



Protection and Restitution for Survivors of Sexual and Gender Based Violence in Uganda: The legal peculiarities, the possibilities and the options

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List of Acronyms

ACORD	Agency for Cooperation and Research in Development
AICM	African International Christian Ministry
CAVR	Commission for Reception, Truth and Reconciliation
CCTJ	Congolese Coalition for Transitional Justice
CFPU	Child and Family Protection Unit
CSO	Civil Society Organizations
DPP	Director of Public Prosecutions
DRC	Democratic Republic of Congo
GAL	Government Analytical Laboratory
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
IDP	Internally Displaced Persons
IRIN	The humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs.
JLOS	Justice Law and Order Sector
LC	Local Council
LRA	Lords Resistance Army
NGO	Non Governmental Organizations
PEP	Post Exposure Prophylaxis
PF3	Police Form 3
RDC	Resident District Commissioner
SGBV	Sexual Gender Based Violence
STD	Sexually Transmitted Diseases
TJ	Transitional Justice
TJWG	Transitional Justice Working Group
UNIFEM	United Nations Development Fund for Women
WORUDET	Women and Rural Development Networks

Acknowledgements

This study is the fruit of lengthy reflections conducted from 2009 to 2010 by ACORD and some of its partners on the protection of and reparation for victims of sexual and gender-based violence (SGBV).

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Introduction and background

ACORD (Agency for Cooperation and Research in Development) undertook a study on ***Protection and restitution for survivors of Sexual and Gender Based Violence (SGBV) in Uganda: the legal peculiarities, the possibilities and the options.***

The study is part of a multi country study that aims to influence policy and practice change in addressing SGBV impunity in partnership with organizations that are working to influence policy and practice in addressing SGBV such as Akina Mama wa Afrika, Uganda Women's Network and others. This study is geared towards restoring dignity for survivors of SGBV by challenging impunity and bringing perpetrators of sexual and gender based crimes against humanity to justice while restoring their health and livelihoods.

This intervention is being undertaken as a strategy to address the prevalent SGBV situation in the country and in the Great lakes region and its various implications, establish strategies for enhancing the systems and structures for investigation of SGBV and ensuring an end to impunity and justice for survivors.

The aim of this project is to document the experiences of SGBV survivors, develop and publish a model comprehensive policy guide that will: inform responses by both civil society and governments on issues around resource allocation, national commitment on the protection and compensation for women survivors of sexual and gender based violence taking into account the potential role of the transitional justice mechanisms going on in other countries. The study will propose appropriate national institutional frameworks for realizing policy objectives, as well as possible necessary legal and constitutional reforms that will be required to regulate and ensure compliance. It will develop a draft national strategy that is linked to regional and global instruments on sexual and gender based violence and the advancement of women in economic and political spheres.

The objectives of this study are to: consolidate learning and experiences from other post conflict societies in addressing SGBV; and publish a comprehensive policy brief that will inform Ugandan engagement on the question of protection and compensation for survivors of SGBV. This will further contribute to promoting the prevention and cessation of abuses.

Defining the problem of SGBV survivors

There is no single or universal definition of gender-based or sexual violence. Understandings differ according to country, community and legal context. According to the Population Council, the term sexual and gender based violence in its widest sense refers to the physical, emotional or sexual abuse of a survivor.¹ The World Health Organization on the other hand adopted an inclusive terminology which defines sexual violence as "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women's sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the survivor, in any setting, including but not limited to home and work". The scope of the definition is here expanded to include the forced sex, sexual coercion and rape of adult and adolescent men and women, and child sexual abuse.

On the whole, the term sexual violence is used to represent behaviour that may otherwise fall under the rubrics of sexual abuse, sexual assault, and any other sexual violations, such as sexual harassment and voyeurism. The term gender-based violence is widely used as a synonym for violence against women, in order to highlight the gender inequality in which much violence is rooted (IGWG of USAID, 2006). Although many who work in the field of sexual violence use the word "victim" to describe the person on whom the sexual violence is inflicted, the word "survivor" is used in this review in an effort to reflect the positivity encouraged in psychosocial care.

This review focuses exclusively on the sexual elements of abuse, and discusses the management of physical and emotional abuse only where it relates to accompanying sexual abuse. It further

¹ Population Council, *Sexual and Gender Based Violence in Africa: Key Issues for Programming*. Nairobi; Population Council, 2008. Available at: www.popcouncil.org/pdfs/AfricaSGBV_KeyIssues.pdf

considers SGBV in two contexts, that is: in terms of acts of violence committed as part of war as defined under international humanitarian instruments and as acts of violence committed in ordinary life which affect their bodily integrity including acts that inflict physical, mental or sexual harm and suffering.

Why the interest in Sexual and Gender Based Violence

Gender-based violence is a violation of basic human rights. It results from an imbalance of power between women and men and is deeply entrenched in some cultural practices and intimate relationships. The subject of SGBV is increasingly becoming of interest globally because "it is no longer a private issue but one that involves society as a whole and therefore calls for a holistic approach promoting preventive solutions."² According to Maguire³, acts of SGBV, especially rape, are increasingly being used as "...an organized and systematic weapon of war, employed to destabilize and threaten an element of the civilian population. The large-scale use of rape and other forms of sexual violence as an instrument for delivering a psychological blow during armed conflict has caused even more concern among human rights advocates and the international community, a phenomenon that the international community must address with greater vigor"⁴.

According to IRIN, "In recent years, mass rape in war has been documented in various countries, including Cambodia, Liberia, Peru, Bosnia, Sierra Leone, Rwanda, the Democratic Republic of Congo, Somalia and Uganda. A European Community fact-finding team estimated that more than 20,000 Muslim women were raped during the war in Bosnia. At least 250,000, perhaps as many as 500,000 women were systematically raped during the 1994 genocide in Rwanda, according to reports from the World Bank and UNIFEM. Most recently in Darfur, Western Sudan, displaced people have described a pattern of systematic and unlawful attacks against civilians by a government-sponsored Arab militia and the Sudanese military forces"⁵.

After such acts of violence, and the resultant physical injury or damage and psychological torture that accompanies it, there is need to restore the survivors to a situation which would in all possibility, have existed if that act had not been committed. This is in addition to the need for perpetrators to be brought to justice.

SGBV in the Ugandan context

In Uganda, the magnitude of the problem of SGBV extends beyond war and conflict situations. In non conflict situations, more than 80% of women consulted have experienced physical, sexual or psychological violence at some point in their marriage or intimate relationship.⁶

The impact of SGBV can be traced beyond the direct pain experienced by the survivor to also include increased risk of mortality and malnutrition, short birth intervals and infant health and survival and lack of economic empowerment which is reflected as lack of access to, and control over, economic resources.⁷

Sexual and gender based violence has further resulted into a number of consequences which include physical and psychological trauma, sexually transmitted diseases (STDs) including HIV, dependency, self blame, withdrawal and unwanted pregnancies and children.

