

THE DELIVERY OF REPARATION FOR UKRAINE

Briefing Paper

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REDRESS

Ending torture, seeking justice for survivors

 **GLOBAL SURVIVORS FUND**

FOR AND WITH SURVIVORS OF
CONFLICT-RELATED SEXUAL VIOLENCE

INTRODUCTION

Widespread violations of international human rights law and international humanitarian law including forced displacement, torture, sexual and gender-based violence, enforced disappearances and arbitrary detention, have been reported in the context of the Russian Federation (Russia)'s occupation of Crimea in 2014, the conflict in Eastern Ukraine since 2014, and Russia's full-scale invasion of Ukraine which began on 24 February 2022. The full-scale invasion has seen an unprecedented response from the national authorities in Ukraine and the international community to pursue justice for victims.¹ Beyond accountability through criminal justice processes, reparations will be needed to address the harm caused to victims, and to restore their dignity and rebuild their lives.

A number of initiatives towards reparation in the Ukraine conflict are in existence or in progress at both State and international levels. In addition, governments around the world, with the support of the government of Ukraine, are exploring how funds can be raised to finance reparation.

This briefing provides an overview of the right to reparation in international law, the domestic level judicial and administrative initiatives and transitional justice efforts in Ukraine, and the key international mechanisms currently under consideration, with conclusions and recommendations for relevant stakeholders.

THE RIGHT TO REPARATION IN INTERNATIONAL LAW

The obligation to provide reparation derives from several sources and infers responsibility at different levels. Under international law, victims have a right to an effective remedy and reparation for violations of human rights and international humanitarian law, such as torture and conflict-related sexual violence, from the State responsible for committing those violations. Further, there is a clear basis in international law for reparation to be paid to the State of Ukraine by Russia for its aggression against it, violating the territorial integrity of Ukraine through the use of force under the United Nations Charter, and for the damage caused, under the law of State responsibility.²

International Human Rights Law

The right to an effective remedy for violations of human rights is well established in international human rights law, including under treaties to which both Russia and Ukraine are parties.³ International human rights law relates to obligations on the part of a State towards all individuals under the jurisdiction of the State (and the respective

1 The terms 'victim' and 'survivor' will be used interchangeably in this briefing. Whereas 'victims' conveys a legal definition, the non-legal term of 'survivor' is often understood by many as more empowering and representative of a sense of autonomy.

2 Russia's unlawful acts have been referred to in International Court of Justice (ICJ), *Allegations Of Genocide Under The Convention On The Prevention And Punishment Of The Crime Of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, as well as UN General Assembly (UNGA) Resolution ES-11/1, 2 March 2022.

3 Article 8 of the *Universal Declaration of Human Rights*; Article 2 of the *International Covenant on Civil and Political Rights*; Article 13 of the *European Convention on Human Rights (ECHR)*; Article 14 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; Article 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination*; Article 24 of the *International Convention for the Protection of All Persons from Enforced Disappearances*.

rights of those individuals against that State), and continues to apply during armed conflict.⁴ Individuals and groups of victims have a right to a remedy for violations of their human rights by an occupying State, a State which had effective authority or control over territory or persons, or from a State agent with authority or control.⁵

International Humanitarian Law

The obligation on States to provide reparation for violations of international humanitarian law (IHL) is an established principle of customary international law by which States are required to make ‘full reparation’ for violations of IHL⁶. Pursuant to Additional Protocol I to the Geneva Conventions, which both Ukraine and Russia have ratified, parties to a conflict are under an obligation to pay compensation where there have been violations of IHL committed.⁷

IHL does not explicitly determine who is owed full reparation. It recognises that parties to international armed conflicts are liable for compensation for violations, but under customary law it extends such obligations to non-international armed conflicts, where non-State actors may be involved, which could suggest compensation could be payable to actors other than States.⁸ Additionally, the application of human rights law in a situation of armed conflict ensures the rights of individuals and groups to an effective remedy and reparation (see below).⁹ Where Ukraine ensures the right to an effective remedy and reparation for human rights violations for which Russia is responsible, it has a right to reclaim the costs of such reparation from Russia.

International Criminal Law

Under the Rome Statute of the International Criminal Court (ICC), victims of international crimes under the jurisdiction of the Court are entitled to reparation, namely for crimes against humanity, war crimes, genocide and aggression.¹⁰ Importantly, at the Court, reparation is owed by convicted perpetrators (and not States or armed groups) to victims of the crimes in question in the case.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation

Taking a survivor-centred approach, the UN 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 offer guidance to States on how to ensure their obligation to provide reparation, including that reparation should take a number of forms:

4 Committee Against Torture (CAT) *Conclusions and Recommendations of the CAT in relation to the United States*, CAT/C/USA/CO/2, 25 July 2006, paras. 14 and 15; Inter-American Court of Human Rights, *Case of the Serrano-Cruz Sisters v. El Salvador*, *Merits, Reparations and Costs*, Judgement of 1 March 2005, Serie C No. 118, paras. 112, 115 and 116.

5 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 111; European Court of Human Rights (ECtHR), *Al-Skeini v United Kingdom*, Application No. 55721/07, 7 July 2011, paras 133-137, 142; ECtHR, *Georgia v. Russia (II)*, Application No. 38263/08, 21 January 2021, ECtHR, *Ukraine and The Netherlands v. Russia*, Applications nos. 8019/16, 43800/14 and 28525/20, 30 November 2022, para 558; UN Human Rights Committee, General Comment No. 31, *The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 10.

6 Article 91 of Additional Protocol I to the 1949 Geneva Conventions and Rule 150 of ICRC Customary International Humanitarian Law; Article 3, 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land; Protocol to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.

7 Article 75 of the Rome Statute of the International Criminal Court (Rome Statute); Article 91 of Additional Protocol I to the 1949 Geneva Conventions and Rule 150 of ICRC Customary International Humanitarian Law.

8 E.C. Gillard, ‘Reparations for violations of international humanitarian law’, ICRC September 2003, Vol. 85, No. 851, pp. 529-553.

9 See fn 3 and 4 above, and Belfast Guidelines on Reparations in Post-Conflict Societies, Principle 1.

10 Article 75 (2) of the Rome Statute. See further paras. 48-51 below.

- **Restitution:** restoring the victim to their original situation before the violation occurred, e.g. through the return of property or return to one's place of residence.
- **Compensation:** for any economically assessable damage, such as loss of earnings, loss of property, loss of economic opportunities, legal and medical costs, and moral damages.
- **Rehabilitation:** including medical and psychological care, legal and social services.
- **Satisfaction:** ceasing the continuation of violations, truth-seeking, searching for the disappeared or their remains, recovery, reburial of remains, public apologies, judicial and administrative sanctions, memorials, and commemorations.
- **Guarantees of non-repetition:** through, for example, ensuring the independence of the judiciary, protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders, providing education to society, reforms in military and law enforcement agencies on human rights and international humanitarian law, and reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.¹¹

The delivery of reparations does not fall only on States responsible for the violations. The Basic Principles provide that States 'should endeavour to establish national programmes 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'.¹²

Inter-State responsibility

In international law, waging an aggressive war breaches the UN Charter provisions on the use of force, and therefore as an internationally wrongful act, invokes a right to reparation.¹³ Articles 30 and 31 of the Draft Articles on the Responsibility of States stipulate that a State responsible for an internationally wrongful act must cease that act and is under an obligation to make reparation for the injury or damage.¹⁴ This includes material and moral damage. States providing 'aid or assistance in the commission of an internationally wrongful act' with knowledge of the circumstances of the internationally wrongful act and where that 'act would be internationally wrongful if committed by that State', could also be responsible.¹⁵ Reparation under this body of law can take the form of:

- restitution i.e. re-establishing the situation before the wrongful act was committed;
- compensation; or
- satisfaction i.e. acknowledgment of the breach, expression of regret or a formal apology.¹⁶

Importantly, it is the injured State, and not individual victims, which is envisaged as having the right to seek reparation for violations under this body of law, and the reparation may not cover all losses, only those causally linked to the wrongful act. Nonetheless, an injured State may seek reparation on behalf of its citizens who have suffered harm.

