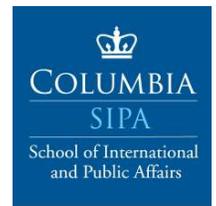


Physicians for
Human Rights

June 2014



Summary of Roundtable Discussion:
Reparations for Survivors of Sexual Violence
in the Democratic Republic of the Congo

OVERVIEW

This report summarizes major points of discussion from the first Roundtable on Reparations for Survivors of Sexual Violence in the Democratic Republic of Congo (DRC) held in Washington, D.C. at Georgetown University on February 24, 2014 (Reparations Roundtable). Physicians for Human Rights (PHR) convened the workshop in collaboration with Georgetown Institute for Women, Peace and Security and the Columbia School of International and Public Affairs (SIPA).

The aim of the Reparations Roundtable was to promote an open exchange of ideas and expertise on the challenges sexual violence survivors face in obtaining reparation in general and court-ordered reparations in particular. The partners and colleagues who attended this gathering contributed expertise on sexual violence from medical or legal perspectives, the justice system in the DRC, as well as the challenges associated with various local and international reparations mechanisms. Participants represented members of the medical, legal, academic, government, and non-government communities, and all expressed interest in exploring meaningful ways to secure reparations for survivors of sexual violence. Roundtable participants included senior U.S. Department of State officials; academics from American University, Columbia University, and Georgetown University; representatives from nongovernment organizations (NGOs), foundations, and professional organizations; students; and a Congolese doctor. Due to the off-the-record nature of the discussions, this report highlights the issues and recommendations from the Reparations Roundtable without attribution.

The key objectives of this Reparations Roundtable were to:

- 1) Bring experts in the field together for the first of many focused discussions on reparations in the DRC;
- 2) Examine and review the current realities of this complex topic in an informal, off-the-record, and collaborative manner;
- 3) Benefit from the presence and unique contribution of Dr. Denis Mukwege, founder and medical director of Panzi Hospital in Bukavu and a notable Congolese physician who has provided medical care and treatment to thousands of sexual violence survivors in the DRC and who served as a leading participant in the UN High Commissioner for Human Rights 2011 report on remedies and reparations in the DRC (OHCHR 2011 Reparations Report)ⁱ; and
- 4) Identify both pragmatic, concrete steps and advocacy opportunities by various stakeholders with respect to helping survivors obtain enforced court-ordered reparations.

The impetus to conduct this Reparations Roundtable stemmed from the May 2013 publication of “Barriers to Justice, Implementing Reparations for Sexual Violence in the DRC” (Barriers to Justice Report)ⁱⁱ, a report written by Columbia SIPA graduate students and commissioned by PHR’s Program on Sexual Violence in Conflict Zones. In early 2013, the Program on Sexual Violence in Conflict Zones partnered with SIPA students on a

research project on reparations putatively awarded by the mobile courts in the DRC to survivors of sexual violence. In January and February 2013, SIPA students reviewed judgments collected from these mobile courts to determine the degree to which reparations were awarded, reviewed related literature, and conducted interviews with experts in New York and Washington D.C. In March 2013, a team of SIPA students traveled to Bukavu, DRC to conduct in-person interviews with key stakeholders and PHR partners to determine the extent to which the payment of these reparations is actually being enforced. In May 2013, the students submitted their final report to PHR and published it online. PHR convened this Reparations Roundtable to provide an opportunity for the SIPA graduates to present and discuss the findings in the Barriers to Justice Report, foster a responsive exchange among expert stakeholders attending the Reparations Roundtable, and use the resulting dialogue as a springboard for future discussions among experts.

To facilitate the discussion, PHR distributed the following documents to participants in advance of the Reparations Roundtable:

- Barriers to Justice Report;
- OHCHR 2011 Reparations Report; and
- Sharanjeet Parmar and Guy Mushiata, *ICTJ Briefing: Judgment Denied - The Failure to Fulfill Court-Ordered Reparations for Victims of Serious Crimes in the Democratic Republic of Congo* (May 2012), available at: <https://www.ictj.org/sites/default/files/ICTJ-Briefing-DRC-Reparations-2012-ENG.pdf> (hereinafter ICTJ Briefing).