There are also a number of complex socio-cultural factors that can exacerbate the impact of SGBV for survivors, both in conflict and non conflict situations. These include traditional gender norms that

² *Kampala Declaration: Prevent Gender-based Violence in Africa*. Kampala, 2003. Available at: www.raisingvoices.org/women/kampala.php

³ IRIN, "Rape as a tool of war" *Our Bodies - Their Battle Ground: Gender-based Violence in Conflict Zones*. September 2004. Available at: www.irinnews.org/InDepthMain.aspx?InDepthId=20&ReportId=62817

⁴ *ibid*

⁵ *ibid*

⁶ ICRW (2009) *Intimate Partner Violence: high cost to Households and Communities*. Washington DC. International Centre for Research on Women. Available at: www.icrw.org/publications/intimate-partner-violence-high-cost-households-and-communities

⁷ Population Council, *Sexual Gender Based Violence in Africa: Literature Review*. Nairobi; Population Council, 2008

support male superiority and entitlement, social norms that tolerate violence against women, weak community sanctions against perpetrators, poverty and high levels of crime and conflict in society⁸.

According to Professor Makua⁹, the above picture is effectively painted by Dr Tamale when she states that “in virtually all societies around the world- even in the liberal industrial democracies in the west - women still labour under an avalanche of disadvantages. The patriarchy, a system of social ordering that has historically placed the male as a superior of the female, is the conception justification for the subordination of women to men. Hetero-patriarchy, hetero-normativity and phallo-centrism – or male-centeredness, to be simple – describes a world view in which the male occupies a hallowed place in human civilization. Pseudo-scientific, religious, cultural, moral, and biological attempts to justify this gender hierarchy have held sway over millennia. As a result, discrimination and deprivation has been the lot of the majority of the world’s women.”¹⁰

The consequences of all the above factors is that the survivors, mostly women and children who largely do not have a platform to be heard remain voiceless and have nowhere to turn to and therefore often contemplate suicide, or turn to alcoholism, are resigned to a life of desperation and lack of interest in caring for their children. It is against this background that a form of reparation needs to be considered to address the situation of survivors of SGBV.

In the case of Uganda, following the war in Northern Uganda and the customary practices that perpetuate inequality, women continue to suffer both psychological and physical abuse. A large element of this is sexual abuse which has become habitual as a result of the large-scale use of rape as an instrument for delivering a psychological blow during armed conflict. This makes SGBV have far reaching implications for the women and the communities in which they live.

According to Maguire

“Women and girls are singled out because the harm and humiliation inflicted not only hurts them, but also deeply harms and affects the men in the targeted community... Such sexual violation of women erodes the fabric of a community in a way that few weapons can... This kind of systematic rape is an effort to humiliate the targeted community”¹¹

This has far reaching implications not only for the survivors but also for their immediate relations and the community at large for which they merit redress.

“... the most common misunderstanding of reparations is that of paying victims money for the harm they suffered but Human rights violations are not the same as accidents or even ordinary crimes... there obviously can never be enough money to compensate for the trauma or torture, or the horror of rape, nor can money bring back a deceased spouse or child or substitute for the absence of a disappeared relative...”¹²

Action principles to guide remedial or preventive actions

There is no specific policy guiding operations on SGBV stakeholders, nor are there any documented and mutually agreed upon principles. Consultations however highlighted the following as the overriding principles and guidelines governing the work of all actors dealing with issues of protection, support and restitution in SGBV survivors:

- Promotion of human rights and improvement of livelihoods
- Confidentiality;
- Security of person and self;
- Non discrimination;
- Respect of the views of survivors; and
- Provision of relevant information to survivors
- Continuous research, documentation and dissemination
- Coordination and partnerships

⁸ *op cit*, pg 9

⁹ Makau wa Mutua: Unfinished Business: Transitional Justice and Women’s Rights in Africa. Occasional Paper No.1 2008, pg 18. Available at: acordinternational.org/silo/files/unfinished-business-transitional-justice-and-womens-rights-in-africa.pdf

¹⁰ Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (1999) Westview Press, Boulder, USA

¹¹ IRIN, *op cit*

¹² Dr. Comfort Ero, International Centre for Transitional Justice. Quoted in *Smash the Glass: Redefining Approaches to Ending Impunity for Sexual and Gender Based Violence*. Nairobi; ACORD 2009. Available at: acordinternational.org/silo/files/smash-the-glass-redefining-approaches-to-ending-impunity-for-sexual-and-gender-based-violence.pdf

Legal context in Uganda

In Uganda, formal and informal justice systems interact, a situation of legal pluralism. In the plural law situation two or more cultures meet and a conflict of principle is only too common. For this simple reason, alone it is perhaps quite important to understand the legal cultures of communities in order to establish their admissibility in relation to the national laws as well as in situations specific to the groups that practice it.

According to Nyamu¹³,

“...there seems to be an assumption that conceptually, there can be a clear divide between formal law and custom or that, in issues of gender inequality, it is possible to clearly identify one side of the formal law/custom divide as the oppressor, and the other as a liberator. Formal law and custom intersect in rather overt ways. ... The state is actively involved in shaping custom and the two ostensibly separate systems reinforce each other”.

This is the context in which the need for legal pluralism ought to be considered in dealing with SGBV issues.

During the consultations, the LC V councilor for Wol Sub-county in Pader District stated that

“People prefer to report SGBV case to the traditional leaders because they are more likely to take immediate action on the perpetrators who are their subjects as a way of ensuring social order and harmony in the community. They should therefore be empowered receive cases of this nature as it is their responsibility to restore order among their subjects”.

Thus, according to Moore¹⁴ there is need to take into account both the formal and informal paradigms of justice.