11 UNGA, 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, 21 March 2006, A/RES/60/147.

12 Ibid., Principle 16.

13 Charter of the United Nations, Articles 2(4) and 39; UNGA Resolution ES-11/1, 2 March 2022.

14 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Articles 30 and 31. Although the Articles remain in draft form, Article 31 reflects the law of international responsibility as determined by Permanent Court of International Justice in *Factory at Chorzów, Jurisdiction*, 1927, P.C.I.J., Series A, No. 9, p. 21, and is widely cited in international jurisprudence.

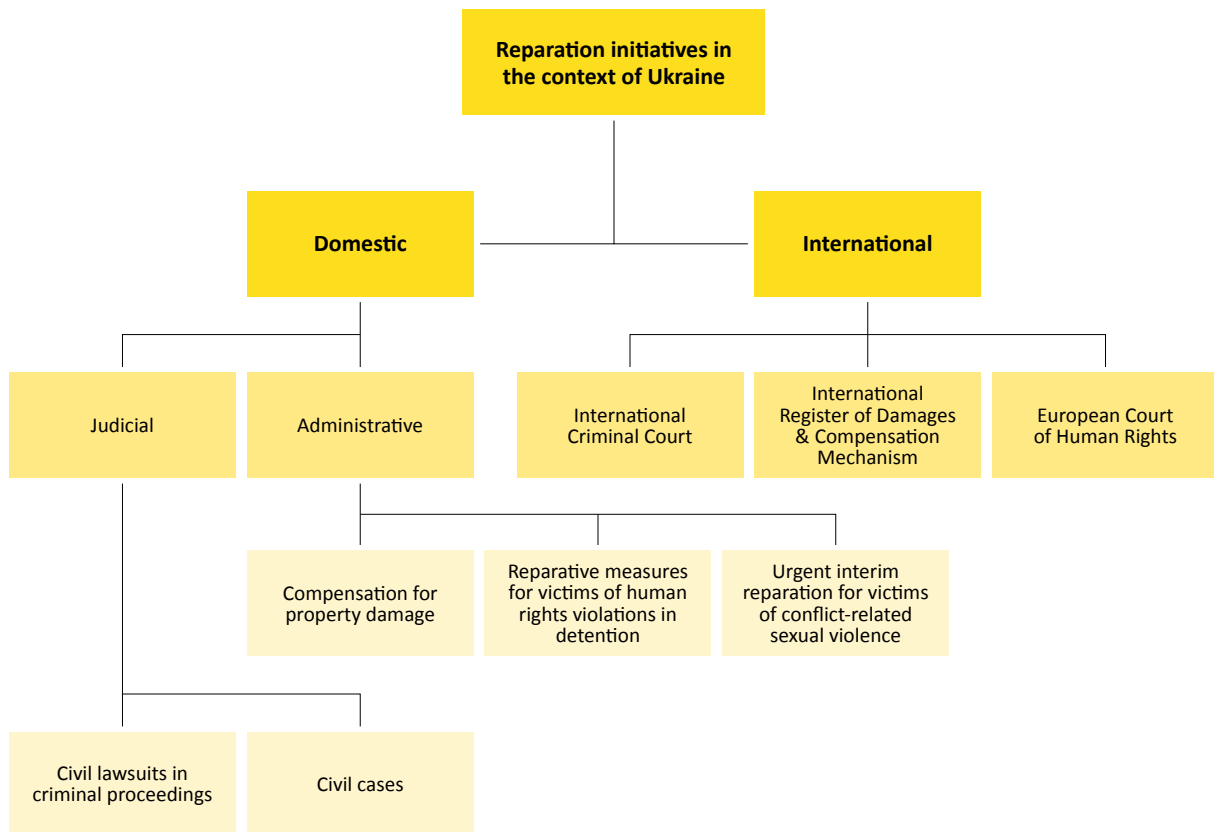
15 Fn 14, Draft Articles, Article 16.

16 Ibid., Articles 34-37.

REPARATION INITIATIVES IN THE CONTEXT OF UKRAINE

The right of victims of the conflict in Ukraine to a remedy and reparation derives from the sources mentioned above and relates to different levels of State and individual responsibility. In the main, the obligation to provide reparation under international law rests with Russia (and in some cases, assisting States, Ukraine and individual convicted perpetrators).¹⁷ However, to fulfil the rights of victims, Ukraine and the international community are developing some initiatives and discussions aimed at ensuring that interim and full reparations are delivered in Ukraine.¹⁸ The following sections aim to provide an analysis of the 'reparation initiatives' under consideration by Ukraine and the international community currently and their potential to ensure the delivery of comprehensive and holistic reparations to victims in Ukraine.

The following diagram is a visual representation of the reparation initiatives available or in progress on both national and international levels to deliver reparation to individual victims in Ukraine.



17 Ukrainian CSOs, 'Position paper. Compensatory mechanisms and compensation for damages'.

18 UN Basic Principles, fn 11, Principle 3(c).

Domestic reparation initiatives

The current reparation initiatives existing or in progress at the domestic level in Ukraine can be divided into judicial mechanisms and administrative mechanisms. Prior to the full-scale invasion, work had also begun on a transitional justice roadmap, outlined below.

Judicial mechanisms

While it is not possible for courts to issue other forms of case-based reparation in Ukraine, they can award compensation in certain civil cases, including civil damages lawsuits connected to criminal proceedings.¹⁹

Firstly, under Ukrainian law, a person who has suffered material and/or moral damage as a result of a criminal offence has the right to claim compensation in a civil lawsuit submitted during the criminal proceedings.²⁰ Under the Criminal Procedural Code of Ukraine, the lawsuit can be satisfied and compensation paid if the criminal offence is established by the court and only after the offender is found guilty.²¹ Compensation is payable by the convicted person or can be made at the expense of the State Budget of Ukraine in cases where the material or moral harm has been caused by a conduct which is attributable to the State.²² The perpetrator (suspect or defendant in the criminal proceedings) may also pay the compensation on their own initiative at any stage before the resolution of the criminal case.²³

The main disadvantage of this mechanism is that the prospect of receiving compensation is entirely contingent upon the resolution of the criminal case. In practice, most defendants in the relevant conflict-related cases are likely to be members of the Russian armed forces or their proxy forces. With the exception of combatants captured by Ukraine, it may be challenging to obtain convictions in trials without holding them *in absentia*. In any event, these accountability and justice processes are long and are likely to *de facto* delay the prospect of any redress to the victim by years.