The summary report that follows is divided into four parts: (1) an overview of the legal context for awarding reparations to sexual violence survivors in the DRC; (2) a discussion of the barriers to accessing justice and remedies; (3) a detailed account of the barriers to securing reparations; and (4) short- and long-term recommendations raised at the Reparations Roundtable and potential topics for future discussions.

The Reparations Roundtable discussion highlighted promising opportunities, and participants expressed significant interest in convening subsequent gatherings to further discuss and plan future actions on reparations in the DRC and beyond.

ⁱ UN Office of the High Commissioner for Human Rights (OHCHR), *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* (March 2011), available at:

<http://www.refworld.org/docid/4d708ae32.html> [accessed 4 June 2014].

ⁱⁱ Randi Aho, Julien Barbey, Katie Bowman, Tiffany Esteb, Winfrida Mbewe, Anna Richardson, Delaney Simon, and Naoko Udagwa, *Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC*, Columbia SIPA (May 2013), available at:

https://sipa.columbia.edu/sites/default/files/PHR_Report.pdf.

INTRODUCTION - ASSESSING THE SITUATION IN THE DRC

More than two million people in the Democratic Republic of the Congo (DRC) have died since the official end of the country's war in 2002.¹ Some scholars have characterized the conflict in the DRC as the “deadliest conflict since World War II,” which has destabilized most of central Africa.² Set against this violent backdrop, the use of rape as a weapon of war has wreaked havoc on the lives of thousands of women, children, and men, destroying nuclear family units along with the social bonds of communities. Sexual violence in the DRC is perpetrated with impunity by both military and non-state actors.

One step towards ending impunity is the successful prosecution of perpetrators. Survivors often endure great stigma and hardship to report sexual violence in the hopes of obtaining justice; however, the justice system routinely fails them. Those survivors whose perpetrators were successfully prosecuted against all odds are further disadvantaged because they do not receive nor do they have access to the full range of reparations necessary for healing and recovery. The state's failure to compensate, fulfill, or provide adequate reparations undermines the rule of law in the DRC and perpetuates a culture of impunity. In addition, sexual violence survivors are not provided with meaningful redress for the harms they have endured, leaving them without the means – including economic, physical, and psychological relief – necessary to handle the consequences stemming from such violence.

Overview of Law and Context in the DRC

The first task at the Reparations Roundtable was to set the legal landscape in the DRC. There was broad agreement among the roundtable participants that the criminal justice system in the DRC is impaired at all stages, from the initial reporting of sexual violence crimes to the final awarding of reparations. Significantly, the different actors involved in the justice system do not always have a clear understanding of their roles and responsibilities or knowledge of the laws themselves.

As a legacy of Belgian colonial rule, the DRC uses a Belgian-based civil law code whereby criminal matters fall under the penal code. Implicit within the civil-law system is the concept that a victim can simultaneously be a plaintiff in a civil suit and a victim in a criminal case.³ A victim can participate in a civil suit by filing an individual claim as a *partie civile* (civil party) to seek monetary damages. However, as one participant noted, a victim need not be a civil party to be awarded monetary reparations. According to Congolese law, criminal courts also have the authority to identify damages and reparations even when there is no civil party to the proceedings.⁴ Unfortunately, according to one roundtable participant, judges exercise this authority and award damages and reparations in a limited number of cases.

While there are various robust laws addressing sexual violence in DRC,⁵ participants agreed that major problems exist in both the interpretation and enforcement of these laws. For example, one of the participants cited the legal misperception that a medical evaluation must occur within 72 hours of a sexual violence incident for the evidence to be admissible in a court of law. While certain types of medical evidence gathered from a sexual violence

evaluation can only be obtained closer to the time of the assault, no such 72-hour legal requirement exists. Furthermore, medical evidence obtained *at any time* after the assault could be helpful in the prosecution of the case. In addition to the misinterpretation of the laws, enforcement of the laws also remains a major problem. Obstacles to effective law enforcement include, but are not limited to the following: difficulties in identifying perpetrators especially after mass rapes; accessibility to the crime scene(s) due to security concerns; weak prison security; limited capacity of courts, police, and the state; prohibitive enforcement procedures and administrative hurdles; susceptibility of law enforcement officials to corruption; and a preference for traditional justice mechanisms in lieu of formal criminal proceedings. Many of these challenges will be more fully detailed below.

