the author to quantify the costs of such equipment, given ongoing supply issues caused by COVID-19 and other expenses associated with the import, transport, maintenance,[682] and installation of such equipment.[683] However, a rudimentary

[679] To illustrate, there is no permanent medical doctor at the health centre. When a medical doctor is required, then they are dispatched from Mongbwalu General Hospital. There is no ambulance that can service the area in between the two locations due to the bad quality of the road. Interview 37, [redacted] from [redacted] healthcare provider.

[680] Mongbwalu General Hospital receives and centralises the referrals from these health areas. Interview 37 with health provider, [redacted].

[681] Megan Rybarczyk et al. Evaluation of medical supplies essential for the care of survivors of sex- and gender-based violence in post-conflict Eastern Democratic Republic of Congo, *Medicine, Conflict and Survival*, 27(2) (2011) 91-110.

[682] For instance, aquasonic ultrasound gel and equipment for cleaning and disinfecting ultrasound transducers.

review of potentially required equipment indicates that the approximate unit cost of an [redacted].[685] Other disposable equipment such as a [redacted].[686]

173. In terms of quantifying an appropriate total cost for attacks on [redacted], [redacted].[687] It may be worth considering that the health centre could be

---

[683] The author could not ascertain the cost of these, but five years is suggested to be liability of the convicted person with the subsequent cost to be shouldered by the Congolese government in line with its obligations on the right to health.

[684] Interview 37 [redacted].

[685] [redacted].

[686] [redacted].

[687] [redacted].

a centre for training local healthcare workers on a gender sensitive and trauma informed approach. The location [redacted] may also allow the provision of discrete services to victims of rape and sexual slavery, but [redacted] hospital given its larger size and ability to provide more specialist services may be more appropriate.[688]

174. Given the extent of their territorial control and the lack of state presence in remote areas, there is also a need to engage armed groups to respect and take ownership of humanitarian norms that prohibit the targeting of healthcare facilities.[689] Reparations aimed at guaranteeing non-recurrence of attacks on healthcare may be appropriate in such circumstances, and can draw upon existing research to understand the behaviours and motives of armed groups in attacking healthcare.[690] These elements have helped to inform engagement and prevention strategies undertaken by humanitarian organisations aiming to ensure that armed groups comply with international humanitarian law.[691] One such strategy is Geneva Call's Deed of Commitment; however, success depends on several factors and monitoring compliance can be difficult [692] The best approach to encouraging

---

[redacted] Deboutte (2011), p306.

[688] [redacted].

[689] Frederik Francois Siem, Leaving them behind: healthcare services in situations of armed conflict, 137(17) (2017), *Tidsskrift for den Norske Laegeforening*, p4.

[690] Ezequial Heffes, Armed Groups and the Protection of Healthcare, *International Law Studies*, 95, 226 (2019), 227-241.

[691] Annyssa Bellal and Ezequiel Heffes, *'Yes, I do': Binding Armed Non-State Actors to IHL and Human Rights Norms Through Their Consent*, *Human Rights and International Law Discourse* 12 (2018) 120.

[692] Deed Of Commitment Under Geneva Call For The Protection Of Health Care In Armed Conflict (the fourth deed of commitment under Geneva call (https://www.genevacall.org/wp-content/uploads/2019/07/Deed-of-Commitment-for-the-protection-of-health-care-in-armed-conflict-final-version-4.pdf). To date, there are only three armed groups who have signed the deed of commitment on the protection of healthcare in armed conflict. Note there are four deeds of commitment under Geneva Call, including the Prohibition of Sexual Violence in Armed Conflict and Towards the Elimination of Gender Discrimination (the third deed of

adoption will differ according to contextual factors such as the motive for attacking healthcare; the cost of complying with international humanitarian law; incentives for protection such as displaying concern for the citizens they claim to defend; the overall objective or ideology of the armed group; and its connection to civilian communities.[693] As Mr Ntaganda is no longer a member of the UPC/FPLC, has been involved subsequently in other groups in North Kivu since 2003, and is perceived as Rwandan, his stated commitment not to attack healthcare in the future may have little effect.[694] Nevertheless, funding for education and training programmes to be carried out by Geneva Call and/or the ICRC with the aim of engaging with the UPC in Ituri to secure its commitment to protecting healthcare, using testimonies in the *Ntaganda* case and evidence of its impact on the local community in combination with international humanitarian law may be an effective way to contribute to the dignification of victims and encourage guarantees of non-repetition of attacks on healthcare.