SGBV in the formal justice system

Outline

Currently in Uganda the legal framework which attempts to address sexual and gender based violence is contained in several different pieces of legislation including the:

- Constitution of the Republic of Uganda
- Succession Act
- Children’s Act
- Marriage Act
- Divorce Act,
- Domestic Violence Act (passed 11 November 2009 to help strengthen legal interventions for survivors of domestic violence),
- Trafficking in Persons’ Act 2008,
- Penal Code Act (provisions on defilement¹⁵ and rape, aggravated rape and aggravated defilement in circumstances where the perpetrator is infected with HIV),
- Female Genital Mutilation Act,
- Employment Act No. 6 of 2006,
- Land Act (provisions protecting women and children’s rights on land, consent for sale/mortgage of land where family derives sustenance),
- Trial on Indictment Act,
- Evidence Act,

¹³ Nyamu, C.I., (1999) *Achieving Gender Equality in a Plural Legal Context: Custom and Women’s Access to and control on Land in Kenya*. pg 26

¹⁴ Moore S.F “Certainties undone: Fifty turbulent years of legal anthropology, 1949-1999” in Moore Sally Falk (ed) *Law and Anthropology* (2005) pgs 361-362.

¹⁵ ‘Defilement’ refers to sexual abuse of children.

- Magistrate Courts Act and
- International Criminal Court Act.

The Penal Code Act has the clearest provisions as far as compensation and reparation for sexual and gender based violence is concerned. The Act provides for compensation and reparations in section 129B. It leaves it to the discretion of the court to determine the actual amount of compensation to award, taking into consideration the extent of the harm to the survivor, the degree of force used by the offender and medical and other expenses incurred by the survivor as a result of the offence.

There are also legislative proposals/bills that if passed into laws will have a significant impact on the fight against SGBV. These include the:

- Marriage and Divorce bill,
- Administration of Muslim Personal bill,
- Sexual Offences bill and
- HIV and AIDS Prevention and Control bill

all of which have aspects of protection, prevention and compensation.

Shortcomings

Respect for, and implementation of, existing laws is a big challenge at most levels. The administration of formal justice takes place at various levels, with several actors being involved including the police, prosecutors and medical doctors who collect scientific evidence in cases of assault and sexual violence and the courts who are in charge of administration of the law. The shortcomings of these actors in dealing with SGBV reflect the challenges facing the formal justice system in Uganda. These shortcomings are summarised here and comprehensive information can be found in ACORD's *Judicial audit of Uganda*¹⁶ which is a sister report to the current study.

If a survivor has the courage to overcome the stigmatisation around sexual violence and is prepared to report the crime, the problems begin immediately. The police are the first point of contact and are responsible for the investigation of cases and arrest of perpetrators. However the survivor may have to travel long distances to reach a police station. This is worse in Northern Uganda where the population is being told to return to the villages but there is no police infrastructure.

The police posts that exist lack equipment and facilities, and staff are poorly trained. Police officers often do not have the legal knowledge of the SGBV legal framework to carry out appropriate investigations nor the skills and attitude to support traumatized survivor. Few police posts have transport facilities and in many areas the police always ask survivors and their families for transport money to enable them go to the scene of the crime, to transport suspects and to apprehend the perpetrator.

The evidence in a case often comes down to that recorded by the police on a form known as a Police Form 3 (PF3). This is a general purpose form for recording any medical evidence, and is not well suited to SGBV cases. Few police stations have the forms available and survivors are often charged for the forms although they should be available free of charge. The form requires the signature of a government medical doctor or police surgeon but they are thin on the ground. Doctors often reluctant to fill out the forms because they will then be required to testify in court as principle witnesses, which they find to be time consuming. Frequently doctors will also ask for money for signing. Due to lack of facilities regionally, physical evidence often has to be sent to the central laboratory in Kampala, where there is a backlog with evidence often taking up to a year to be processed.

As a result of this, the reports passed from the police to the Director of Public Prosecutions (DPP) office are often inadequate. However state attorneys and prosecutors also lack the resources to carry out further investigations and many cases are dropped due to insufficient evidence.

If the case comes to court, it may be heard in the Local Council Courts, the Magistrate Courts or the High Court. The lower courts are plagued with allegations of corruption. In the High Court there are long delays because of the small number of High Court judges. It is also expensive for the survivors

¹⁶ ACORD Study Report, *Judicial Audit of Uganda*. Kampala: ACORD, , March 2010 at page 18.

to attend court. The government has established the approach of having High Court Division circuits to try and speed things up, but these are expensive to implement and have not widely been put in place. Suspects who have not been brought to court within the constitutional time period of 360 days are released.

In court, witness testimony and cross-examination takes place in open court, an experience that many survivors find harrowing. Due to stigma around SGBV, many survivors also fear the publicity that comes with the court case. Judges may be out of touch with legal developments relating to SGBV. Sentencing is variable and tends toward the lower end of the penalties available.

Throughout this process there is no protection against reprisals available to survivors. The Domestic Violence Act, passed in 2009, will provide for some level of protection, but has not yet been implemented.

SGBV in the informal 'traditional' justice system

Outline

There is no single formula for dealing with a past marked by large-scale human rights abuse, and that is why some countries in Africa like Sierra Leone and Uganda are choosing to use traditional justice measures where communities may wish to use traditional rituals to foster reconciliation of warring parties or to reintegrate ex-combatants.

The advocates of the use of this system argue that:

"they overcome the principle obstacles that deny many people access to formal justice systems...they are quick, accessible use the local language, follow procedures that are understood by all and are enforced by people who are socially important to litigants. In addition they avoid cost to individuals and governments that come with formal state systems"¹⁷.

According to a Councillor in Wol Sub-county- Pader District:

"In most cases people report cases to the clan leaders rather than the formal authorities as first instance because they have sanctions that can be used to deal with such issues".

The list of associated benefits can go on and on with the intended result being restoration of peace by reconciling the parties to the dispute and the wider community.

One of the aims of this study was to establish the extent to which traditional justice is being used to deal with SGBV, how they deal with this, as well as the implications of the use of traditional mechanism of conflict resolution for dealing with SGBV and how it impacts on the protection and restitution for SGBV survivors in Uganda.

It will suffice to note from the onset that traditional justice systems can be complex as they are closely linked to historical, social and cultural realities of the relevant communities. Understanding them entails an appreciation of the total reality of the community, requiring substantial engagement in time and space. In Uganda today, even though most communities do not explicitly state rules for customs, traditions, norms and other social values, implicitly they are still used to ensure compliance and conformity. Informal systems for dispute resolution are found in all communities in Uganda and are accessible to all unlike the formal system. Concrete support for informal justice systems and experience of engaging them in mainstream practices remain relatively limited.

Shortcomings

There is no positive evidence of the use of traditional justice in dealing with SGBV cases in all communities visited. In an interview, the Director of AICM in Kabale District, stated that:

"the traditional methods are not seen, but even where they may be in use, they are not effective due to the gender imbalances".