The second option is to bring civil cases for compensation not contingent upon the resolution of criminal proceedings. The Civil Code of Ukraine provides a general litigation framework for compensation claims for material and moral (non-pecuniary) damages that do not necessarily have to be linked to criminal accountability processes. This mechanism covers a wide range of damages claims between private individuals and certain categories of damages caused to private individuals by the State or its constituent elements.²⁴ In particular, moral and material damage can be claimed for causing an injury, damage to health or death. In the categories of cases where the harm was caused by decisions, actions or omission of State officials, State bodies, or regional and local authorities, that harm is compensated by the respective tier of the government regardless of the establishment of the guilt of the individual official. This extends, for example, to cases of arbitrary detention by law enforcement authorities.

Finally, under the Law ‘On Countering Terrorism’, compensation for material and non-pecuniary damages caused by a terrorist act may be claimed. The approach of the national courts allowed plaintiffs in conflict-related cases

19 Compensation is one of the five forms of reparations, set out in the UN Basic Principles, *Ibid*.

20 Criminal Procedural Code of Ukraine, Article 128: ‘Civil lawsuit in criminal proceedings’.

21 Additionally, there are very narrow circumstances which allow the compensation to be granted without a guilty verdict, e.g. when the defendant is declared not guilty based on an insanity defence.

22 Criminal Procedural Code of Ukraine, Article 130.

23 Criminal Procedural Code of Ukraine Article 127(1). A third party—a natural person or legal entity—can also pay the compensation in lieu of the perpetrator, subject to his consent.

24 Civil Code of Ukraine, Articles 1166-1168, 1173, 1174, and 1176.

to claim compensation under this anti-terrorist legislation.²⁵ Considering that in 2018 Ukraine formally changed the legal characterisation of the hostilities in the east of the country from an “anti-terrorist operation” to a “joint forces operation” with a clearer military link, and given the full-scale invasion by Russia in 2022, this compensation track is less relevant, unless conduct is categorised in claims as a “terrorist act”. This may however contradict other classifications of the same conduct as international crimes.

One interesting factor, however, is that since the full-scale invasion, the Supreme Court of Ukraine has delivered a series of breakthrough—and legally controversial—conflict-related judgments awarding compensation payable by the Russian Federation as a State to victims that deny the jurisdictional immunity of Russia in Ukrainian courts on the basis that upholding immunity would deny the complainant’s right to remedy and effective judicial protection.²⁶ Currently, it is not clear whether these judgments will be satisfied, and Russia may benefit from enforcement immunity if attempts are made to satisfy the judgments through Russian State assets frozen abroad.

Ultimately, civil proceedings are unfortunately not accessible for the majority of victims, especially if they are located in occupied territories or are unable to afford the legal fees involved. Indeed, as the OHCHR noted, ‘obtaining such judgements is a long, complex process and the right to remedy and reparation would be better upheld through the introduction of an administrative procedure for reparations claims.’²⁷

In addition to the above, the case-law of the courts is lacking in coherence as to how to evaluate damages and the grounds for responsibility, how to approach the non-participation of the Russian authorities as respondents, and issues around State immunity.

Administrative mechanisms

Ukraine has not yet developed a comprehensive administrative reparation programme. Nonetheless, administrative mechanisms providing compensation to those who have suffered property damage, and reparative measures to those who have suffered human rights violations while in detention exist, and other initiatives are in development. These are currently considered as ‘assistance’, rather than reparations.

Compensation for property damage

Ukrainian legislation provides for an administrative mechanism for compensation for housing destroyed “as a result of the armed aggression of the Russian Federation”.²⁸ Under the relevant decree, compensation claims are to be awarded by administrative bodies—commissions which are established at the local level. The commissions have the power and the responsibility to physically inspect the destroyed housing. The local authority, under the ambit of which the commission is created, makes the payment to the eligible individuals, based on the calculation

25 For example, in the judgment of the Pechersk District Court in Kyiv of 14 June 2017 (Case No 757/61954/16-ц), the court granted both material and moral damage to the plaintiffs due to damage in their house, their displacement, and the psychological distress and suffering caused. The court noted that the conviction of the perpetrator of the terrorist act is not a precondition for compensation for the victim. The court stated: ‘*There is no doubt the plaintiffs suffered a psychological loss and anguish: cumulatively there was an injury to their honor and dignity as residents of certain regions of Ukraine, emotional distress in connection with the violation of their right to property and the violation of their normal way of life and contacts with due to their forced displacement, and the weight of the forced changes to their life, could not but have the effect of worsening their health.*’

26 The first judgment was delivered on 14 April 2022 and concerned moral damage claimed from Russia by the wife of a deceased Ukrainian soldier. It was further followed by judgments on 18 May 2022 (1 and 2) and 8 June 2022, all conflict-related, where the court took a similar approach. See also, on the question of adjudication of “moral damage” claims, Decree No. 4 of the Plenum of the Supreme Court of Ukraine ‘On Court Practice in Cases on Compensation for Non-Pecuniary Harm’ (1995).

27 OHCHR, ‘Report on the Human Rights Situation in Ukraine 16 May to 15 August 2019’, para. 32.

28 Decree of the Cabinet of Ministers of Ukraine No. 947 of 18 December 2013, as amended on 11 March 2022. The decree precedes the full-scale invasion of Ukraine by Russia. It is not clear how the mechanism established under the decree has been functioning since the full-scale invasion began.

of the amount of compensation by the evaluating commission. OHCHR previously welcomed the gradual ease of accessibility of this compensation mechanism but also pointed out that budgetary allocations capable of covering the awarded claims were insufficient²⁹ and that certain categories of applicants were *de facto* excluded from being able to exercise their right to compensation.³⁰

Additionally, prior to the full-scale invasion, Ukraine had made attempts to create a more comprehensive framework on compensation for conflict-related property damage. The draft laws were registered in the Parliament in 2021 but remained pending as of October 2023.³¹ OHCHR welcomed the initiative of a more comprehensive legislative approach to ensuring the right to compensation but pointed out that the suggested legislation still left out residents of territories which were not controlled by the government of Ukraine.³²

Since the beginning of the full-scale invasion, Ukraine has begun putting in place new initiatives in relation to property damage. The Law 'On Compensation for Damage and Destruction of Certain Categories of Real Estate Property as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Military Aggression of the Russian Federation' No. 7198 provides for remedies in various forms: compensation for damaged or destroyed housing; financing the construction of a new building in lieu of the destroyed one (this can be seen as a form of restitution); as well as financial assistance for repair and restoration of damaged buildings. OHCHR provided a nuanced commentary on this legislative initiative in its draft form: "... draft law No. 7198 will significantly enhance opportunities for the affected population to receive compensation. OHCHR regrets that the draft law fails to make provision for residents of territories controlled by Russian armed forces and affiliated armed groups, and requires ownership documentation and two expert assessments of affected housing, which is likely to protract and in some cases may entirely frustrate the compensation process".³³ Another potential challenge is that those receiving compensation are obliged to use it exclusively to finance the construction or purchase of housing. For victims with immediate housing and other survival needs, purchasing real estate or waiting for its construction may not be the most effective use of the funds.³⁴