175. Accordingly, appropriate reparation for attacks on healthcare would include: a memorial garden in Saïo (also to be considered near Bambu); [redacted]; psychological counselling made available for healthcare staff in Saïo who were working there at the time;[695] and a collective programme on improving local actors commitment to protecting healthcare.

Recommendations

In light of the analysis and the principles above the author suggests the following reparations would be appropriate:

Individual Reparations: Compensation

---

commitment launched in July 2012, see https://www.genevacall.org/wp-content/uploads/2019/07/DoC-Prohibiting-sexual-violence-and-gender-discrimination.pdf).

[693] Heffes (2019).

[694] As discussed in the next section an apology and an acknowledgment of responsibility may be a positive contribution.

[695] It is unlikely that this will be taken up, but given that may had to flee during the attacks and treated numerous victims, such services should be made available, even though there is a culture of working through and neglecting their own needs to serve their community.

a. Individual compensation is the most appropriate form of reparations for victims of rape and sexual slavery in the *Ntaganda* case as it acknowledges their personal suffering as well as the resultant social, economic and medical consequences caused by such crimes. According to consultation and research related to this mandate, compensation is also a preferred form of reparation by victims, and takes a gender and contextually sensitive approach to such crimes in the face of ongoing violence and insecurity. The author has outlined four categories to reflect the different impact of sexual violence on direct and indirect victims. This approach respects victims' agency allowing them the choice of investing in socio-economic and income-generating activities of their choice, education, [redacted].

b. [redacted].

Collective Reparations

(i) <u>Medical Rehabilitation</u>

Not all victims will necessarily need medical rehabilitation, but a collective rehabilitation programme should be made available to identify those who would benefit in having their physical and mental harm redressed. Medical rehabilitation should also cover the cost of modality of engagement such as through a health screening programme for five years that would be camouflaged as a general community health screening or a mobile clinic for women's health with staff trained in a gender-sensitive and trauma-informed approach to carry out basic sexual and reproductive health services, whether through an established State or private humanitarian organisation. It would also allow victims of sexual violence referral pathways to access specialist services where required, opportunities to check in on the physical and mental health, and as a contact point for the emergency protocol system. As needed specialist services would be for ARV provision for those with HIV, surgical or medical interventions for genital or uro-gynaecological injuries, or IVF/ART treatment in [redacted].[696] For those displaced [redacted] a private provider may need to be used to allow access for these individuals, but care needs to be taken to minimise stigma. HIV treatment should be for five years for the liability of the convicted person with the Congolese government to ensure lifelong access for victims. As a minimum, screening programmes should integrate physical and psychological care. For male victims of sexual violence, a similar programme may be needed on a smaller scale with staff particularly trained and specialists on their needs, given the lack of data so far it is unclear the extent of these victims before the Court who would be eligible.

In terms of specific measures:

a. Medical care (HIV) - Appropriate HIV care, treatment and monitoring for HIV-positive direct victims and HIV-positive children born out of rape (currently adults) for five years. The court may wish to consider extending HIV healthcare to HIV-positive partners or spouses where evidence exists that on the balance of probabilities HIV was transmitted from the victim to their partner after the crime. Treatment will be in the form of ARV as well as other

[696] This represents a non-exhaustive list.

care for HIV-related comorbidities or complications. PrEP may also be considered for sexual partners of HIV-positive victims (direct and children born out of rape) so as to prevent any further long term consequences as a result of the crime (also subject to medical evaluation). If the victim (likely child born out of rape who is HIV-positive) is planning or is pregnant within the 5 years, then they may be offered the option of care under an obstetrician with an interest in HIV, provided this is available within a reasonable proximity or where the patients wishes to transfer care to a health area where this service is available (see Appendix 1). The author acknowledges the national HIV/AIDS control programme which aims to provide free HIV care, yet there are current limitations in attaining long term adequate ARV for HIV-positive victims. Therefore, Mr. Ntaganda should be liable for five years of care as a minimum, and under the principle of reparative complementarity, the DRC Ministry of Health should provide resources to support the care of these victims, including ARV throughout a HIV-positive person's life course. Testing should be freely available to children of HIV-positive mothers as well as their partner, but if not this cost will need to be met through coordination with local humanitarian organisations.