¹⁷ ACORD, *Pursuing Justice for Sexual and Gender based violence in Kenya. Summary of reparations options*. Nairobi, ACORD 2010, pg 32. Available at: www.acordinternational.org/silo/files/pursuing-justice-for-sexual-and-gender-based-violence-in-kenya.pdf

A number of other shortcomings have been expressed regarding the unsuitability of traditional justice models to deal with the complex charges relating to war crimes and crimes against humanity, more specifically SGBV. In an effort to explore the use of traditional justice in resolving war crimes, the Transitional Justice Working Group (TJWG) of the Justice Law and Order Sector (JLOS) in Uganda in its preliminary working document noted with concern that:

“The extent of the crime and damage is beyond anything for which these mechanisms were created, or previously used”.¹⁸

There is also a concern that some of these mechanisms are being politicized. Thus the ability to settle community matters is compromised. According to the Community Development Facilitator for World Vision, Rukiga Area in Kabale District:

“the sexual gender based abuses are rampant in the area because the traditional structures in place are weak and easily corrupted”.

Women are greatly affected by the conflict, yet have little voice in the contemporary use of traditional practices. The concept of the inclusiveness and the role of women in traditional justice is very limited. For instance, traditional dispute resolution forums are chaired by men. This is because of the patriarchal worldview of justice¹⁹. Frequently cases relating to women are deliberated upon with very little of their participation. Among the Mijikenda in Kenya for instance, the women are not allowed to sit in the court. This means reporting SGBV to elders is heavily hindered given that there could be information that survivors might only be free to share with female elders²⁰. This is because of the traditional beliefs about and practices relating to women.

During a survivor focus group discussion in Ongako Sub-county in Gulu District, respondents observed the following:

“Because of customary and religious beliefs, women are afraid to report cases of SGBV by their husbands”;

“Many fear to report rape because they believe they are fulfilling their conjugal obligations”;

“Survivors do not always report cases for fear of stigmatisation or shame. A woman who has been abused will find it very difficult to present herself in public in her soiled clothes or to be ostracised by the community, while men who suffer domestic violence are usually too ashamed to report a case so their problems go unattended”.

This practice has a tendency of leaving the survivor's needs unattended to. They remain traumatized, untreated, disempowered, humiliated and unable to come to terms with this reality.

There is also a concern that some of these mechanisms are being politicized and commercialized. Thus their ability to settle community matters is compromised. According to the Community Development facilitator of World Vision Rukiga Area in Kabale district,

“Instead it is used to satisfy the financial needs of the parents, guardians and care takers at the expense of the victims. The issues are handled at a family level because the parents are interested in getting income from the offense. In some cases they even hide the case from the authorities and handle the matter secretly”.

Essentially the outcome of the hearing does not confer the benefits to the survivors but rather to the clan as a whole, to the parents or care takers.

¹⁸ Unpublished

¹⁹ ACORD 2010, *loc cit*

²⁰ *ibid*

What is Transitional justice?

Transitional Justice (TJ) is justice adapted to societies transforming themselves after a period of pervasive human rights abuse. Transitional justice approaches are currently being introduced for dealing with a number of crimes, one of which is SGBV, as policy makers and statesmen now increasingly realize that a human rights state that internalizes human rights norms cannot be created unless the political society concretely addresses the grievances of the past. There is no future without a past, and the future is largely a result of the past. Unless we construct a future based on the lessons of the past, we are bound to repeat our mistakes and retard the development of our society.²¹

Transitional justice mechanisms can be effected in different ways, including:

- i) Prosecution of alleged perpetrators before national courts, hybrid tribunals like the international criminal Tribunal for Rwanda, Yugoslavia, the Special Court for Sierra Leone or the international Criminal Court (ICC);
- ii) Truth commissions or other truth seeking initiatives, including recording of survivor testimony, and historical research;
- iii) Actual or symbolic reparation to survivors and survivors which may include restitution, compensation and rehabilitation;
- iv) Commemoration of survivors and survivors through ceremonies or the construction of memorials or museums at appropriate sites;
- v) Reconciliation initiatives including healing ceremonies for survivors and individual acts of acknowledgment, apology, symbolic payment or community service by perpetrators; and
- vi) Institutional reform aimed at building fair, effective and transparent public institutions to safeguard against further abuse (the judiciary, the police, the army and other relevant institutions).

Experiences of transitional justice in other countries

Sierra Leone

Sierra Leone established a truth and reconciliation commission which was aimed at finding a settlement to the war in Sierra Leone with the desire to achieve lasting peace, national unity and reconciliation. The report of the commission contained recommendations to address impunity, respond to the needs of the survivors, promote healing and reconciliation and prevent repetition of the violations and abuses suffered. The commission lacked an enforcement mandate, there was little government ownership of the process, competing claims for limited resources and weak capacity on human rights and SGBV issues. The commission did not provide reparations for survivors.

The Special Court of Sierra Leone was set up to try persons bearing the greatest responsibility for crimes committed during the war therefore there was a limit to the number of people that it would try. The Statute of the Special Court does not make provision for reparations, this was left to the national courts which raised the concern of the weaknesses of the national courts in dealing with reparations.

The Lome Agreement gave blanket amnesty to members of the armed forces and former combatants including those that were in exile for reasons related to the conflict thereby effectively denying survivors of SGBV the chance to get reparations.

²¹ Makau Mutua, "Transitional Justice in Sexual and Gender Based Violence". *Pambazuka News, Pan-African Voices For Freedom and Justice*. 2008 – 07-13, Issue 388. Available at: www.pambazuka.org/en/category/features/49424

Morocco

The Moroccan Equity and Reconciliation Commission was the world's first truth Commission with the power to give reparations directly. It was established in 2004 to investigate instances of enforced disappearance and arbitrary detention between 1956 and 1999, issue reparations to survivors, provide recommendations on other measures for survivors and establish a good historical record of abuses. Most women who appeared before the commission were not survivors of direct violence, but were affected nonetheless by the repressive regime of King Hassan II and in desperate need of social and economic benefits. Previous reparation benefits were based on traditional laws of inheritance that prioritise eldest sons over wives, usually leaving widows destitute and or reliant on male relatives for survival. In an effort to not replicate these gender hierarchies, the Equity and Reconciliation Commission proposed that a more equitable share of reparations be given to spouses of those who had died or disappeared. To avoid unilaterally defining the violations committed against women involved in the transitional justice process, the commission tried to be aware of the unique differences in their experiences and backgrounds when creating reparations recommendations. The commission influenced changes in awards of reparations to women, shifting the criteria away from inheritance law to criteria based on their equality as human beings and on the nature and degree of the wrongs they had suffered.²²

The communal reparations programme, which includes women from regions that suffered from collective punishment or isolation due to the presence of former secret detention centres, represents one of the most advanced experiences in the field of collective reparations. It acknowledged past abuses and preserved the memory by converting former detention compounds into social, cultural and economic centres and memorials. In light of prevailing inequalities in Morocco, an impressive 163 of the 319 commission executives were women, accounting for over half the administrative staff.

