

REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE



COUNTRY BRIEFING: DEMOCRATIC REPUBLIC OF CONGO

The Global Survivors Fund (GSF) currently supports locally-led civil society organisations, the Panzi Foundation and the [Mouvement national des survivant.es de violences sexuelles en RDC](#) (MNSVS), as part of a project to provide access to individual and collective interim reparative measures, including livelihood packages, financial compensation, and funds to facilitate access to medical and psychological care. The project includes advocating for the prioritisation of reparations as part of the national policy agenda and the setting up of a national administrative fund to provide reparations for survivors of conflict-related sexual violence and other grave crimes.

Although DRC's history includes several violent conflicts that involved sexual violence on a large scale, this country briefing relates to reparations for crimes committed from 1993 onwards.

Official Register of Survivors of conflict-related sexual violence (CRSV): None.

Commonly cited number of CRSV Survivors: The United Nations High Commissioner for Human Rights ([OHCHR](#)) and [other reports](#) refers to over 200,000 cases of rape being reported since the war began notwithstanding a reluctance to report.

Domestic Legal Framework for Administrative Reparations Programme: No.

Mechanism to implement Administrative Reparations Framework: No, but there are various initiatives to establish such a mechanism.

Domestic Avenues for Reparations through Courts: Yes, technically possible to claim compensation in cases involving sexual violence as part of genocide, war crimes and crimes against humanity through the military courts. In practice however, reparations are [almost never awarded](#) due in part to [lengthy, complex and costly procedures](#), the evidentiary burden and the stigma attached to being a victim of such crimes.

Approximate Number of Survivors having received any formal Reparations for CRSV: 33 out of 119 survivors were awarded monetary compensation for sexual violence in the [Songo-Mboyo Case](#), a historical ruling by the Military Court of the Equateur province where seven members of the DRC Armed Forces were condemned alongside the State to the payment of USD 165,317 in damages. Compensation was, however, paid more than ten years after the decision, with a large part of the funds being misappropriated by state agents and intermediaries and further unequal distribution practices.

Survivor Perception regarding state of Implementation of Reparations: Survivors view reparations through criminal proceedings as a way to acknowledge suffering and restore dignity but have low expectations of ever actually obtaining reparations in this way as they mostly do not have access to the justice system. Survivors welcome ongoing State efforts to create a national reparations fund to fulfil their right to reparation and address the needs of those who do not have access to the justice system.

Ongoing CRSV: Yes.



Nature and Scope of CRSV

Since the 1990s, the DRC has experienced multiple internal and international armed conflicts resulting in serious violations of human rights and international humanitarian law, including mass rape and other forms of sexual violence, especially in the eastern regions. As the [UN Mapping Report](#) highlights, the brutality with which sexual violence was committed was “*unprecedented and limitless*”, taking on “*unbearable proportions, and the cruelty and multiplicity of abuses appear[ed] to be exponential*”. Forms of CRSV perpetrated included rape, sexual mutilation, forced pregnancy, forced slavery for extended periods of time and forced prostitution, as a strategy to change the ethnic makeup of the next generation.

Parents were forced to have intercourse with their children and vice versa, elderly individuals, young children and even babies were raped. It is reported that many victims were subjected to sexual violence numerous times throughout their life because of the continuous nature of the conflicts. There are also reports of children born of rape having themselves been raped in later life. Such crimes were often committed in public places in front of the entire local community and/or the victims’ extended family. In some locations, the conflict has not ended, and brutal sexual violence continues to take place.



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"Here in Kasika, we have suffered a lot. We are waiting for the state to take responsibility and make full reparations so that we regain the esteem of our families and husbands. We have had nothing for years and they [the government] know it"



Harm caused to Survivors, Families and Communities

Some victims were shot and killed following rape; others were buried alive. Survivors have been left physically and psychologically traumatised. Many have had their genitals and internal reproductive organs mutilated and have lost the ability to reproduce. Others suffer from prolapse, sexually transmitted diseases and infections (inc. HIV). Many survivors can no longer carry out day-to-day activities because of permanent physical injuries and severe trauma.