b. Medical care (non-HIV) should be provided for up to five years where this is perceived to be beneficial, through a registered and regulated medical or humanitarian organisation. Depending on the quality of services available, care may be provided by the private or public medical sector. However, existing organisations specialising in caring for victims of sexual violence should be supported, both in training and capacity building in order to meet the needs as a result of health harms victims are faced with. The type of medical (or surgical) intervention and therefore level of care (primary, secondary, tertiary) will depend on the harm as a result of the crime. Nonetheless, wherever feasible care must be as accessible as possible and appropriate to the victims' needs. As mentioned, medical rehabilitation could be complemented by the assistance mandate of the TFV, where a community

health screening programme under the assistance mandate could be set up (such as for women's health), with referral to more specialist services as required for eligible victims in this case to receive medical rehabilitation as reparations. The potential array of specialist services is variable, but as a minimum this would include a nurse, a general or family practitioner and a general gynaecologist. For more complex cases, such as assisted reproductive technology (ART) for infertility then referral to a supra-regional health facility or another country may be warranted.

c. Mental health services should be provided for up to five years for direct victims of rape and sexual slavery, children born out of rape, partner or spouse, and other family members affected (such as grandparents or siblings). The type of care will depend on how mental health is affected, however most of this will entail community and social care. The potential range of mental health and psychosocial services include, but are not limited to: psychiatry services (outpatient or inpatient), community psychiatric nursing, drug therapy, psychotherapy (may be delivered by a number of professionals), clinical psychology, counselling, art therapy, temporary residence at substance misuse units or therapeutic communities (such as part of addiction rehabilitation programmes), cognitive behavioural therapy, interpersonal therapy and family therapy. This may involve engaging the community (including trusted CSOs and victim organisations) in the delivery of counselling and psychosocial support with appropriate safeguards and to enhance success of sustainability. Psychological counselling should be made available to victims of sexual violence for five years consistent with *Lubanga*, but given lifelong needs of such victims, the Congolese government should provide dedicated resources to support this in the long term under the principle of reparative complementarity.

d. Gender-sensitive and ethical training for all who will come into contact with victims of rape and sexual slavery and in particular those delivering health

(medical and mental health) and social care. [redacted].

e. [redacted].

f. [redacted] Support – As reparations or assistance of emergency medical care for victims of rape or sexual slavery. Development of an emergency rehabilitation protocol for victims of sexual violence.

ii.) Rehabilitation: Social

a. A sensitisation campaign that can contribute to social reintegration of victims of sexual violence comprising of three key elements. First, a multi-sectoral and multi-agency approach involving endorsement from the DRC government, community and religious leaders or notables, local and international NGOS, victims (only if they wish to) as well as providers of care. Second, information is to be delivered through multiple modalities of communication. Third is identifying community referral points where victims can go to for confidential support in their local area who can signpost them onto more specialist services or respond to a stigmatising incident.

b. In coordination with local authorities the Court should direct a programme to allow the creation of identity and other legal documents for children born as a result of rape.

iii.) Symbolic measures

a. The convicted person should consider contributing to acknowledging and remedying victims' harm through an apology or dignification measures.

b. The Court should develop dignification programmes with community leaders to counter stigma and improve social inclusion of victims of rape, sexual slavery, former child soldiers and any children born as a result of these crimes.[697]

c. A memorial or monument to victims of rape or sexual slavery is likely going to be inappropriate and it would be more effective to direct resources into individual compensation or collective medical rehabilitation.

iv.) Attacks on a protected building (Saïo)

a. a memorial garden in Saïo (also to be considered near Bambu);[698]
b. [redacted];[699]
c. psychological counselling made available for healthcare staff in Saïo who were working there at the time; and
d. a collective programme on improving local actors' commitment to protecting healthcare.