East Timor

Timor – Leste's Commission for Reception, Truth and Reconciliation (CAVR) was established by the United Nations in 2002 to investigate human rights violations between April 1974 and October 1999. It was set up to investigate the causes of the violations; to address issues related to accountability; to recommend reforms and prosecutions; to promote reconciliation and human rights; and to assist in restoring the dignity of survivors. The CAVR was active in its involvement of women at the national and district levels and also established a special research team on women's issues as well as national public hearing on women. As a result, gender was identified by CAVR as one of the four guiding principles for a reparations programme.

The commission's recommendations for reparations included offering single mothers, including survivors of sexual violence and war widows a scholarship for the school aged children until they reach eighteen years of age; providing single mothers with access to other services such as counseling, peer support; livelihood skills training and access to micro-credit for livelihood activities; and the provision of support to severely affected communities through activities like healing workshops.

The commission also made significant advancements towards gender justice which included:

- i) reparations for single mothers was interpreted to include all mothers who were not legally married, whose partner was killed or disappeared, or who were survivors of sexual violence and bore children out of the rape;
- vii) the Commission broadly defined survivors of sexual violence to include boys and men who were subjected to sexual slavery, forced marriage or other forms of sexual violence;
- viii) recognizing the plight of children during the conflict in turn assisted women as the primary caregivers;

²² ACORD, *Smash the Glass: Redefining Approaches to Ending Impunity for Sexual and Gender Based Violence*. Nairobi; ACORD 2009 p11. Available at: acordinternational.org/silo/files/smash-the-glass-redefining-approaches-to-ending-impunity-for-sexual-and-gender-based-violence.pdf

- ix) recommendations included a stipulation that at least 50 percent of the programme's beneficiaries should be women;
- x) in those communities where reparations were applied for as a collective, gender balance among beneficiaries was specified as criteria for eligibility; and
- xi) it recommended a public education programme as part of collective reparations in order to address issues of stigmatization, particularly for survivors of sexual violence.

In the CAVR's final reports released in 2005 and 2008, the Commission made various recommendations to the Government of Timor-Leste, to Timorese civil society and to the governments of other countries. The Parliament of Timor is currently considering a law to establish a follow up body to CAVR, which will be called the Public Memorial Institute and a law to establish a national reparations programme. The two laws will allow the recommendations to be implemented. The two laws were drafted in early 2010 and the drafts released for public comment in June 2010.

Democratic Republic of Congo (DRC)

The DRC ratified the Rome Statute of the International Criminal Court (ICC) on 11th April 2002. Since then (because the DRC is a monist legal system), crimes against humanity and other crimes covered under the Rome Statute have been domestic crimes in the DRC, but the necessary specific legal reforms to give teeth to the change have been, lacking and the government bill adapting the Rome Statute to Congolese law is still pending.²³ As far as transitional justice goes, the present Congolese court system is not, and will not in the near future, be able to deal with the massive incidence of serious crimes in the country and yet it is clear that impunity for serious crimes in the DRC needs to be addressed.

The ICC has undertaken investigation of some incidences in the DRC, but the Courts' focus is on a few of the most responsible perpetrators and as such it cannot by itself satisfy the call for justice. Additionally, the purposes of the fight against SGBV, the first two indictments did not include sexual offences, eliciting calls for inclusion of such offences in future. The most recent case against Germain Katanga and Mathieu Ngudjolo Chui, however, does include counts of sexual violence (sexual enslavement).

A group of NGOs, collaborating since 2004 under the name of the Congolese Coalition for Transitional Justice (CCTJ), has advocated transitional justice measures. The creation of an independent, credible and competent truth and reconciliation commission has been on the groups' agenda since its inception. In the meantime, there are on-going investigations of serious human rights abuses and atrocities, undertaken almost exclusively on the initiative of international agencies and local NGOs.

There is currently also underway a transitional justice initiative, the 'DRC Mapping Exercise' of serious human rights and humanitarian law violations which is being carried out by the Office of the High Commissioner for Human Rights in collaboration with the United Nations Development Programme. The objectives are to map serious violations committed between 1993 and 2003 with the aim of gathering basic information and assessing the capacity of the Congolese judicial system to deal with these matters, to prepare a report outlining the options for actions to be undertaken by national authorities with the assistance of the international community, with a special focus on the role of appropriate transitional justice mechanisms.

²³ This when passed into law will align with the Rome Statute the domestic codes covering penal law, judicial competence, criminal procedure and military justice.

What are reparations?

Reparation refers to the obligation of the wrongdoing party to redress the damage caused to the injured party. Under international law, reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.²⁴

Reparations impacts on both the individual survivor and the wider societies and communities affected by refocusing on the restorative and the retributive, in mass atrocities, reparations plays a big role in rebuilding war torn societies by advancing truth and acknowledging the depth of the crimes committed.

Using REDRESS's definitions, reparations can be broken down into restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.²⁵

Restitution

While it is recognised that it is generally not possible to restore survivors precisely to their original situation before the violation occurred, restitution may also include restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

Compensation

is understood to cover any economically assessable damage resulting from the crime, including:

- physical or mental harm, including pain, suffering and emotional distress,
- lost opportunities, including education;
- material damages and loss of earnings, including loss of earning potential;
- harm to reputation or dignity; and
- costs required for legal expert assistance, medicines and medical services and psychological and social services.

Compensation may be financial or in kind, for instance in provision of agricultural equipment and inputs to help rebuild livelihoods.

Rehabilitation

is said to include medical and psychological care as well as legal and social services.

Satisfaction and guarantees of non-repetition

includes such individual and collective elements as:

- revelation of the truth,
- public acknowledgment of the facts and acceptance of responsibility, including recognition by the state of any harm it has done
- search for the disappeared and identification of remains,
- the restoration of the dignity of survivors through commemoration and other means,
- activities aimed at remembrance and education and at preventing the recurrence of similar activities,
- reform of public sector institutions

Reparations can take various forms. They can follow civil or criminal legal action in the formal justice system, or may be part of the 'traditional' justice system. Alternatively they may form part of a particular institution or process established specifically to provide transitional justice, such as a truth commission.

²⁴ Article 1 of the draft Articles on State Responsibility adopted by the International Law Commission in 2001: Every internationally wrongful act of a state entails the international responsibility of the state. (UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001.