Survivors are also stigmatised by their husbands, families, and communities. Female survivors are referred to as ‘rebel’ or ‘unfaithful women’. Children born of rape are often rejected by the community and their mothers forced to choose between staying with their other children or leaving the community with those born of rape, which deepens the consequent social breakdown and limits survivors’ ability to integrate into the community’s social, cultural, and economic life.

As the [Mapping Report](#) has noted, “*the socio-economic vulnerability [of women] has encouraged the forms of extreme violence they have suffered (...) The unequal place of women in the family has also encouraged sexual violence in times of war*”. The [Special Rapporteur on violence against women](#) further explains that “*sexual violence in armed conflict in the DRC feeds on gender discrimination in society at large*”.



Survivors' Perspectives

Needs and Expectations

Survivors' perceptions of the future are marred by concerns for the safety, survival, and education of their children. Their expectations and needs are consistent: they call for the financial means to care for themselves, to send their children to school and to have an income-generating activity so that they can take care of their families. Survivors also hope for recognition of the humiliation and suffering they have endured and for restoration of their 'lost dignity'. Many survivors believe that reparations can help them rebuild their lives. Emphasis is put on the fact that reparative measures need to be tailored to context and to the reality of individual survivors. Survivors also expect reparations to include measures for social reintegration, community solidarity and the rebuilding of a lasting peace.

Many survivors further call for '*justice to be done*' and perpetrators to be prosecuted. They express little trust in the justice system. If they have not lodged a complaint, it is because they cannot identify their perpetrators, and complaints against unknown perpetrators cannot be filed in the DRC. Fear, threats and shame are also factors that influence survivors' decisions not to press charges.



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Survivors' Initiatives

There are very few survivor initiatives other than the MNSVS, which brings together more than 4,000 survivors throughout the country, and the Association of Victims of Kisangani.

Since October 2019, GSF has worked with the Panzi Foundation to implement a [pilot project](#) to provide individual and collective interim reparative measures to over 1,200 survivors in the North and South Kivu and Central Kasai regions. The project is co-created with survivors and takes a survivor-centric approach in which survivors, activists, civil society organisations, reparation experts, United Nations actors and judicial actors work together with the active involvement of the regional authorities.

By testing different processes, measuring impact and learning from experience, the project aims to demonstrate that reparations for CRSV survivors are possible despite the many challenges. With that in mind, an important component of the project is advocacy activities aimed at promoting the establishment of a survivor-centred national reparation policy in accordance with the commitments made by the government, not least in the [Addendum to the Joint Communiqué](#) on CRSV between the DRC and the United Nations.



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"Reparations are not only money, but it is the whole range that allows the survivor to rebuild herself and to be accepted by her community because rape goes far beyond the simple economic and physical consequences, there is a bit of her soul that is lost"

Tatiana Mukanire, survivor, MNSVS Coordinator and member of the DRC project steering committee



Reparations

IN THEORY

International obligations: The DRC has ratified several regional and international texts prohibiting sexual violence in times of peace or war and guaranteeing citizens the right to reparation for human rights violations. These include the International Covenant on Civil and Political Rights and the Rome Statute. In addition, the DRC has signed the [Addendum](#) to the joint communiqué with the United Nations on reparations for CRSV survivors in times of conflict.

National legislation: [Article 15 of the Constitution](#) establishes that sexual violence constitutes a crime against humanity, punishable by law, if carried out with a specific intent. [A 2006 revision](#) of Congolese legislation breaks new ground by criminalising rape with objects and other forms of sexual violence, and sets the obligation to remedy the harm suffered by victims. Congolese law (Articles 258 and 260 of the Civil Code, Book III) recognises the right of victims to reparation for the harm suffered. Victims are entitled to seek legal redress by bringing civil action before the Congolese courts alongside the criminal proceedings. In cases involving genocide, war crimes and crimes against humanity, Congolese victims must lodge a complaint with the military courts.

Administrative remedies: Over time, several initiatives for awarding reparation to CRSV survivors and other crimes have been announced. Recently, national authorities including the [Minister of Human Rights](#) have announced their intention to establish a national reparations policy. [The First Lady](#) has organised a multi-stakeholder roundtable in Kinshasa in October 2021 and submitted a proposal to create a Fund to the Prime Minister.