In addition to citing specific laws and the relatively new constitution promulgated in 2006, roundtable participants also discussed the heightened complexity of the criminal justice system due to the existence of both civilian and military courts. For example, a defendant is tried in a civilian court if he/she has not committed the crime in the exercise of his/her duty as a government employee and is not charged with an international crime under the Rome Statute of the International Criminal Court (Rome Statute),⁶ including war crimes, crimes against humanity, or genocide. Sexual violence prosecuted within a civilian court is often labeled as “common rape,” and most sexual violence cases fall within this category.⁷ In those cases where the defendant is alleged to have committed a crime in the exercise of his/her duty as an employee of the state⁸ or is alleged to have committed an international crime under the Rome Statute, such cases are adjudicated in military courts. Regulations related to military courts are problematic. The military penal code stipulates that the presiding judge must be of equal or superior rank to the defendant, yet there is a dearth of high-ranking judges in the military, which makes it extremely difficult to try high-level commanders or generals for systematic use of rape as a weapon of war, further contributing to impunity.

Pursuing justice using the laws available is itself a major feat in the DRC. Countless victims, including sexual violence survivors, do not pursue justice through the formal governmental mechanisms for a variety of reasons as described in the next section. Of the cases that are adjudicated and where a successful judgment is rendered and reparations awarded in favor of a sexual violence survivor, presently no court-ordered reparations have been fulfilled. In the 20 cases analyzed by the SIPA students in the Barriers to Justice Report and the four cases surveyed by the International Center for Transitional Justice (ICTJ) in the ICTJ Report⁹ in which monetary reparations were awarded, not a single victim had received compensation upon completion of the respective research. The roundtable discussants cited many obstacles facing survivors. These obstacles, outlined in the following sections, can be classified into two groups: the barriers to accessing justice after the sexual violence has taken place and until judgment is delivered, and the hurdles in obtaining reparations following judgment.

ACCESS TO JUSTICE AND REMEDIES

According to the United Nation's "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" (UN Basic Principles),¹⁰ the rights to remedy and reparations constitute fundamental rights for all victims of gross human rights violations. The UN Basic Principles lay out detailed mechanisms, procedures, and methods for providing victims of gross human rights violations, including sexual violence survivors, their right to benefit from remedies and reparation. However, in practice, the rights to remedy and reparations are difficult to realize for survivors, and the legal hurdles and challenges facing sexual violence survivors in the DRC ensure that these rights to remedy and reparation are rarely, if ever, realized.

The right to a remedy has generally been interpreted to mean equal and effective access to justice. Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.¹¹ Access to justice involves "normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight."¹²

Roundtable participants acknowledged that a meaningful discussion about reparations in the DRC would be remiss without first discussing a sexual violence survivor's ability to access the justice system and the impediments faced when trying to navigate this system. In a country like the DRC – where the legal system is complex at all stages – sexual violence survivors face the following hurdles in accessing the justice system:

- General insecurity affecting all civilians and overall lack of political will;
- Logistical obstacles, including poor infrastructure, difficulty and high cost of transportation, and limited and oftentimes inaccessible medical, law enforcement, and court facilities;
- Law enforcement challenges, including poor training of law enforcement, lack of respect from the police, limited resources for investigative purposes, poor infrastructure, and lack of witness protection; and
- Social issues of stigmatization and ostracism of victims and strong community preference for traditional mechanisms.