²⁵ REDRESS, *What is Reparation?* <http://redress.org/smartweb/what-is-reparation>. The outline here is also supplemented with reference to Vanderginste (2009)

Reparations can also be either individual or collective. Collective measures are usually the only adequate option in transitional justice situations. As Vanderginste (2003, p158) notes:

"..individual reparation to all victims after mass victimization will be neither sufficient (because of the structural damage) nor possible (because of the number of people who were victimized).. In order to be effective, the threshold for collective reparation measures will necessarily be low, which in itself will make them more attractive. Thus collective measures have the advantage of reaching a larger number of survivors. There is also less risk of an artificial and arbitrary limitation on the range of beneficiaries. Furthermore, they seem better suited to offer a remedy for a past which has, in actual fact or in people's perceptions, collectively victimized certain groups, beyond the violations suffered by individual members of the group."

Contextualizing the reparations debate

Reparation is a principle of law that has existed for centuries and it refers to the obligation of the wrong doing party to redress the damage caused to the injured party. In broad terms, reparations are payments or other compensation offered as an indemnity for loss or damage. They are a fundamental and uncontroversial part of most domestic legal systems for crimes such as libel or negligence. As already noted, under international law²⁶, reparations must as far as possible wipe out all the consequences of the illegal act and re-establish the situation which would in all possibility, have existed if that act had not been committed.

Reparations have a unique role within approaches to providing justice in post-conflict situations. During a period of transition, reparations:

- i) contribute to justice
- ii) show a country's seriousness in upholding rule of law and protecting its citizens;
- iii) promote reconciliation which breaks the cycle of violence and encourages peaceful coexistence;
- iv) promote acknowledgement and repair for the suffering of survivors by recognizing the wrongs done and making good the damage;
- v) give survivors a role in the transitional justice process and act as a bridge between the past and the future.

Several countries have established legislation and policies on reparations for war crimes. Germany for instance created a system of compensation for Nazi genocide and crimes against humanity. This was as a result of demands, from those who had escaped from countries occupied by Germany, for compensation for property and monies taken from them. These demands included a collective claim for reparations to the Jewish people for property whose owners were unknown or dead, for institutions and communities that has been destroyed or had vanished, and for damage done to the very fabric of Jewish people's existence. To deal with these scenarios, successive German compensation laws and agreements were enacted and concluded between 1948 and 1965, including a treaty between the Federal Republic of Germany and Israel. The preamble to the 1952 agreement noted that unspeakable criminal acts were perpetuated against the Jewish people and that Germany agreed within the limits of their capacity to make good the material damage caused by the acts. Between 1959 and 1964 Germany concluded treaties with thirteen European states providing for the payment of money for injury to life, health and liberty of their nationals. Other examples of reparations have been dealt with above under transitional justice.

Some forms of reparation may find a legal basis in domestic law or in international human rights law, while other forms are a matter of government policies and priorities. The right to compensation for survivors of torture is an individual subjective right in Uganda's domestic legal system and is justiciable in criminal, civil, administrative or other proceedings. In addition, after the domestic remedies have been exhausted, international complaints procedures may be available such as the

²⁶ Draft basic principles and guidelines on the Right to a remedy and reparation for Victims of Violations of International Human Rights and Humanitarian Law (4) (Draft principles on reparations).

African Court of Human and People's Rights which can order a state to pay compensation in cases where the court finds that a violation has occurred.

It should be imperative for post-conflict reparation processes to include crimes of sexual violence and the needs of survivors as a key point of focus. Unfortunately this has rarely been the case and very few reparations programmes have taken the needs of SGBV survivors into consideration. This failure affects the participation of women survivors in the programmes. It also runs the risk of reinforcing inequality within societies, even though reparations are often viewed as a way to help restore survivors to being equal rights holders.

The role of reparations in transitional justice

Reparations constitute a critical dimension of transitional justice, the one that focuses most specifically on the recognition of survivors' rights and the harms they suffer²⁷. Reparation is considered as one of the primary tools for rebuilding national trust and encouraging reconciliation²⁸. Over the years however much less systematic attention has been paid to survivors of human rights violations by way of reparations.

According to Pablo de Greiff, reparations programs may occupy a special place in a transition out of conflict or towards democracy. For some survivors reparations are the most tangible manifestation of the efforts of the state to remedy the harms they have suffered. Criminal justice— even if it were completely successful both in terms of the number of perpetrators accused (far from being the case in any transition) and in terms of results (which are always affected by the availability of evidence, and by the persistent weaknesses of judicial systems, among other factors)—is, in the end, a struggle against perpetrators rather than an effort on behalf of survivors²⁹. This is a clear indication that transitional justice can play a significant role in reparations.

Experience of limitations regarding SGBV

There are numerous dilemmas of administering justice for SGBV survivors that have emerged in transitional justice initiatives. In the DRC³⁰, this includes how to protect the witnesses as well as issues of relocation. In Sierra Leone on the other hand, there has been a tendency to silence SGBV stories for the benefit of the integrity of proceedings. In essence therefore SGBV crime are not being made central to perpetrators charges. As a result, transitional justice approaches often neglect women's experience of political violence and the physical injuries women suffer.

Transitional justice tends to focus on economic and social integration in responses to massive human rights violations, but generally fails to address the psychological or medical needs of survivors of sexual abuse. This was the case in Rwanda, Sierra Leone and the DRC.

In Sierra Leone, the way that conflict and harm were interpreted led to several examples of where gender has been simply overlooked. There was a failure to connect the harm caused to women during conflict (namely killings, disappearances, torture, bodily injury, sexual violence, forced recruitment and displacement) with the harm women may experience in the aftermath of conflict. These may include long term bodily harm and health consequences, including curtailment of reproductive freedom, loss of land, enhanced burden of care and economic hardship and vulnerability. The result was that reparations policies and design did not adequately address the longer term vulnerabilities.³¹

Even when SGBV has been recognised within the reparations process, there has often tended to be a focus on sexual crimes instead of a broader understanding of the harm caused by SGBV. This has limited the impact of reparations in that it does not address the secondary impact of SGBV like dependants or secondary survivors.

The institutions of the transitional justice process itself have often reflected the prevailing gender discrimination in societies. In Morocco, the Truth Commission created three working groups on investigations, reparations and research, but there were no women appointed to two of the three working groups. This potentially reduced the working groups' attention to gender issues when contemplating reparations.

In some transitional justice processes that made use of truth commissions, as in South Africa and Sierra Leone, only cases identified by the commission as human rights violations were eligible for reparations. This created a barrier that affected SGBV survivors and others, and severely hampered the scope of reparations.

