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REDRESS

Ending torture, seeking justice for survivors

May 2024

JUST REPARATION

Strengthening the community of practice for reparations by sharing topical developments in the field



Hello

Welcome to Just Reparation, our roundup of news on reparation curated by the REDRESS legal team. This edition covers reparation stories for survivors of conflict-related sexual violence in Ukraine, environmental defenders in Peru, Holocaust survivors in Romania, and survivors of the genocide in Sudan, as well as our partners experience seeking reparation for electoral sexual violence in Kenya.

Please share your feedback using [this form](#) or contacting Alejandro Rodriguez (REDRESS Legal Officer) at alejandro@redress.org.

BIG STORIES



UKRAINE

Conflict-Related Sexual Violence Survivors of the War in Ukraine Will Start to Receive Interim Relief

Ukrainian survivors of conflict-related sexual violence (CRSV) will begin to receive interim reparations in the [coming weeks](#). This announcement was made by Deputy Prime Minister for European and Euro-Atlantic Integration Olha Stefanishyna, First Lady Olena Zelenska, representatives of the Ukrainian Government and Parliament, and non-governmental organisations on 4 March. (See also: [Open Letter to Rishi Sunak: Fulfil Your Promise to Ukrainian Victims and Resolve the Impasse over the Sale of Chelsea FC](#)).

This pilot reparation project is being implemented by the [Global Survivors Fund](#) (GSF), an organisation that advocates for access to reparation for survivors of CRSV worldwide, together with the Ukrainian government, survivors' networks and civil society organisations, with funds coming from donors. GSF intends to identify victims of CRSV based on criteria that “invites people to trust, is accessible and simple, and is based on a flexible assessment of veracity”, whilst ensuring that those receiving reparations suffered violations. Up to 500 individuals who meet the criteria are expected to receive interim reparation by October 2024, including a payment of €3,000 each, along with medical and psychological support.

According to GSF, this will be the first time that survivors are awarded reparation during an active conflict. As such, the project in Ukraine seeks to contribute to best practice and inspire similar initiatives in other countries experiencing armed conflict.

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PERU

Reparation for Victims of Environmental Contamination in Peru

On 22 March, the Inter-American Court of Human Rights (IACtHR) released its [decision](#) in the Case of La Oroya Population v. Peru. The case concerns violations against individuals from the community of La Oroya, a district located in central Peru by the Complejo Metalurgico de la Oroya (CMLO) project. Established by a United States corporation in 1922, the rare metal extraction and refinement project operated in La Oroya without specific restrictions on pollution for over 70 years causing significant degradation to the area and community. As noted by the IACtHR, in 2006 La Oroya was amongst the top ten most polluted cities in the world, with a study showing that 99% of pollutants were produced by the CMLO project. Pollutants found in the air, water, and soil caused significant health problems to those in the local community.

In its [decision](#), the IACtHR found that depriving the applicants of their right to enjoy clean air, water, and soil constituted a violation of their human rights, including the rights to personal integrity and health. The Court also found that some of the applicants were subjected to acts of physical and psychological violence due to their role as defenders of the rights of the community, including environmental rights.

The IACtHR ordered Peru to provide comprehensive reparation, including to:

- Investigate, prosecute, and punish those responsible for both the administrative and criminal environmental offenses and the harassment of the environmental defenders.
- Provide appropriate compensation to the victims, including to any future victims, as well as medical, psychological, and psychiatric care (i.e. rehabilitation).
- Implement a remediation plan that seeks to reverse environmental damage as a form of restitution.
- Introduce guarantees of non-repetition through changes in law and practices to ensure the monitoring of pollution.

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ROMANIA

European Court of Human Rights awards reparation in case concerning unpublicised retrials of Holocaust crimes

On 23 April, the European Court of Human Rights (ECtHR) issued a [decision](#) in the Case of Zăicescu and Fălticineanu v. Romania, in which it ordered the State to pay €8,500 euros to two Jewish Holocaust survivors for Romania's failure to publicise the re-trial of war crimes and crimes against humanity in the context of the Holocaust.