Perhaps the clearest illustration of these challenges is the "Barriers to Reparations in the Judicial Process" chart produced by the SIPA students in the Barriers to Justice Report.¹³

Lack of Peace and Security

"Peace and security is a precondition to justice," one participant observed. A major obstacle to accessing the justice system for most sexual violence survivors is the ongoing conflict between warring militias and widespread insecurity in the DRC, particularly in the eastern part of the country. Access to justice is hindered when citizens fear the system or see it

as alien, corrupt, or unrepresentative; when the justice system is financially inaccessible;¹⁴ and when individuals have no or incompetent counsel or are unaware of their rights. In such an unstable and hostile environment, the rule of law is rendered dysfunctional, if not wholly ineffective. Discussions on reparations and access to justice must address the major problems of an insecure and violent environment. The same participant noted that sexual violence survivors want “peace and markets,” and sexual violence will not be curbed until peace, security, and economic opportunity are brought to the region.

Logistical Obstacles

The sheer size of the DRC, spanning more than 900,000 square miles and divided into eleven provinces, renders the administration of justice extremely difficult. Regardless of whether a survivor’s case is brought before a civilian or military tribunal, the gravity of a sexual violence crime warrants that the case be heard in courts located within the provincial capitals.¹⁵ Unfortunately, for those sexual violence survivors in remote areas, oftentimes the nearest court to hear their case is hundreds of miles away. In addition to the absolute distance of the courts, infrastructure challenges of poor roads and weather-related issues compound the problems of physical access to police stations and courts. Also, it is costly to travel; poor roads often necessitate air travel, which is cost-prohibitive, too time consuming, and logistically difficult for most survivors.

Recognizing that the vast distance between courts and survivors is a major impediment to accessing justice, the country’s 2006 constitution (as did the previous constitution of 1960) allows for district civilian and military courts to operate as mobile courts (*audiences foraines*). Aside from location, nothing distinguishes a court in the provincial capital from a mobile court. While such courts may improve access to justice, the costs associated with mobile courts are prohibitive, so the international community has played an active role in providing both financial and logistical support to fund their operation.¹⁶ The use of mobile courts has shortened the time for a case to reach a decision by almost three months,¹⁷ creating greater access to justice for sexual violence survivors. Nonetheless, certain problems and issues persist, including the prohibitive costs associated with running mobile courts, concomitant time constraints to keep costs down, high demand for mobile courts due the volume of sexual violence cases, and limited, sometimes incompetent, or nonexistent advocates for victims.

Reliance on Traditional Justice Mechanisms

Another major impediment to accessing the formal justice system is the reliance on traditional justice mechanisms. Roundtable participants noted that survivors are compelled by their families and communities to seek redress through traditional mechanisms instead of through the formal justice system. Families and communities often demand survivors use traditional justice because the process often leads to the survivor’s family receiving some type of compensation (for example, a goat) for the loss of dignity and honor experienced by the survivor. The traditional process may also offer the victim’s family access to expedited justice. While turning to traditional justice may be an attractive option for the family of those victimized, the survivor is rarely at the center of the traditional justice process or the

direct recipient of the reparation. Furthermore, by using the traditional justice mechanisms instead of the formal legal process, the opportunity for individual redress is lost. In choosing the traditional process, the formal legal rights of the survivor and responsibility for the perpetrator entrenched in the penal code are undermined. Though the formal justice system has been criticized for many reasons, including introducing Western concepts of justice and eroding cultural values, one participant aptly said that she has “never heard a victim say that the legal system is too Western.” More often than not, survivor’s voices are heard and needs are met within a victim-centered formal justice system contrary to what the survivor experiences within the traditional justice system.

Accessing formal justice mechanisms is the first and most important step in the pursuit of justice for a sexual violence survivor. Understanding the barriers preventing survivors from accessing formal channels of justice is imperative to understanding the issues surrounding reparations. There are thousands of victims who are left behind and not offered any form of redress because of the problems in accessing justice in the first place. Roundtable participants understood that further conversations on access to justice are necessary if the collective group is to have any meaningful impact on reparations more generally.