The Law also provides for the establishment of a Register of Damaged and Destroyed Property as a single database for recording damage and compensation, however it remains to be seen how this will be operationalised and connected to other registers, including the International Register of Damage (see below).³⁵ Further legislation and procedures have been adopted, including to implement an E-recovery service providing compensation on the basis of applications to the Diya web portal.³⁶

29 See OHCHR report on the human rights situation in Ukraine (1 August 2021 - 31 January 2022), para. 44, which reads: "Since the introduction of the compensation procedure in 2020, 573 individuals have been awarded compensation (74 in 2020 and 509 in 2021). In 2021, the portion of the government budget allocated for such compensation was almost fully exhausted (UAH 114 million, approx. \$ 4 million), leading to delays in issuing compensation payments. OHCHR regrets that the budget allocation for compensation in 2022 was significantly decreased, to UAH 81 million (\$ 2.8 million) ...".

30 Ibid., OHCHR stated, "This exclusion means that IDPs and residents from armed groups-controlled territory, whose houses were destroyed, are *de facto* prevented from accessing adequate housing, infringing their right to an adequate standard of living."

31 See draft laws 5177 "On Protection of the Right to Property and Other Material Rights of Persons Who Suffered Due to Armed Aggression" of 1 March 2021 and 5177-1 "On Protection of the Right to Property and Other Material Rights of Persons Who Suffered Due to the Conduct of the Anti-Terrorist Operation or the Joint Forces Operation" of 17 March 2021.

32 See OHCHR report on the human rights situation in Ukraine (1 August 2021 - 31 January 2022), para. 45.

33 OHCHR, "Situation of Human Rights in Ukraine in the Context of the Armed Attack of the Russian Federation", 24 February-15 May 2022, para. 55.

34 Transparency International, 'Compensation for damaged and destroyed property: analysis of draft law 7198', 12 January 2023.

35 Note that another draft Law 'On compensation for property lost, damaged and destroyed as a result of the armed aggression of the Russian Federation and fair distribution of reparations No. 7237' of 31 March 2022, envisaged two stages of compensation for property damage: primary and full compensation, however there has been no further progress on implementation of this since.

36 Resolution of the Cabinet of Ministers of Ukraine No 381 on 'Procedure for providing compensation for the restoration of certain categories of real estate damaged as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation, using the electronic public service "eRecovery"'; Resolution of the Cabinet of Ministers of Ukraine No. 600 'On Approval of the Procedure for Providing Compensation for Destroyed Real Estate Objects'.

Reparation and assistance options for victims of grave human rights violations, including arbitrary arrest, arbitrary detention, enforced disappearance, and torture and ill-treatment

OHCHR has reported the acute lack of remedy and reparation options for victims of arbitrary detention, torture and ill-treatment and sexual violence in Ukraine.³⁷ One State-supported assistance mechanism that had been operationalised prior to the full-scale invasion by Russia was a one-time payment of 100,000 UAH (approx. 2,470 euros at the time of writing) granted to victims of conflict-related arbitrary detention cases.³⁸ By December 2021, 209 victims had received the payment.³⁹

The regulation that previously provided this one-off payment was replaced by a more comprehensive assistance law: the Law ‘On the social and legal protection of persons who have been deprived of personal liberty as a result of armed aggression against Ukraine, and their family members’, adopted in January 2022.⁴⁰ This piece of legislation was developed with the assistance of and clear endorsement by Ukrainian civil society, including NGOs specialising in conflict-related human rights cases, victims, and their relatives.⁴¹ Although the mechanism focuses on detention, it is de facto relevant for a number of categories of victims of grave human rights violations. In the context of the current conflict, instances of torture, ill-treatment, and sexual violence have been extensively documented in relation to individuals whose detention was often unacknowledged and concealed, which heightened the risks of such violations. As such, the law has relevance and practical meaning for various categories of victims who suffered from different types of violations but were united by the fact of being detained. In other words, CRSV survivors can often intersect with other groups of detained individuals eligible for assistance under this law.

The law applies to individuals—both POWs and civilians—who have been deprived of their personal freedom as a result of armed aggression against Ukraine. It establishes a State register of such individuals. A designated administrative commission hears claims and establishes the fact of “deprivation of liberty as a result of armed aggression”. The commission is a large inter-agency body that includes representatives of various ministries, the President, the Ombudsperson, the Prosecutor’s Office, other State bodies, and civil society organisations. The procedure under this mechanism requires the submission of strictly enumerated materials that prove the eligibility of the applicant. The procedure stipulated under the law establishes a high judicial threshold.

Eligible applicants have the right to periodic annual payments of financial support for every year of imprisonment, which can also be received by family members of the detained person in lieu of the latter. Additionally, a one-time-payment is provided after the release from imprisonment or in the event of the death of the detainee. The Ministry of Reintegration reported that both the periodic and one-time payments were fixed at UAH 100,000 as of March 2023, equivalent to approximately 2,700 USD.⁴²

In addition to financial assistance, the law provides a number of other measures, which are framed as “assistance” but in their essence have reparative value. These include medical care and rehabilitation, temporary housing,

37 OHCHR, “Arbitrary Detention, Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine.” (2014-2021), para. 84. The relevant excerpt reads, “...the right of victims to remedy and reparation for harm suffered remains largely unfulfilled. Rehabilitation of victims of torture and conflict-related sexual violence is provided almost exclusively by NGOs, with support from international organizations, while Government-supported services and mechanisms are effectively lacking.”

38 The Cabinet of Ministers Decree No. 1122 ‘On Certain Issues of Social and Legal Protection of Persons Deprived of Their Liberty as a Result of the Armed Aggression against Ukraine after Their Release’ of 11 December 2019.

39 A Nassar, K. Busol and A. Sydor-Czartorysky, ‘Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-related Sexual Violence’, Global Survivors Fund, May 2022, p. 61.

40 Law ‘On the social and legal protection of persons who have been deprived of personal liberty as a result of armed aggression against Ukraine, and their family members’ from 26 January 2022.

41 Center for Civil Liberties, ‘Human rights activists urge Verkhovna Rada to adopt a bill on the protection of prisoners’, 20 October 2021.

42 The Ministry of Reintegration of Temporarily Occupied Territories, ‘What state financial aid are prisoners and their family members entitled to?’, 3 March 2023.

reimbursement of legal aid costs and free legal aid options, social adaptation and reintegration measures, assistance with employment and facilitation of access to education and vocational training options.

Reparation for survivors of conflict-related sexual violence (CRSV)

Sexual and gender-based violence has been committed on a large scale during the conflict in Ukraine since 2014, and efforts have been made towards addressing the ‘extreme unmet medical, psychological, and economic needs’ of this particular survivors group.⁴³

One initiative is the Action Plan,⁴⁴ presented by the government in September 2022 and further developed in late 2022 and early 2023, for the implementation of the Framework of Cooperation with the government of Ukraine on the Prevention and Response to Conflict-Related Sexual Violence⁴⁵ (the Framework). This was developed between the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict’s Office and the Ukrainian government in collaboration with UN Women and other UN Agencies.⁴⁶ The Framework builds upon Ukraine’s National Action Plan for Security Council Resolution 1325 on Women, Peace and Security.⁴⁷ The latter establishes national objectives in relation to ensuring “access to justice” and “complex assistance” to CRSV survivors.