²⁷ ICTJ, *Reparations: resources*. Available at: <http://www.ictj.org/en/tj/782.html> 22/09/2010

²⁸ Suma. M and Corres. C. Report and Proposals for the Implementation of Reparations in Sierra Leone. December 2007. Available at www.ictj.org/static/Africa/SierraLeone/ICTJ_SL_ReparationsRpt_Dec2009.pdf 22/09/2010.

²⁹ Repairing the past: Compensation for victims of human rights violations. Available at www.ictj.org/static/TJApproaches/Reparations/060515_DeGreiff_Intro.pdf. 22/09/2010

³⁰ Justice, Impunity and Sexual Violence in Eastern democratic republic of Congo. November 2008

³¹ Pan African Conference Report, Kampala, October 2009 at10.

Box 2: Placing reparations in the formal justice system

The question of whether to place reparations processes within the formal justice system or elsewhere is much debated. This extract from Vandeginste³² outlines the issues.

Limitations

1. A judicial approach presupposes the existence of a properly functioning system of justice. However, in post-conflict societies the justice system itself may have been a victim of past oppression. Neither the legislation, the personnel nor the infrastructure are likely to be adequate.
2. Criminal justice systems are not designed to deal with large numbers of violations or of perpetrators, or to accommodate such subtleties as the differences between direct and indirect victims. Rendering justice and providing reparation to victims within a reasonable period of time is therefore likely to be beyond the capacity of any system.
3. A judicial approach will in most cases be designed to deal with individual guilt or civil responsibility and individual harm and redress. In a transitional context, the issue of responsibility (of the leaders, the "ordinary" perpetrators or the beneficiaries of past offences) is likely to be much more complex than it is in normal situations and requires a broader approach. Also, the total amount of reparation needed is likely to add up to more than the sum of individual needs. A judicial approach is unlikely to be able to respond fully to needs which have a strong collective dimension.
4. In a judicial approach, procedural guarantees and conditions of legitimacy should be carefully taken into consideration in order not to impose (criminal) sanctions and reparative payments on suspected perpetrators and/or beneficiaries in an unsubstantiated or arbitrary manner. In a judicial process the human rights of suspected perpetrators must be respected. This contrasts with an administrative procedure before a compensation commission, where obtaining reparation is not linked to establishing the guilt or civil responsibility of an individual.
5. As a result of these guarantees, the standards of evidence required under a judicial procedure may be too high for the victim. He may be able to provide sufficient evidence that he has suffered damage as a result of the abuse, but it may be much more difficult to prove "beyond all reasonable doubt" the responsibility of an individual. A non-judicial body can give the "benefit of the doubt" to claimants in awarding reparation, which is not possible in a judicial procedure.
6. Asking beneficiaries (see chapter 5) - offenders who, legally speaking, are not responsible for the violations - to contribute to reparation is normally impossible through a judicial approach. Only when beneficiaries can be shown to be directly or indirectly complicit does this become a potential avenue. It may be easier to involve beneficiaries through a non-judicial mechanism, thus giving them the opportunity to acknowledge the benefit they have enjoyed from past oppression or abuse, to express solidarity with the victims and to contribute to reparation schemes. This may be an important factor in a wider effort to promote reconciliation and unity.
7. Judicial proceedings against suspected perpetrators may in practice not be an option, for example, because of amnesty legislation, temporary immunities granted within the framework of a peace agreement or statutes of limitation. Although such legislation may, if contested, be found to be contrary to international law (as it certainly is in the case of international crimes), in practice the safest strategy for victims and their representatives may be to advocate the use of non-judicial mechanisms.
8. Irrespective of the particular domestic legislation, access to a judicial process may not be more than a theoretical option for the poorest victims: they will often lack the information, legal assistance or financial means needed to initiate civil claims against perpetrators, to travel to a court or to participate as civil claimants in criminal proceedings. This is all the more likely in countries where international or national support groups have limited capacity. A relevant question in this context relates to the admissibility of class actions under the relevant national legislation.

³² Stef Vandeginste, "Reparation" in Bloomfield, Barnes and Huysse (eds) *Reconciliation after violent conflict*. Stockholm: International Institute for Democracy and Electoral Assistance (International IDEA), 2003, pp145-162. Available at: www.idea.int/publications/reconciliation/

Merits

Despite these limitations, judicial approaches set important precedents, both at a symbolic and at a practical level.

1. A judicial decision sends a very strong signal that a certain practice will not be tolerated and that victims of that practice are entitled to redress. This in itself may provide victims with a certain degree of satisfaction, despite the fact that criminal trials are usually more focused on perpetrators than on victims. The judicial decision also confirms the validity and the binding nature of the norms that were violated.
2. At a practical level, a successful legal claim may be the most convincing argument for a government to acknowledge the suffering of victims and to adopt reparation legislation and establish other, non-judicial reparation mechanisms. For instance, the decision by the Japanese Government to seriously consider the issue of reparation for around 20,000 so-called comfort women, abused as sex slaves during World War II, was prompted by the legal action undertaken by one individual victim. It should be noted that, in cases where domestic legal action is not an option, proceedings before an international human rights body or before national judiciaries in other states may have a similar effect.
3. Even if non-judicial mechanisms are created, the judicial enforcement of the right to reparation should preferably remain an option for those victims who are not satisfied with the non-judicial approach. Reparation should indeed remain an individual, justiciable right, whatever supplementary reparation policies are developed.

Reparations in Uganda

Transitional justice in the Ugandan context

Uganda is still in the process of establishing what transitional justice mechanisms are best suited to the needs of the survivors of the LRA conflict. As a member state to the ICC Statute, Ugandan survivors can benefit from the Rome Statute. Article 75 provides that the Court shall establish principles relating to reparations to, or in respect of survivors, including restitution, compensation and rehabilitation. On this basis, in its decisions the court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, survivors and will state the principle on which it is acting.