ACCESS TO REPARATIONS

In addition to the right to a remedy by accessing the justice system, the UN Basic Principles also enumerate the right to reparations for sexual violence survivors. Roundtable participants reviewed the different types of reparations and what constitutes adequate and effective reparations. As described in the UN Basic Principles, the type of reparation should be proportional to the gravity of the violations and harm suffered. In addition, the circumstances of the human rights violation(s) will determine the type of reparation that is most appropriate including whether reparations are to be provided individually or collectively (as in the case with mass atrocities). Participants acknowledged that reparation in cases of mass atrocities is particularly challenging. Roundtable participants agreed that while the most common form of reparation awarded through the formal justice system is that of monetary compensation, other forms of reparations for sexual violence survivors should be pursued. In addition, the group discussed a movement in international law that advocates for the victim to be consulted about the appropriate manner of reparation.

Forms of Reparation

The following five forms of reparation enumerated in the UN Basic Principles were discussed at the roundtable:

- 1) **Restitution** - A victim should be returned to the situation that they were in before the human rights violation was committed. Restitution includes restoration of liberty, enjoyment of human rights, identity, family life and citizenship, restoration of employment and return of property. As a form of reparation, restitution is not feasible in certain circumstances (murder, for example), thereby rendering other forms of reparation necessary.

- 2) Compensation - A victim should be economically compensated for the harm (including for physical and mental harm, lost opportunities, material damages and loss of earning, moral damage, and to defray legal and medical costs) they have endured.
- 3) Rehabilitation - A victim should be rehabilitated from the harm that they have endured through medical and psychological care as well as legal and social services.
- 4) Satisfaction - This is a catchall category whereby some, if not all, of the following should be provided to the victim: measures aimed at cessation of continued violations; revelation of the truth; official declaration or judicial decision restoring the dignity, reputation, and rights of the victim; public apology including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for violations; commemorations and tributes to victims; and inclusion of an accurate account of violations that occurred in international human rights law and international humanitarian law.
- 5) Guarantees of non-repetition - A victim should enjoy the guarantees of non-repetition that will lead to prevention of future violations including: ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process, fairness, and impartiality; strengthening the independence of the judiciary; protecting persons in the legal, medical, and health care professions, the media, and other related professions; providing education to all sectors of society; promoting the observance of codes of conduct and ethical norms; promoting mechanisms for preventing and monitoring social conflicts and their resolution; and reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Though there was consensus on the forms of reparation and that some combination, if not all, should be made available to sexual violence survivors, questions of whose responsibility it is under international law to ensure that reparations are awarded and funded remained unanswered. In addition, the most appropriate form of reparation can depend on the purpose of the reparation in a given situation. For example, one participant noted that depending on whether the purpose of reparations for a sexual violence survivor was to make a victim whole or to punish the perpetrator would determine the most appropriate form of redress. It was agreed as a group that the different forms of redress serve different purposes and a combination of reparations is necessary for a survivor to achieve a measure of justice.

Obstacles to Fulfilling Court-Ordered Reparations

As a participant noted, while judgments can be won and reparations awarded, one “can’t eat judgments.” There are various obstacles to fulfilling court-ordered reparations. The SIPA graduates presented the current obstacles that sexual violence survivors face in claiming the reparations awarded to them and identified the many steps that a victim must take to claim

monetary reparations.¹⁸ Overcoming the obstacles outlined in this list can prove daunting, even prohibitive, for individuals who are well-resourced and positioned, let alone for the majority of survivors who are financially indigent and disenfranchised. The hurdles that a sexual violence survivor must overcome include:

- Navigating the onerous post-trial process *alone* and without counsel;
- Paying prohibitively expensive administrative processing fees and duties upfront; and
- Collecting and presenting difficult to obtain paperwork necessary to receive a certificate of indigence to waive these fees.

Overlaying these process-oriented obstacles is the fact that sexual violence survivors are only awarded monetary compensation as reparation. Granting reparations solely in the form of monetary compensation is especially problematic as the number of sexual violence crimes perpetrated by civilians increases. Convicted perpetrators are often insolvent and cannot pay reparations to the survivors, and – in these cases – there is no other body or governmental entity that is required to pay reparations as is the case for *in solidum*¹⁹ judgments. The inability of the civilian perpetrator to pay compensation to the survivor leaves the survivor without meaningful redress for the harm she/he has suffered. Several participants noted that survivors had expressed the need for other forms of redress, including public apologies or acknowledgement from the state for their injuries and adequate education and medical treatment for their children and themselves. Another grievance aired by sexual violence survivors as noted by a roundtable participant is the failure to incarcerate perpetrators after a guilty-verdict has been delivered. When those who are found guilty do not serve the time required, it increases the insecurity of the victim, her/his family, and the community at large, in addition to not serving the intended function of satisfaction of an effective punishment.