Under the Framework, “both parties seek to strengthen partnership through joint actions and programmes to prevent and respond to CRSV, and strengthen survivor-centred responses by supporting and reinforcing national mechanisms and institutions.”⁴⁸ Part of this involves “the design of reparations programmes for victims”.⁴⁹ While the key ideas of the Framework and Action plan remain unchanged, the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict’s Office together with partners is currently working on a revised implementation plan.

Alongside this work, in May 2022, GSF, together with partners, released their “Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence”⁵⁰ covering both CRSV from 2014 onwards and part of the new large-scale invasion. The government of Ukraine signed a Memorandum of Understanding with the Dr. Denis Mukwege Foundation and GSF in July 2022. The Memorandum provided for the development of an Urgent Interim Reparation Programme, the set-up of a registry of victims, the establishment of a fund, and work on innovative forms of financing reparation, including repurposing of assets and holistic care for survivors. GSF also committed to provide technical support to share best practice and lessons learned on reparation for survivors of conflict-related sexual violence with the government and for the enactment of relevant legal frameworks.

The idea behind the programme is to ensure that urgent interim reparation, not least in the forms of compensation, rehabilitation and various elements of holistic care, are granted to survivors in a timely manner to address urgent and immediate consequences of harm while survivors wait for comprehensive reparation.

43 Fn 39.

44 The Action Plan for the implementation of the Framework of Cooperation with the government of Ukraine on the Prevention and Response to Conflict-Related Sexual Violence, September 2022 (as amended).

45 Framework on cooperation between the Government of Ukraine and the UN on prevention and response to conflict-related sexual violence, May 2022.

46 Office of the Special Representative of the Secretary General for Sexual Violence in Conflict, Remarks of SRSG-SVC Pramila Patten at the Summit of First Ladies and Gentlemen Hosted by the First Lady of Ukraine, 23 July 2022.

47 Decree of the Cabinet of Ministers of Ukraine 1544-p of 28 October 2020, ‘On the Adoption of the National Action Plan on the Implementation of the United Nations Security Council Resolution 1325 on Women, Peace and Security for the Period before 2025’.

48 Framework on cooperation between the Government of Ukraine and the UN on prevention and response to conflict-related sexual violence, May 2022.

49 Ibid.

50 Fn 39.

While relevant legislation on reparation for survivors of CRSV is approved by the Ukrainian Parliament, a pilot project on urgent interim reparation, supported by the government of Ukraine, will be initiated with a core group of 500 survivors of conflict-related sexual violence from 2014 and onwards. The objective of the Pilot is to act now but also to provide relevant stakeholders in Ukraine with the evidence they need of how such a programme could and should work. As such, relevant practice will be shared with the government, Parliament, survivors and other actors to ensure best practice informs the set-up of a fully-fledged administrative reparation programme.

Advice has also been provided by GSF, REDRESS, and other international and national partners on the draft laws “On the Status of Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations”⁵¹ (which has been registered before Parliament) and “On Amendments to the Budget Code of Ukraine on the Establishment of the Fund for the Payment of Urgent Compensation to Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine”⁵² to align them, as far as possible, with international standards and best practice.

Transitional justice in Ukraine

Prior to the full-scale invasion in 2022, reparation had formed part of transitional justice initiatives in Ukraine following the outbreak of conflict in 2014. Amendment of national legislation in the domain of transitional and transformative justice fell within the mandate of the specialised Law Reform Commission, which was established in 2019,⁵³ whose work was built upon by the Working Group on the Reintegration of the Temporarily Occupied Territories.⁵⁴

Among other important issues, the transitional justice Roadmap, developed by the Working Group in 2020, covered reparations in the forms of compensation and satisfaction and addressed the gendered aspects of the armed conflict.⁵⁵ In particular, the Roadmap envisaged the creation of a fund for reparations to victims with the participation of international donors.⁵⁶ The suggested Roadmap has not been adopted in the form of any government policy or regulatory framework. The Draft Law on the Principles of State Policy of the Transition Period⁵⁷ which was prepared in 2021 and withdrawn for reconsideration in January 2022 following considerable criticisms – including of its lack of survivor-centrism – further fragmented the issue.⁵⁸

The Working Group has expressed its intention to continue its work on transitional justice in light of the full-scale invasion.⁵⁹ In practice, however, elements which could fall within a holistic approach to transitional justice are instead being pursued independently, such as the reconstruction and recovery of Ukraine, justice and accountability, and reparation.

51 Draft law 10132 registered on 9 October 2023, pending at the relevant parliamentary committee at the time of writing.

52 Draft law 10133 registered on 9 October 2023, pending at the relevant parliamentary committee at the time of writing.

53 President of Ukraine, Regulations on the Commission on Legal Reform.

54 Provisions on the Law Reform Commission, approved by Presidential Decree No. 584/2019, dated 7 August 2019, para. 9.

55 K. Busol, ‘Mariupol and the Origins and Avenues of Ukraine’s Transitional Justice Process’, 1 June 2022.

56 OHCHR described the provisions on reparations as ‘generally in line with the UN 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’. See OHCHR, ‘Report on the Human Rights Situation in Ukraine 1 August 2020– 31 January 2021’, para. 32.

57 Проект Закону про засади державної політики перехідного періоду, No. 5844, 9 August 2021. English translation available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)055-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)055-e).

58 K. Busol, ‘Mariupol and the Origins and Avenues of Ukraine’s Transitional Justice Process’, 1 June 2022.

59 K. Busol, ‘Mariupol and the Origins and Avenues of Ukraine’s Transitional Justice Process’, 1 June 2022.

International reparation initiatives

The establishment of the Register of Damage and a compensation mechanism

The development of an international compensation mechanism has been in progress since 2022. In May 2022, Ukraine's President Zelensky formed a special Working Group chaired by the Head of the Office of the President, which included representatives of the Cabinet of Ministers and leading Ukrainian and foreign international lawyers,⁶⁰ to consider the development of a compensation mechanism.

In one of the first decisions taken at international level, following the expulsion of the Russian Federation from the Council of Europe and its cessation as a State party to the European Convention on Human Rights, on 15 September 2022, the Committee of Ministers of the Council of Europe, in its decision aimed at identifying existing international accountability gaps, welcomed the initiative on the establishment of the Register of Damage and a compensation mechanism.⁶¹

On 14 November 2022, the UN General Assembly adopted a Resolution on the 'Furtherance of remedy and reparation for aggression against Ukraine', which recognises that Russia 'must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts.'⁶²

The Resolution recommends:

- the creation by Member States, in cooperation with Ukraine, of an **international register of damages** to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of Russia in or against Ukraine of an international damage compensation mechanism; and
- the establishment of an **international mechanism for reparation for damage**, loss or injury, arising from the internationally wrongful acts of the Russian Federation in or against Ukraine.