The ICC has established a Trust Fund for Victims which is currently involved with helping survivors of the LRA conflict in Uganda. The Fund recognises that during the two decades of conflict in northern Uganda, gender related crimes were pervasive both in the villages and IDP camps and that during the return process, the phenomenon is still very common in the communities, and the survivors themselves perceive it as "normal". In Oyam and Pader districts, the Trust Fund for Victims is supporting, with other donors, projects to fight SGBV which consists in offering a proper response to the survivors in the form of:

- i) psychosocial support and facilitation in the provision of different services needed such as medical and free legal assistance;
- ii) prevention of SGBV through sensitization and raising awareness through activities in the villages, training to community leaders and activities with the youth;
- iii) protection, counselling and shelter for about 500 survivors of SGBV a community centres;
- iv) ambulance for survivors in need of emergency care and are unable to reach the centres on their own;
- v) education, counselling and protection for about 320 girls at risk of sexual violence; and
- vi) sensitization and education for about 7,000 community members and leaders to inform them about sexual violence and the rights of survivors.³³

The ICC Statute also contains the most detailed codification of rape, sexual slavery, prostitution, enforced sterilization or any other form of sexual violence of comparable gravity as crimes against humanity.³⁴

Following a referral of the LRA situation to the ICC, the LRA leaders were indicted by the court for war crimes and crimes against humanity in northern Uganda. The indictments were for Joseph Kony, their leader, Vincent Otti, Okot Odhiambo and Dominic Ongwen while the court withdrew the indictment on Raska Lukwiya after confirming that he died in battle.

By criminalizing sexual violence, the ICC Statute embodies the principles of the various UN conventions and declarations on violence against women, while providing measures to improve investigations and protection of female witnesses and reparation to survivors. It is however only through the successful prosecution of cases that the ICC will fulfil its promise of delivering justice to survivors.

Community views on reparations to survivors of sexual and gender based violence

During the study, respondents indicated what they perceived as reparations to include income generating activities like provision of oxen to plough, tailoring, poultry and piggery; educational support for the children especially to complement UPE and nutritional support to children.

³³ Trust Fund for Victims, Assistance to Help Victims Rebuild their Communities. <http://trustfundforvictims.org/projects> 6/29/2010

³⁴ Rome Statute of the International Criminal Court, Article 7 (g).

At a focus group discussion in Wol sub-county in Pader district, the women survivors proposed agricultural support as the most convenient support that would most likely enable them to improve their living standards. According to one of them, Christine Lamunu of Akal Agum parish,

“it would be good to support us with oxen and ox-ploughs for farming. This support would also help us for income generation”

Similarly, Oyela Jema of Mura parish added that such other agricultural support could be in terms of seeds and seedlings especially beans, sesame, groundnuts, and cassava, which grow well in their region.

In Kabale district, the Director of Child Rescue Voluntary Organisation stated that

“in addition to support directed towards dealing with the high levels of poverty among the survivors, psycho-social and medical support aimed at repairing physical damages should be provided”

Currently, survivors of SGBV can pursue compensation through civil suits in the Magistrates’ Court or the High Court.³⁵ Under the criminal law, the Penal Code provides that a person convicted for defilement or rape may be asked to pay compensation in addition to receiving any sentence.³⁶ However, the discretion to determine the amount of compensation is left entirely to the Judge, taking into consideration the extent of the harm suffered by the survivor, the degree of force used by the convict as well as the medical and other expenses incurred by the survivor as a result of the offence.

None of the survivors interviewed during the study have ever received compensation for crimes committed against them. According to ACORD’s Judicial Audit of 2010, none of the survivors interviewed was able to access any form of court awarded compensation or reparation. The provisions in the law for both civil and criminal compensation are dependent on the survivor going to court. Having already looked at the challenges faced in getting a case to court, it should be noted that the process of getting compensation is also dependent on the conclusion of a case, which almost always does not happen because of the myriad problems already discussed in this report. Further, most survivors are unfamiliar with the law governing the process of pursuing civil remedies and compensation, most survivors are mostly indigent and as such are unable to afford the high monetary costs that pursuing the legal process entails.

Although there are a few such criminal cases, it proved difficult to access real life cases where courts have ordered for compensation or other form of reparations for SGBV cases.

Recommendations

It is vital that the Ugandan government provides tangible support as reparation to the survivors of sexual and gender-based violence. This is both an issue of justice as well as a strategy to restore them to a situation where they can sustain themselves.

It is also important to sensitize the public about reparations processes as well as ongoing the legal options for pursuing justice for SGBV. To facilitate this, communities need better access to legal aid services. The government should support this, in partnership with civil society and other stakeholders.

Crucial decisions need to be taken on the nature of the reparation and as to whether to offer cash or services to those who suffered or a combination. Vanderginste observes that:

“The South African RRC³⁷ identified a number of disadvantages of a “services package” - a package of access to health, housing, education and other basic services. These included higher administrative and logistical costs, less flexibility to adapt to victims’ changing needs,

³⁵ Section 197 of the Magistrates Courts Act provides inter alia that when an accused person is convicted by a magistrate’s court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable. Provision of section 126 of the Trial on Indictments’ Act is similar.

³⁶ Section 129B, Penal Code Act, Cap 120.

³⁷ Reparation and Rehabilitation Committee of the Truth and Reconciliation Commission.

the potential for tensions within a community as a result of a select group of individuals having preferential access to services, and (less predictably) budget implications. The committee therefore chose to give the recipients some freedom of choice and recommended financial reparations at a level which would enable reasonable access to essential basic services, thus generating the opportunity for people to achieve a dignified standard of living within the particular socioeconomic context.³⁸

Uganda could well benefit from this example and modify it to suit the socio-economic circumstances of the survivors of SGBV in Uganda.

Lessons drawn from other countries reveal the need for procedural shifts to allow greater access to reparations by survivors of SGBV which include:

- i) There should be functional interaction between enforcement of reparation rights and the adoption of reparations policies.³⁹
- ii) Definitions of survivors/survivors' family needs to be open and based on the specific reality of survivors, including extended families and customary marriages.
- iii) In the context of reparations for survivors of SGBV in Uganda, it is important to note the 'no size fits all' approach to reparations. That is, the individual circumstances of each case must be considered and any form of the different types of reparations may be awarded to the same survivor, included both individual and collective reparation.
- iv) Eligibility for reparations must not be limited by any excessively narrow concept of human rights violations that excludes crimes such as sexual violence and other gender based violations.
- v) As a result of the fear that many women have of revealing the extent and details of violations against them for fear of shame and stigmatization, mechanisms put in place should provide a scope for women to testify before women's groups about their experiences of sexual and other forms of violations and any testimony before males, should be done in camera.
- vi) All mechanisms established for reparations should have a system of witness and survivor protection.
- vii) Transitional justice mechanisms should ensure proper representation and participation of women in the design and procedure of reparations initiatives.
- viii) In dealing with SGBV, attention should be paid to other aspects of gender related harm which may also have long term effects which include the likelihood that women will experience direct and indirect harms including the loss of means of support for themselves and their families where male relatives are killed or rendered unable to work.

Lastly, a reminder that reparations are only one part of the response to SGBV. Perpetrators should also be brought to justice, and impunity for SGBV must be challenged.

³⁸ Vanderginste, 2009, p154

³⁹ Vanderginste, 2009, p146

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