The reparation amounts that are awarded also vary considerably among cases and jurisdictions. The lack of consistency in how compensation is calculated and monetary reparations awarded undermines the rule of law. The integrity of the formal justice system is compromised for sexual violence victims because it is unclear how monetary compensation is determined and experts and victims have not been consulted in the calculation.

Finally, as mentioned, to participants' knowledge, no sexual violence victim in the DRC has received monetary compensation awarded by a court order. If no reparations have been received by survivors, future victims lack incentives to pursue formal channels of justice and the culture of impunity continues unabated. Echoing the recommendation made in the OHCHR 2011 Reparations Report,²⁰ one participant noted that for the violence to stop, reparations need to be paid, if not by the perpetrator, then by the state. Requiring the state to pay for reparations may create the political will necessary to end the violence and the culture of impunity. However, due to the present conditions in the DRC and the lack of funds for this purpose, this recommendation has not been implemented.

Survivors face great stigma and hardship due to the unique nature of crimes of sexual violence, increasing their reliance on the damages awarded. Sexual violence survivors are

often cast out from their families and communities, abandoned by their husbands, and left to care for their children alone, including those children resulting from the sexual assault. They also require access to services for physical damage. Without the financial means to care for themselves and their children, the nonpayment of monetary reparations makes life that much more difficult.

RECOMMENDATIONS AND NEXT STEPS

Participants discussed recommendations and next steps for both short- and long-term interventions. The resounding sentiment among all participants was that a sexual violence survivor must be at the heart of any reparations discussion. Therefore, it was recommended that going forward, such discussions should include a victims' representative to speak on behalf of survivors or should include survivors themselves. In addition to focusing on a victim-centric approach, several roundtable participants also voiced the need for reparations to have an overall emphasis on empowerment and the need for survivors to move from a place of "pain to power." Survivors should be seen as "change agents" and part of the solution.

Short-Term Recommendations: Pragmatic solutions that can be implemented immediately

In discussing recommendations, participants acknowledged several pragmatic solutions that could be handled in the short term, including the following:

- *Training of Judges:* Even though damages and reparations can be awarded to sexual violence survivors who are not civil parties in the proceedings, this is only done in a small number of cases. A roundtable participant recommended that training judges on this particular Congolese law would help survivors tremendously, as would education on monetary reparations more generally and how to analyze evidence. Judges should be trained on all the remedies available to sexual violence victims.
- *Focus on the Post-trial Phase:* The Barriers to Justice Report, along with the SIPA graduates' presentation, emphasized the need for stakeholders to focus on the post-trial phase. In addition to focusing on the steps leading to judgment, one suggestion was to redirect international funds and donations to the post-trial phase. As one participant noted, this redirection would require educating donors on the realities on the ground in terms of the difficulties survivors face in receiving their due compensation. In addition to educating donors, another suggestion was to find a way for the international community to pay the prohibitive court fees outright for the survivor so as to overcome the need for the survivor to obtain a certification of indigence, a lengthy and often unsuccessful endeavor. Additional suggestions from the roundtable discussants, corroborated by the Barriers to Justice Report, were to fund lawyers and advocates to aid survivors through the post-trial phase, strengthen victim protection and security, and enable legal actors to access and use technology.