Following the UN General Assembly Resolution, on 16 May 2023, the Council of Europe together with a coalition of member and non-member States and the EU, approved the creation of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine through an Enlarged Partial Agreement.⁶³ The Register:

"shall serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused, on or after 24 February 2022, in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, State-owned or controlled entities, by the Russian Federation's internationally wrongful acts in or against Ukraine."⁶⁴

60 Office of the President of Ukraine, [Президент провів нараду щодо компенсації Україні шкоди, завданої агресією РФ](#), 6 August 2022.

61 Decision of the Committee of Ministers of the Council of Europe, 15 September 2022, CM/Del/Dec(2022)1442/2.3.

62 UNGA, [Furtherance of remedy and reparation for aggression against Ukraine](#), A/RES/ES-11/5, 15 November 2022.

63 Council of Europe, ['Council of Europe Summit creates register of damage for Ukraine as first step towards an international compensation mechanism for victims of Russian aggression'](#), 17 May 2023.

64 Council of Europe, [Resolution CM/Res\(2023\)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine](#), Article 1.

It will:

- a) receive and process information on claims of damage and evidence;
- b) categorise, classify and organise such claims, assess and determine the eligibility of claims for inclusion in the Register; and
- c) record the eligible claims for the purposes of their future examination and adjudication.

The scope of the Register is limited since it relates to damage, loss or injury caused on or after 24 February 2022 only; which is related to the Russian aggression; and which occurs on the territory of Ukraine. The digital platform to host the Register is nearing creation, with the Register being designed as the first component of a future international compensation mechanism to be established in co-operation with Ukraine.⁶⁵ It is envisaged that the Register will be connected to national registries, with information being extracted from national registries of relevance. These registrations have already begun in connection with damage, loss or injury caused in the first three months of 2022. To further support the work of the Register, on 13 November 2022, Ukraine's Ministry of Social Policy, with the support of the Cabinet of Ministers of Ukraine, introduced a new law on the 'Registration of Persons whose Life and Health were Damaged by the Russian Aggression against Ukraine', establishing a national registry to record all damages and harm caused to Ukrainian victims by Russia.

The Register has received some criticism in relation to its "top-down" approach of being created by national and international policymakers without the meaningful participation of victims.⁶⁶ As of October 2023, the temporal scope of the Register is likely to exclude a considerable number of victims affected in Crimea and Donbas during the first phase of Russia's aggression in 2014-2021, and the territorial scope may exclude some victims who are no longer on the territory of Ukraine, such as detainees or children who have suffered forcible transfer. The information contained in the Register and categories of damage recorded will impact the operationalisation of the compensation mechanism which will be linked to the Register. It is possible that the compensation mechanism could receive mass and/or overlapping claims, and therefore it appears that further thought will be needed as to how this body will prioritise individual claims, or how those awards will be financed.⁶⁷

The Declaration of The Informal Conference of Ministers of Justice of The Council of Europe adopted on the occasion of the Conference: "On the Path to Justice for Ukraine: Advancing Accountability, Reuniting Children with Their Families, and Supporting the Resilience of its Justice System" on 11 September 2023, contained the "Riga Principles" which envisage a "victim-centred approach":

"The Register should be guided by a victim-centred approach, in a manner consistent with States' obligations to provide remedies and redress to victims, in particular the most vulnerable, such as women and children. Its organisation, functioning and structure, and rules for eligibility of claims for inclusion in the Register, evidence, and procedures shall enable the Register to document, promptly and with due priority, claims for human rights violations and abuses, such as those involving loss of life, enforced disappearance, conflict-related sexual violence, serious injury, torture, arbitrary arrest and detention, while pursuing the timely and efficient registration of other claims, such as damage to property, infrastructure, environment and cultural heritage."

The "Principles" also require meaningful consultation with civil society and non-governmental organisations, including human rights defenders, as well as victims and victims' rights organisations.

⁶⁵ Ibid.

⁶⁶ ICTJ, 'An International Register of Damages for Ukraine Promises Accountability, But Could Victims Be Left Behind?', 2 June 2023.

⁶⁷ ICTJ, 'An International Register of Damages for Ukraine Promises Accountability, But Could Victims Be Left Behind?', 2 June 2023.

The International Criminal Court

The delivery of reparations to victims in Ukraine could be also carried out through the ICC.

While neither Ukraine nor Russia has ratified the Rome Statute, Ukraine has twice accepted the ICC's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, pursuant to Article 12(3) of the Statute. The ICC Prosecutor opened an investigation into the situation in Ukraine which "encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards", following the referral by 39 State Parties.⁶⁸ Arrest warrants were issued on 17 March 2023 against Russian President Vladimir Putin and Maria Lvova-Belova, the Commissioner for Children's Rights in the Office of the President of the Russian Federation, both allegedly responsible for the war crime of unlawful deportation of a population (children) and the war crime of the unlawful transfer of a population (children) from occupied areas of Ukraine to the Russian Federation (under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).⁶⁹ The ICC will now rely on the cooperation of Member States (and, in some cases, non-Member States) to arrest and surrender Putin and Lvova-Belova.

The ICC has the power, under Article 75(2) of the Rome Statute, to make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Victims can apply to participate in ICC proceedings and/or for reparations in the case of a conviction through a standard application form at each stage in the proceedings.⁷⁰ The form will then be considered by the Court, and victim status and the entitlement to participate or receive reparations decided on by the Judges.

Where appropriate (and where the convicted person does not have the means), the Court may order that the award for reparations be made through the Trust Fund for Victims (TFV) (and this is the case in the majority of practice). The ICC's TFV set up under Article 79 of the Rome Statute implements reparations ordered by the ICC against convicted persons for the benefit of the victims, collectively or individually (its '**Reparations Mandate**'). Second, victims and their families who have suffered physical, psychological, and/or material harm as a result of war crimes, can receive rehabilitation and support through service-based programmes carried out by implementing partners of the TFV (its '**Assistance Mandate**').⁷¹ Unlike reparations under its reparations mandate, the TFV's assistance programmes do not require a direct link to an ICC conviction or judicial proceedings.⁷² Both mandates of the TFV can be financed through fines imposed following conviction and the seizing of personal assets of the convicted person (brought about through mutual legal assistance requests), but more often through voluntary donations by member States and individual donors. If the Trust Fund for Victims does initiate an Assistance Mandate for Ukraine further clarification will be needed on the scope of such mandate and its complementarity and synergy with other initiatives.

The European Court of Human Rights

Under the ECHR, Ukraine as a State can bring a case to the European Court of Human Rights (ECtHR),⁷³ and individual victims may also bring individual applications where there have been violations of the Convention.⁷⁴ Where

68 ICC, Situation in Ukraine ICC-01/22. Note that 43 State Parties referred the situation.

69 International Criminal Court (ICC), 'Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova', 17 March 2023.

70 ICC, 'Victims before the International Criminal Court: A guide for the participation of victims in the proceedings of the ICC'.