IN PRACTICE

International judicial remedies: The International Criminal Court (ICC) did not charge Mr. Lubanga in the [Lubanga Case](#), despite evidence pointing to widespread rape and other forms of sexual violence against child soldiers. The [Katanga Case](#) was the first in which charges were brought for crimes of sexual violence, albeit that Mr. Katanga was acquitted of crimes of rape and sexual slavery. The ICC ordered reparations for victims of rape and other forms of sexual violence in the [Bosco Ntaganda Case](#), which must now be enforced through cooperation with the Congolese authorities.

Apart from the implementation of the ICC reparations orders to which it contributes, the Trust Fund for Victims implements assistance programs. Created under the Rome Statute, the Trust Fund for Victims has partnered with national and international civil society actors in the [DRC between 2008 and 2017](#) to put in place a range of assistance measures. The [sixteen activities of the DRC program](#) include physical rehabilitation, psychological rehabilitation, and material support projects.

Domestic judicial remedies: Despite the existence of legal remedies to claim reparation before courts, survivors have not been able to secure reparation through judicial remedies because of multiple [legal and procedural obstacles](#) such as the difficulty of accessing judicial institutions located in the provincial capitals notwithstanding the operation of some mobile courts (*audiences foraines*).

The lack of access to legal aid and the stringent laws regulating how evidence and testimonies can be brought before the courts also put an unreasonable burden on victims to prove what has happened to them. This is exacerbated by the [difficulty in identifying the perpetrators](#) in the first place, the attacks often taking place at night by armed militias unknown to the community, or because they were raped during mass attacks; due to fear of reprisals in a general context of insecurity; and due to stigmatisation and ostracism.

The exorbitant cost of proceedings and particularly the obligation for victims to pay consignment costs to become a party to a lawsuit, as well as a tax proportional to the amount of the judicial compensation judicially granted (prior proportional right) is also prohibitive for survivors. Financial insolvency of those found guilty and the general failure of the government to respect and enforce the payment obligations ordered by the courts, contribute to survivors' inability to access reparations.

Efforts are being made to hold more mobile court sessions in remote areas to bring justice closer to survivors and communities, but this does raise some concerns. For example, in cases where the perpetrator is acquitted, this can affect the security of survivors who, in some case, end up having to move elsewhere once the case goes to court.



Opportunities

A bill on reparations has been under consideration by the National Assembly for several years, albeit limited to cases of unpaid judicial reparations. Civil society actors continue to engage in various advocacy initiatives to move the bill forward.

A roadmap to implement the provisions of the 2019 [Addendum to the Joint Communiqué](#) between the DRC and the United Nations on justice and reparations for CRSV survivors is also being put into action. Since 2020, two decrees are under consideration: one on the creation of a national transitional justice and reconciliation commission and the other one on the creation of a national fund for the reparations of victims of sexual violence and other serious crimes.

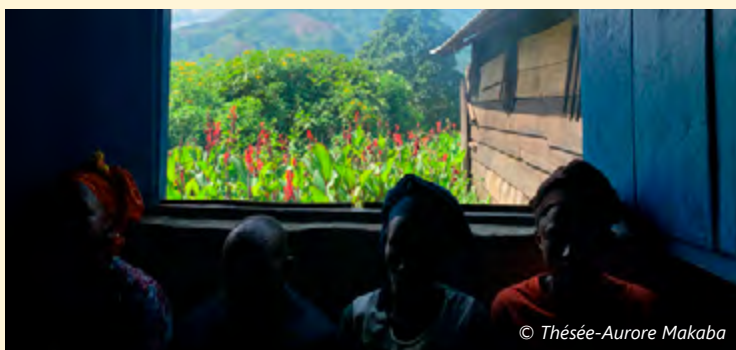
GSF organised a roundtable in March 2021 in Kinshasa, bringing together the MNSVS, civil society organisations, key institutional actors, heads of diplomatic missions and international technical partners, to exchange ideas on how to implement a domestic reparations programme in DRC in practice.