[redacted]

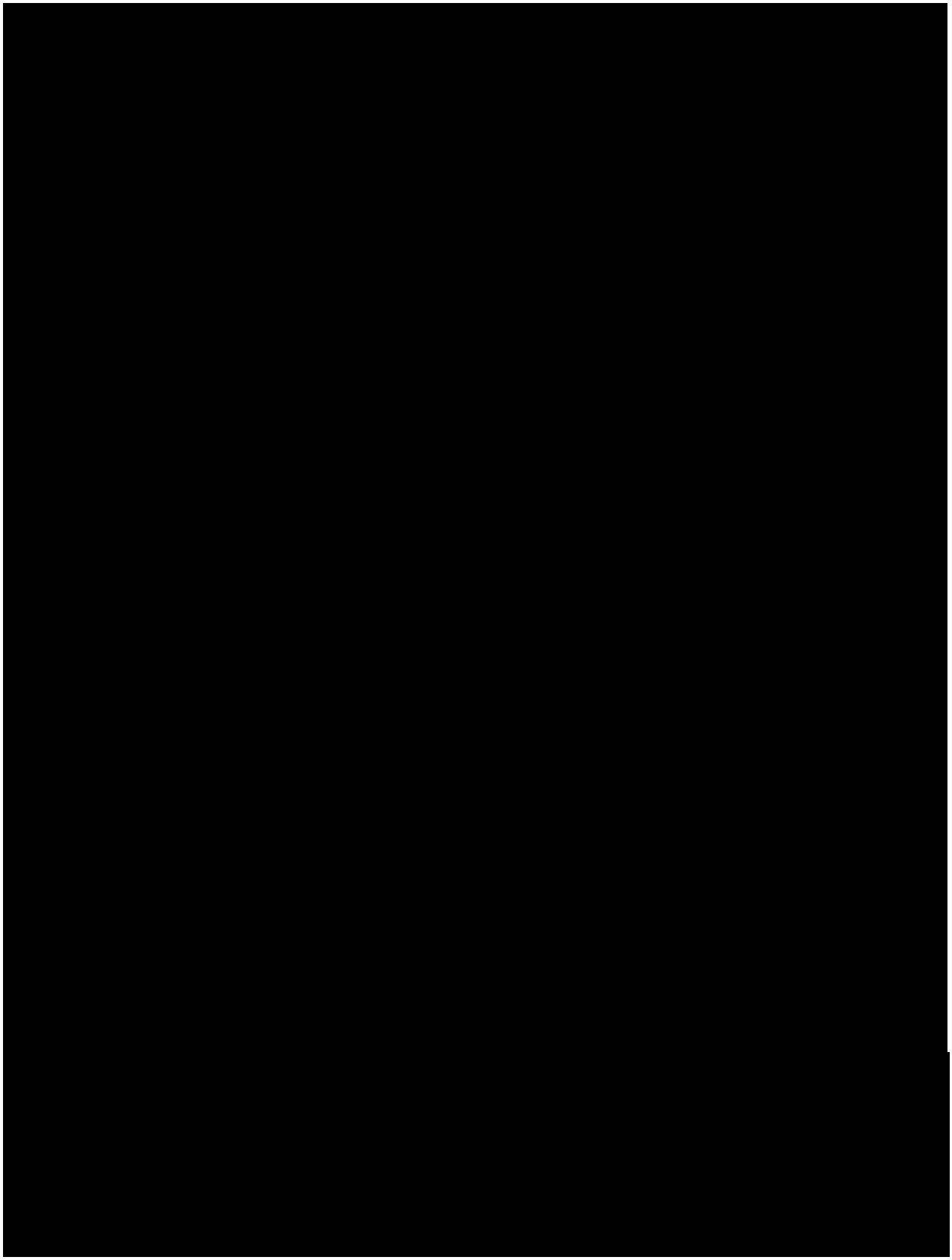
[redacted]

[redacted]

[697] [redacted].

[698] Ibid.

[699] With all costs given in this report the Court should consider using a Gross Domestic Product price deflator to account for the impact of inflation over time – see Guidance and Application Form for Payments for Seriously Injured and Bereaved Victims, QUB Human Rights Centre (2019), para.48.



This report is compiled by the undersigned in line with the Chamber's decision on the experts' report on reparations in the *Ntaganda* case.

_____

Dr Sunneva Gilmore

Dated this 28th October 2020

At Belfast, Northern Ireland