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Opinion – Administrative Reparations for Victims of Conflict-Related Sexual Violence in Ukraine

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SYLVAIN KELLER, APR 7 2024

Amid the multitude of crimes committed in Ukraine since 2014, conflict-related sexual violence (CRSV) has emerged as a persisting and significant concern, affecting mainly women and girls aged from 4 years old to 80 years old. A recent OHCHR report notably documented how Russian soldiers raped and committed sexual violence against women, acting with impunity in occupied territories. In several cases, Ukrainian authorities were also accused of acts of sexual violence. Those crimes are taking different forms, ranging from gang rape to coercion to watch an act of sexual violence committed against a family member or a relative. Sexual violence is also used against men and women in detention and qualified by the OHCHR to amount to a “form of torture or ill-treatment”. As it was indicated by the TPIY (Tadic Case), rape is considered as a grave form of torture. Other forms of sexual violence, such as forced nudity can be considered as inhuman or degrading treatment. Considering the prevailing international legislation, acts of CRSV reported in Ukraine since 2014 constitute crimes under international law. UN Security Council Resolution 1820 notably acknowledged in 2018 that rape and other forms of sexual violence are considered as a war crime, aligning with article 8 of the Rome Statute.

An administrative reparations program can be defined as an “out-of-court process used by states to provide reparation to massive numbers of victims of gross violations of IHRL and/or serious violations of IHL”. Such programs are primarily used in armed conflict situations or post conflict situations where judicial alternatives are lacking. They are more advantageous for victims than judicial procedures (which have several constraints including high expenses, the lack of trust in the justice system by victims, cross-examination, necessity to gather evidence). Administrative programs are only a complementary measure and victims benefiting administrative reparation have still the right to receive reparation through local or international courts.

In armed conflict situations, including Ukraine, different factors such as the length of proceedings, cost, high evidentiary threshold, or the fact that only a handful of victims initiate judicial proceedings impede victims to obtain judicial reparations. In Ukraine recently, the scarcity of convictions related to CRSV crimes hinders the ability to use the criminal procedure and individual responsibility to compel perpetrators of sexual violence to compensate victims. Considering the emergency of this situation for several victims, a 2019 OHCHR report focused on Ukraine already indicated that, as an alternative, state authorities should use administrative procedures to provide reparations to victims of this conflict.

A 2023 UNGA resolution (A/RES/ES-11/5) acknowledged the responsibility of the Russian state in this armed conflict, emphasizing the obligation for Russia to establish a mechanism for providing reparations. Nonetheless, at least in 2024, the ongoing aspect of this armed conflict and the reluctance of Russian authorities hinders the use of traditional legal channels for reparations. In light of these circumstances, as an alternative, it is important to consider Ukraine’s responsibility to take proactive steps towards reparative actions. The UNGA’s Guidelines on reparations (non-binding) particularly indicate that “states should endeavor to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”

It is also important to emphasize that under International Human Right Law (IHRL) a state has a permanent

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obligation to provide reparations to victims within their jurisdiction. This obligation is indicated in different treaties ratified by Ukraine. States have an obligation to provide reparations to their citizens, but the Belfast Guidelines also mention the possibility to use “frozen sanctioned assets of those responsible for those crimes” to provide reparations. This is the current consideration for the implementation of reparation programs in Ukraine.

While before Russian invasion in 2021, in the absence of any administrative reparation program Ukrainian victims could only obtain judicial reparations, an alternative mixed approach has been initiated. In 2021, Ukrainian authorities notably set up a “Working Group for the Development and Implementation of International Legal Mechanisms for Compensation for Damages Caused to Ukraine.” Based on the recommendation of the UNGA , an International Claims Commission could now be created (potentially funded by Russian frozen assets) and used to provide reparations to the victims of war in Ukraine. To anticipate the work of this type of organ in the future, an register of damages was initiated by the European Council and Ukrainian authorities and Ukrainian authorities are currently establishing a State Register of Victims. Despite the absence of certitudes, several administrative reparation plans are now expected and authorities need to adapt them to address different types of damages, with a particular focus on the needs of victims of CRSV.

Beyond financial compensation, victims of CRSV hold the right to different forms of reparations. This is why the Ukrainian authorities and the international community need to consider the specific aspect of victims affected by CRSV in Ukraine and act through a holistic approach and a victim-centered program. As an example, in other situations, a trust fund for victims of CRSV was initiated in the Central African Republic to provide medical treatment, psychosocial rehabilitation, education and socio-economic support. Symbolic reparation measures such as a statue or memorials may also be provided to victims of sexual violence (in DRC or Iraq, for example).

According to a recent study by the Global Survivors Fund(GSF), Ukrainian victims of CRSV are asking for different forms of reparation, including medical-psychological care, public awareness, security and financial support. This GSF study also emphasizes that, a significant proportion of Ukrainians victims have little understanding of reparations as a legal concept. In such a way, a victim-centered approach is necessary to provide direct assistance to victims and facilitate their access to reparations. It can be facilitated by an administrative reparations process that involve victims, victims’ groups, government authorities and the civil society. Regarding the urgent needs of some victims, recently, a victim-centered pilot project was initiated between the Ukrainian government, victims’ groups, NGOs and IOM to provide victims of CRSV with “financial compensation necessary to halt the exacerbation of their suffering”.

Nonetheless, despite the initiation of several proceedings, there are still several gaps that need to be addressed to establish a comprehensive long-term reparation strategy that truly meets the needs of victims of CRSV. For example, the Register established by Ukrainian authorities to prepare a list of victims is extensive and contentious. It does not include victims of crimes committed before 2021 and only mentions broadly damages to life and health, which may not suit to the specific crimes committed against CRSV victims. This Register also does not clearly consider the potential types of reparation (mainly focusing on payments provided), and the absence of clear guidance on the procedure for obtaining victim status poses a significant challenge. Similarly, the top-down aspect of the European Register of Damage has also been criticized due to the lack of inclusion of victims and the absence of consideration of their needs.

The international community and national authorities will have to improve the implementation of a specific reparation program through a victim-centered approach that doesn’t impose evidence gaps preventing several victims from getting access to reparations. As an example, the Committee on the Elimination of Discrimination against Women noted in 2020 that insufficient compensation and support were provided to victims of CRSV in Bosnia. While a comprehensive reparation plan had been initiated, several victims of CRSV did not have access to any kind of reparation due to a lack of evidence. The unique circumstances and challenges faced by victims of CRSV, notably those residing in border areas, will require a focus on their specific needs. Large-scale reparations programs may not suit the requests of the affected population if they don’t include a comprehensive victim-centered approach, particularly for victims of CRSV. The broad range of CRSV victim ages in Ukraine also demonstrates the diversity of their reparative needs. State authorities should also avoid narrow deadlines to allow all victims to seek reparations on

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a long-term basis.

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