Currently, there is a unique opportunity in DRC to move reparations for CRSV survivors forward, not least because of the ongoing work to set up the reparations Fund as well as various transitional justice mechanisms such as the *Commission Nationale de Justice Transitionnelle et Réconciliation*. Various State entities are also currently engaged in ensuring that reparations move forward. These include the Head of State, the Office of the First Lady, and the Human Rights Ministry. On 20-21 October 2021, the First Lady convened a two-day roundtable inaugurated by the President, and with the presence of Ministers, the international community, survivors, and civil society representatives. The event directly led to the adoption of a [declaration calling for the establishment of a National Reparation Fund](#).



Key Challenges

- Mass, systemic and ongoing sexual and gender-based violence during multiple armed conflicts in DRC.
- Ongoing conflict in the Eastern region of the country where sexual violence is used systematically as a method of warfare, not least to punish civilians suspected of cooperating with opponent groups.
- No progress in designing and implementing a holistic transitional justice process to fulfil survivors' rights to truth, memory, justice, reparation, and non-repetition.
- Impunity continues to prevail.
- Multiple persisting legal and procedural obstacles hampering survivors' access to justice and reparations before judicial bodies.
- Lack of enforcement of domestic judicial reparation orders resulting in survivors losing trust, hope, and interest in advancing their claims for reparation.
- High emotional, physical and socioeconomic vulnerability of CRSV survivors as a result of the violations suffered, as well as the stigma surrounding CRSV, and the marginalisation they face in their families and communities.
- Lack of effective coordination between different stakeholders that are or should be involved in implementing reparations at national and local level.



"Reparations will be a great remedy for my different problems".

"I was raped for six months in Cikundushi forest near Kaniola. I ran away but I was already pregnant. I feel sick and have constant nightmares".

"I was abducted from a church with four other girls. Every day we were raped and then given 150 lashes a day. I was still a young girl but I still suffer a lot physically".



Preliminary Recommendations

The announcement of the creation of the national Fund for survivors of conflict-related sexual violence and other grave crimes is a major step forward towards the design and establishment of a domestic reparations programme in DRC as part of a holistic transitional justice strategy. There is momentum that needs to be seized by all relevant actors taking key steps such as those included in these preliminary recommendations:

- The government should adopt a survivor-centric approach and engage survivors of CRSV and other gross human rights violations and serious violations of humanitarian law in decision-making related to the design, implementation, monitoring and evaluation of a domestic reparations programme that goes beyond compensation, is accessible to all survivors and responds to their real needs. This requires broad consultation and 'co-creation' with survivors, as well as the involvement of civil society actors who can support a 'do no harm' approach to ensure that the process does not jeopardise the safety and security of the survivors and does not result in secondary traumatisation and stigmatisation. The methodology and outcomes of the pilot project led by GSF and the Panzi Foundation could prove useful for the development of this policy.
- The government should adopt a holistic legal framework for a comprehensive reparations policy, drawing on lessons learned in other contexts and the achievements of national and international organisations in the field of reparations. Such framework should set out clearly at least:
 - the violations and harms that will be subject to reparations;
 - who qualifies as victim(s);
 - the eligibility criteria that would apply including factual, geographical and temporal scope;
 - the types of reparation available, which should go beyond compensation;
 - the identification and registration processes to be followed; and
 - the way the domestic reparation programme would interact with, benefit from and complement other transitional justice mechanisms.

The policy should foresee the creation of a domestic reparation programme and the establishment of a government body tasked with implementing the reparation policy. Careful consideration should be given to taking a hybrid (semi-centralised) approach and delegating some functions to civil society actors, community-based organisations and other stakeholders at local level. For example, communication with victims and delivery of some types of reparations could be facilitated by the trust survivors have in these actors.

- The government should secure financing for the construction of the reparations framework and delivery of actual reparations for victims by creating a national reparations fund and by making appropriate annual budgetary allocations to the Fund. Targeted taxation should also be explored, particularly for extractive industries which impact the occurrence of conflict and human rights violations, including CRSV. Innovative financing mechanisms should also be considered, including strategies for the confiscation of assets associated with human rights violations under national and international jurisdiction.