- *Engage Community Chiefs of the Traditional Justice System:* While participants cautioned that traditional justice mechanisms all too often consider the victim as property and the sexual violation as damage to the family honor, there may be opportunity for improving support for survivors by more intentionally engaging community chiefs. These chiefs, the administrators of the traditional justice system, should be trained, sensitized and educated on the rights of survivors. Such training would emphasize the chiefs' leadership role to secure survivor rights by directing survivors and their families to pursue cases within the formal justice system. By engaging community chiefs as advocates for survivors, the gaps between the two systems could be minimized.
- *Strengthen and Enforce Penitentiary Systems:* Currently, the prison infrastructure in the DRC is extremely weak and conditions are poor, crowded, and often considered inhumane. Bribery is a common way for prisoners to escape. If reparations are to include proper punishment for sexual violence perpetrators, then functional and adequate prison systems need to be created and supported. Punishment should be a deterrent to committing a crime. Instead, the lack of punishment or adequate prison facilities reinforces the notion that such crimes can be committed with impunity. Participants noted that prison system infrastructure could potentially be created and enforced by international donors. In addition, roundtable participants acknowledged that prison conditions need to meet international standards if they are truly to become effective vehicles of punishment.

Long-Term Recommendations: Aspirational solutions that can have lasting effects

- *Marshall Political Will:* There was acknowledgment that for a low-resource and underdeveloped economy as exists in the DRC, mobilizing political will to secure resources that are potentially available is important. Many of the problems with access to justice and reparations exist because there is a lack of political will to address sexual violence. While it was acknowledged that the international community needs to encourage political will among the DRC government, there was some debate as to how this could be achieved.
- *Create a Sovereign Mineral Fund:* Recognizing the mineral wealth that exists in the DRC, there was a lively debate as to how this wealth could be harnessed for the benefit of survivors. One possible solution is to devise comprehensive programs of reparation that harmonize otherwise competing priorities (for example, the creation of a sovereign wealth/mineral fund whereby a portion is used for victim compensation). Another suggestion was to create some type of tax on the minerals harvested in the country and use the proceeds to create a victim compensation fund. However, it was acknowledged that if the tax was too high, this could create the unintended consequences of illegal exploitation, smuggling, and/or corruption.

- *Create a Well-Supported Victims' Fund:* In addition to the recommendation above to create a mineral fund, it was also suggested that a well-resourced victims' fund be established. Understanding that many of the reparations awarded to survivors were monetary in nature, having a substantial victims' fund to meet these needs would help survivors receive reparations. It was discussed that this victims' fund could be supported by the international community for an interim period until the state is able to at least pay *in solidum* reparations. However, a roundtable participant noted that a well-resourced fund for victims could obfuscate perpetrator liability and responsibility. Another participant responded by saying that – if the criminal justice system worked – the perpetrator should still be imprisoned and punished, and the existence of the fund would have no bearing on the perpetrator taking responsibility for their actions.
- *Reform the Legal Sector:* Recommendations for reforming the legal sector included the creation of mixed chambers and revisions to legislation. As one participant noted, there are new models of justice, such as the concept of mixed chambers, which involves the temporary inclusion of international staff at the national judicial level. Mixed chambers could provide the DRC judicial system with the support necessary to tackle rampant impunity for the worst crimes. The involvement of international experts with experience in trying complex cases would bolster the justice sector. In addition to recommending mixed chambers, roundtable participants also called for revising legislation. Particularly, discussants emphasized the need to change the military rank requirements (current Congolese law requires the rank of the presiding judge to be equal to or higher than the accused) such that high-ranked military officials do not enjoy *de facto* domestic impunity.

Potential Future Topics

The Reparations Roundtable was the first of many discussions concerning comprehensive support for survivors of sexual violence. Many topics were raised during the three-hour workshop and some necessitate further exploration. An extension of this discussion will hopefully take place at the FCO Summit in the United Kingdom in June 2014. Potential themes and topics for future discussions include:

- Development/humanitarian aid versus reparations;
- Purpose and goals of reparations;
- Pros/cons of individual versus collective reparations;
- Reparations for mass atrocities;
- Creation of political will;
- Strategies for including a gender perspective on peace and security reform; and
- Incorporating new modes of justice, such as mixed chambers.

CONCLUSION

The Reparations Roundtable and this report demonstrate the significant role reparations can play in the lives of sexual violence survivors in the DRC and elsewhere. Reparations can provide emotional, psychological, physical, and economic relief for the pain, humiliation, trauma, and violence that these survivors have endured. Sexual violence – both within and outside of conflict – has plagued thousands of women, girls, boys, and men in the DRC. Meaningful conversations among various domestic and international actors will hopefully lead to both short- and long-term solutions that will have a valuable and lasting impact on the lives of sexual violence survivors.