71 TFV Assistance Mandate.

72 TFV, Assistance Programmes.

73 ECHR, Article 33.

74 ECHR, Article 34. Ukrainian CSOs, Position paper. Compensatory mechanisms and compensation for damages.

the ECtHR holds that there has been a violation it may award ‘just satisfaction’ to the injured party ‘if the internal law of the High Contracting Party concerned allows only partial reparation to be made’.⁷⁵ ‘Just satisfaction’ is equivalent to damages or compensation for the injured party or parties, and covers pecuniary or non-pecuniary damage, such as mental or physical suffering, as well as legal costs and expenses. In addition to ‘just satisfaction’ payments, the execution of judgments also contributes to restitutio in integrum, cessation and non-repetition. There are several inter-State cases brought by Ukraine against Russia currently pending before the Court.⁷⁶ The exact number of currently pending individual applications against Russia and Ukraine related to the conflict is unknown, however even prior to the full-scale invasion there were 8,764 individual applications related to the hostilities and occupation in eastern Ukraine and Crimea pending.⁷⁷

As of 16 September 2022, Russia is no longer a party to the ECHR.⁷⁸ Accordingly, the ECtHR will only consider individual and inter-State applications against Russia in relation to alleged violations that occurred before that date and within the limits of its jurisdiction. The Council of Europe’s Committee of Ministers adopted a decision asking the Council of Europe to put into effect and actively explore with interested member States all possible strategies to ensure the effective implementation of judgments against Russia.⁷⁹ The Committee further noted that it will continue to supervise execution of judgments and friendly settlements that concern Russia prior to its exit from the Council of Europe, and that Russia is obligated to implement the decisions.⁸⁰

Although the enforcement options in respect of European Court judgments are limited and are still being explored,⁸¹ there are no time limits on implementation, and therefore changes in Russia’s regime or a willingness to return to the ECHR in the future could lead to delayed implementation of reparation in favour of applicant victims in Ukraine and Russia. Ukraine, on the other hand, is a party to the ECHR and generally complies with the Court’s awards of “just satisfaction”⁸² to the applicant, albeit often with significant delay.⁸³

75 ECHR, Article 41.

76 <https://www.echr.coe.int/inter-state-applications>.

77 IWPR, ‘Why the European Court of Human Rights Remains Key to Justice for Ukraine’, 6 September 2022.

78 Committee of Ministers, Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, 16 March 2022.

79 Decision 1451st meeting, 6-8 December 2022 (DH).

80 Committee of Ministers, ‘Preparation of the next Human Rights meeting: Cases pending against the Russian Federation’, Decision CM/Del/Dec(2022)1451/A2a, 8 December 2022.

81 Council of Europe, Ministers’ Deputies, ‘3rd Strategy paper regarding the means to ensure implementation of judgments of the Court with respect to the Russian Federation’, CM/Inf/DH(2023)22, 26 September 2023.

82 This is the term which the ECtHR uses in its jurisprudence for compensation awards.

83 See the 2022 Annual Report of the Committee of Ministers, which supervises the execution of ECtHR’s judgments. The report stated the following in relation to Ukraine: “full payment of the just satisfaction awarded by the Court was registered in 74 cases in 2022, while confirmation of full payment and/or default interests was awaited in 274 cases for which the deadline indicated in the Court’s judgment has passed since more than six months”, p. 83.

PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS

Based on the current landscape and ongoing initiatives pertaining to reparations, certain preliminary observations and recommendations can be made.

Defining the scope of reparation

The complexity of the landscape results in a lack of clarity as to what reparation means for Ukraine and for victims of the conflict. Most reparation programmes follow the conclusion of conflicts, especially internal conflicts. The Ukrainian situation is therefore unique: the multitude of initiatives while the conflict is ongoing shows a willingness to act with speed to put in place initiatives. Despite this, the scope of the various mechanisms varies, and therefore questions arise as to whether there is a holistic understanding of the short and long term requirements of Ukraine as a State and of victims. At present, much of the discussion surrounding reparation in relation to Ukraine at national and international levels focus on the recovery and reconstruction of Ukraine as a State, as opposed to reparations for individual victims who have suffered harm. This also marks a narrative shift away from transitional justice. Even where there is attention on the individual level, most of the focus relates to compensation only.

National and international actors working on the issue of reparation for victims of the conflict in Ukraine should:

- a) In working to understand the short-term priorities, distinguish between assistance, which is forward-looking in addressing the needs of victims, and reparation, which is designed to repair harm which has occurred before in multiple forms beyond compensation, and also including shelter, security, food, healthcare, and the restoration of rights which have been violated as a result of the conflict.
- b) In considering a longer-term vision, consider:
 - i) What is meant by 'victims' in the context of the Russian aggression;
 - ii) Whether and how reparations to individual victims can be emphasised within the narratives on the reconstruction and economic recovery of Ukraine;
 - iii) How reparation can be prioritised alongside efforts towards criminal justice; and
 - iv) Bringing reparation as part of a broader transitional justice framework as previously envisaged prior to the full-scale invasion.

The need for a coordinated approach to reparation

The most striking observation when considering the reparation landscape currently in relation to Ukraine is that it is fragmented: the delivery of reparations is an issue being considered by several national and international actors through various initiatives. While all the efforts are laudable, there appears to be a lack of coordination and overarching strategy both among different actors on the domestic level (including between judicial and administrative avenues), and between the domestic and international levels. This risks duplication of efforts and the re-traumatisation of victims registering their claims through multiple initiatives.

National and international actors working on the issue of reparation for victims in Ukraine should further cooperate and coordinate their activities:

- a) Further cooperation is needed between all domestic actors, international actors, and between domestic and international initiatives to ensure alignment, and to avoid fragmentation, duplication or retraumatisation;
- b) Registers and/or funds should be coordinated or merged at a national level and between national and international levels;
- c) While urgent interim reparation initiatives are essential, domestic actors should work towards a *comprehensive* reparation strategy for survivors which encompasses reparation in multiple forms, and the main coordinating bodies;
- d) Tools on the national level to promote cooperation and mutual complementarity should be effectively utilised; and
- e) All relevant actors should work collaboratively on a single coherent legislative framework for reparation rather than engage in competing policy initiatives.

The need for engagement with survivors and a tailored approach to reparation

Consultations demonstrate that victims are not sufficiently informed as to which reparations initiatives are available to them, or how they could be eligible to apply, leading to low expectations and a lack of accessibility. Furthermore, there are questions as to whether the initiatives, emphasising compensation, correspond to the requirements of many survivors, including of CRSV, who may prioritise reparations in the form of rehabilitation or, in appropriate cases, restitution, in addition to or instead of individual financial reparations.

Some rehabilitative initiatives are in place: the Ukrainian government has launched an online information platform and relief centres for survivors.⁸⁴ As of October 2023, there were 11 survivor centres in operation across the country as a result of the joint efforts of UNFPA, the Office of Vice-Prime Minister for European and Euro-Atlantic Integration and the State Commissioner for Gender Equality.⁸⁵ Support is also being offered by several Ukrainian and international civil society organisations, but much more is needed to support victims in rebuilding their lives.⁸⁶

There are many categories of survivors who are not always recognised as such, including soldiers and individuals who may have simultaneously collaborated with Russia and been victims. There may also be victims of violations which have occurred outside the territory of Ukraine but which are nonetheless connected to the conflict, such as children who have been subjected to forcible transfer or deportation. Furthermore, certain categories of survivors have received less attention, including those who have suffered violations prior to the full-scale invasion (who would also be excluded from the Register of Damage), are disabled, who are over 60 years of age, internally displaced persons, and those who have suffered domestic violence at the hands of veterans suffering themselves with symptoms of post-traumatic stress and who have not received rehabilitation.