ENDNOTES

¹ International Rescue Committee, *Mortality in the Democratic Republic of Congo: An Ongoing Crisis*, (2007) at ii.

² Séverine Autesserre, *The Trouble with Congo*, FOREIGN AFFAIRS, May/June 2008, Vol. 87, Issue 3.

³ Also within the civil-law system both criminal and civil-law remedies can mutually exist in a single case.

⁴ Article 108 of the “Loi organique n°13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire.”

⁵ When the constitution was adopted in 2006, there were two groundbreaking laws that were adopted into both the criminal code and the criminal procedural code: laws 006/018 and 006/019. These two laws addressed sexual violence, in particular defining the crimes of rape, forced prostitution and indecent assault. These laws also increased the age of sexual consent from 16 to 18 years, identified the victim's right to medical and psychological treatment and prescribed a range of prison sentences for those convicted of sexual crimes.

⁶ DRC ratified the Rome Statute on March 30, 2002 (Legislative Decree no. 003/2002), and referred crimes committed in its territory for investigation and prosecution to the International Criminal Court on April 19, 2004.

⁷ Unfortunately, there has been an increase in civilian perpetration of sexual violence including by ordinary people occupying positions of authority, friends, neighbors, and family members. A study conducted by Oxfam International cited that rapes committed by civilians had increased seventeenfold (Susan Bartels, *Now, the World is Without Me: An Investigation of Sexual Violence in Eastern Democratic Republic of Congo*, Harvard Humanitarian Initiative and Oxfam International, (April 2010) at 39, available at: <http://hhi.harvard.edu/sites/default/files/publications/hhi-oxfam%20drc%20gbv%20report.pdf>).

⁸ If the perpetrator is engaged in a principal-agent relationship with the Congolese State, and the convicted committed the crime in fulfillment of his functions as an agent of the Congolese state, then the state is condemned *in solidum*. In practical terms, this means that the Congolese state is responsible for paying any reparations awarded if the defendant is an employee of the state (e.g. a soldier or a policeman) and is alleged to have committed a crime while on duty. For sexual violence victims, this can be particularly useful because most defendants do not have the financial means to pay monetary reparations.

⁹ See ICTJ Briefing at 2.

¹⁰ UN General Assembly, 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, resolution adopted Dec. 16, 2005 A/RES/60/147, available at www.unhcr.org/refworld/docid/4721Cb942.html.

¹¹ United Nations Development Programme, *Programming for Justice: Access for All: A Practitioner's Guide to Human Rights-Based Approach to Access to Justice* (Bangkok: UNDP, 2005), available at: <http://www.apjrf.com/APJRF%20Content/UNDP%20-%20Programming%20For%20Justice%20-%20Access%20For%20All.pdf>.

¹² United Nations Development Programme, *Access to Justice Practice Note* (2004), available at: http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf.

¹³ *Supra* note iii, at 3.

¹⁴ The financial barriers to entry for sexual violence survivors include costs associated with securing an attorney and administrative fees including payment for medical services and medical certificates, among other financial hurdles.

¹⁵ For civilian cases, the provincial District Court hears the case (*le Tribunal de Grande Instance*); for military cases, sexual violence cases fall under Military Garrison Courts (*le Tribunal Militaire de Garnison*). Both *le Tribunal de Grande Instance* and *le Tribunal Militaire de Garnison* are located in the 11 provincial capitals.

¹⁶ *Supra* note iii, at 14-15.

¹⁷ Avocats Sans Frontières, *La Justice face à la banalisation du viol en République Démocratique du Congo: Etude de jurisprudence en matière des violences sexuelles de droit commun* (Kinshasa 2012) at 10.

¹⁸ *Supra* note iii, at 3.

¹⁹ *For the whole*. Refers to those cases where the state is found liable *in solidum* for those sexual violence crimes committed by its agents (for example, government forces) thereby requiring the state to pay damages in full.

²⁰ *Supra* note ii, at 49.

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