Although consultations with survivors have been carried out in relation to some domestic initiatives in Ukraine, and a mapping initiative is underway by the Council of Europe, it is not clear if survivors have been excluded in the creation of the Register of Damages which was created on the initiative of national and global policymakers, such as the Ukrainian government and intergovernmental bodies such as the UN General Assembly and the Council

⁸⁴ The government launched an online platform to help Ukrainians affected by the war, 15 March 2023.

⁸⁵ Tenth center for survivors support was opened in Odessa, 5 May 2023.

⁸⁶ See Money and consultations, Bucha residents who suffered from the war can obtain support, 20 May 2022; EUAM Ukraine, *Alyona Kryvulyak: La Strada hotline is witnessing a trauma which might destroy a generation*, 13 May 2022.

of Europe. The Register has faced criticism for employing a ‘top-down’ approach making ‘it more difficult for the register to be inclusive, participatory, and victim centred in its operation’.⁸⁷ The lack of transparency as to how survivors can meaningfully participate in the operation of this process only enhances distrust. Survivors should be involved in the delivery of reparations at all stages: from the point of design of initiatives to the implementation.

Moreover, most of the discussions about reparations at the domestic and international level are focussed on making Russia pay, instead of guaranteeing the right to reparation and the well-being of victims. There is a need for designing a reparations policy that could guide the different processes towards providing effective responses to victims, in various forms beyond compensation that could prioritise those who suffered the most serious violations, including torture, CRSV, forceable transfer and others; that could be accessible to survivors, who often suffer from fear, trauma, stigmatisation and lack of evidence; and that could be implemented promptly and comprehensively by Ukraine, with the support of the international community, without prejudice of future claims against Russia and the confiscation and repurposing of Russian assets to pay for reparations.

The delivery of reparations in Ukraine should be survivor-centric:⁸⁸

- a) The rights of individual victims to reparation should be considered alongside important efforts towards the reconstruction and recovery of Ukraine;
- b) Reparation should be available for persons victimised since the beginning of the conflict in 2014; reparation must be prompt, accessible and effective: victims should be able to practically realise this right whether through Ukrainian State-led and/or international or hybrid mechanisms or programmes;
- c) Reparation should be non-discriminatory and inclusive but can take into account differentiated approaches based on the category of the victim and type of CRSV;
- d) Reparation should be adequate, and tailored to the immediate and long-term requirements of victims; and
- e) Victims should be engaged from the point of creation of initiatives, to their implementation.

The role of the international community in delivering and financing reparation

The international community is exploring how it can play a part in the delivery of reparation to victims in the Ukraine context. There may be some limited legal routes for victims of the conflict who are located abroad to claim compensation in other jurisdictions (for example civil tort cases). Many governments are also considering how they can pursue the financial accountability of Russia and Russian individuals and entities involved in the violations, which in turn could assist in financing the reparation initiatives outlined above.

For example, given that significant numbers of Russia’s and Russian individuals and entities’ assets are frozen abroad, governments across the world are considering whether and how assets could be confiscated and repurposed for the benefit of Ukraine. Some existing routes linked to criminality are available,⁸⁹ and new legal bases for confiscation of State and individual assets have been created and proposed in Canada.⁹⁰ The current asset

87 ICTJ, ‘An International Register of Damages for Ukraine Promises Accountability, But Could Victims Be Left Behind?’, 2 June 2023.

88 Ukrainian CSOs, ‘Position paper. Compensatory mechanisms and compensation for damages’.

89 Europe Sanctions, ‘US court grants forfeiture of \$5.4 million owned by Konstantin Malofeyev’, 15 February 2023.

90 Canada, ‘Canada starts first process to seize and pursue the forfeiture of assets of sanctioned Russian oligarch’, 19 December 2022. See also, Bill S-278, An Act to amend the Special Economic Measures Act (disposal of foreign state assets).

confiscation bases still require legal strengthening in line with the law on sovereign immunity, procedural and due process guarantees. The processes also centre around repurposing assets for funding the war effort and economic recovery above reparation for individual victims.

While the creative thinking and debate on asset confiscation continues, governments, international legal scholars and practitioners are exploring shorter-term alternative solutions such as: asset confiscation following a criminal conviction for sanctions violations, repurposing of sanctions violations penalties to finance reparation,⁹¹ introducing a windfall tax generated on the interest or profits of frozen or immobilised assets⁹² or on companies which have profited from the invasion;⁹³ the enforcement of Ukrainian judgments or judgments of international courts in domestic (third) courts, or “voluntary donation mechanisms”, whereby sanctioned individuals can volunteer their assets for the benefit of victims of the conflict in Ukraine.⁹⁴

There is also a unique case in the UK whereby Roman Abramovich’s sale of Chelsea Football club was permitted in May 2022 despite him being subject to sanctions. In accordance with Abramovich’s pledge, the UK declared the £2.5 billion proceeds would go to Ukraine through the establishment of a foundation, although the process has reached a stalemate, with neither the government nor those tasked with setting up the foundation taking responsibility to progress the matter.⁹⁵

The exploration by the international community of financing routes is, however, currently disconnected from the discussions surrounding the delivery of reparations. Since many domestic and international mechanisms exist or are in progress which have the potential to fairly and effectively distribute reparation, it is striking that governments are not considering channelling confiscated or gathered funds into these mechanisms and supporting their coordination and effectiveness. This multiplication of funds adds to the complexity of the reparation landscape.

Governments around the world, in alignment with each other, should endeavour to:

- a) Expand, in line with international law and procedural guarantees, existing legal bases for confiscation of assets of individuals and entities, and States involved in violations of international law in Ukraine, to capture those not already covered, or create new legal bases to do so;
- b) Consider shorter-term alternatives to financing reparation for Ukraine (as the ones previously mentioned); and
- c) Consult with the Ukrainian government, survivor groups and civil society, as well as with (inter)national actors involved in mechanisms for the delivery of reparation, to inform them of the efforts being made at domestic levels to confiscate assets, and to understand how these funds can finance existing reparation mechanisms and reparative measures.

91 JP Sexton and D Kinnecome, ‘Enforcing Sanctions Violations to Fund the Reconstruction of Ukraine’, 8 June 2023, *EJILTalk!*.

92 Financial Times, ‘US backs plans to help Ukraine with profits from Russia’s frozen assets’, 11 October 2023.

93 A Lawson, ‘Donate ‘wartime profits’ to Ukraine or pay windfall tax, MPs tell BP’, *The Guardian*, 7 December 2022.

94 UK Government, ‘New legislation allows Russian sanctions to remain until compensation is paid to Kyiv’, 19 June 2023.

95 REDRESS, ‘Open letter to the UK Government: Repurposing of 2.5 billion in Chelsea FC Sale for Victims’, 24 May 2022; P McInnes, ‘Roman Abramovich representatives believe UK government changed terms over frozen £2.5bn’, *The Guardian*, 17 October 2023.

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