The case originated from a complaint filed by the applicants before the Romanian Supreme Court of Justice against two Romanian army officers responsible for war crimes and crimes against humanity during the Holocaust.

The Romanian Supreme Court acquitted the two officers on the grounds that they were following orders regarding the deportation of Romanian Jews, and that the massacre of Jews had been carried out by German soldiers. In 2016, the applicants requested access to the case files, but were denied by the Court. They only found out about the acquittal by accident many years after the judgment was handed down by the Romanian Supreme Court.

The applicants brought their case to the ECtHR, claiming that the retrial, acquittal, and the State's failure to inform the public of this proceeding and of its outcome, had violated the applicants' rights under the European Convention on Human Rights (ECHR). They argued that the State's actions had denied them an effective investigation into the State's role in the Holocaust and had damaged their psychological integrity as Holocaust survivors.

The ECtHR ruled in favour of the applicants, finding Romania responsible for violations of articles 8 (right to respect private life) and 14 (prohibition of discrimination) of the ECHR. It stated that the Romanian Supreme Court's reasoning contained elements of Holocaust distortion and denial, and rejected the argument that an act ordered by a superior officer can be used as defence within the context of war crimes under customary international humanitarian law. Furthermore, the ECtHR found that the State's failure to publicise the re-trial and acquittal could have provoked feelings of vulnerability and humiliation in the applicants. The ECtHR found no other violations of the applicants' rights under the ECHR.

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SUDAN

BNP Paribas Faces Lawsuit over Sudan Genocide

On 18 April, a US judge [ruled](#) that BNP Paribas is to face a lawsuit accusing the bank of helping the former Government of Sudan led by Omar al-Bashir to commit international crimes in Sudan between 1997 and 2011, by providing banking services that violated (then) US sanctions.

The [lawsuit](#) - a class action initially filed in 2016 - has been brought by a group of Sudanese refugees now living in the United States having fled Darfur, the Nuba Mountains, and South Sudan. They are seeking unspecified damages as reparations from BNP Paribas for its involvement in the Government of Sudan's abuses. If successful, the class action would be one of the first times survivors of human rights violations in Sudan have been compensated for violations perpetrated under al-Bashir's regime.

In his judgment, US District Judge, Alvin Hellerstein, found that there was substantial evidence showing a relationship between BNP Paribas' financing and human rights abuses perpetrated by the Government of Sudan.

Earlier in 2014, [BNP Paribas](#) had already pleaded guilty to evading US trade embargoes by processing transactions on behalf of Sudanese, Iranian, and Cuban entities between 2002 and 2012, for which it agreed to pay a criminal penalty of US\$8.9 billion. As part of the plea agreement, the French bank admitted to acting as the [primary foreign bank](#) of the Government of Sudan between 2002 and 2008.

During this time period, the Government of Sudan oversaw and committed [widespread human rights violations](#) - including extrajudicial executions, forced displacement, sexual violence, arbitrary detention, and torture - resulting in the death of more than 300,000 civilians, particularly from marginalised communities in Darfur, South Kordofan, and Blue Nile. Survivors of these violations are generally yet to receive any form of reparation for the violations they have suffered.

Although the US Department of Justice initially [attempted](#) to use part of the fine monies levied against BNP Paribas to compensate survivors of the Government of Sudan's crimes, the US Congress eventually [diverted](#) the funds to the US's Victims of State-Sponsored Terrorism Fund, which provides compensation to US persons harmed by State-sponsored terrorism.

Meanwhile, French prosecutors are conducting a [related criminal investigation](#) into BNP Paribas' Sudan activities between 2002 and 2008.

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COMMUNITY CORNER

This section is dedicated to sharing the perspectives, progress, and insights of lawyers, activists, survivors and others engaged in the field of reparation. If you would like to feature here, we highly encourage you to submit your contributions by 30 May 2024 to alejandro@redress.org. Your experience and input are invaluable to enriching our collective understanding and fostering a meaningful dialogue within the reparation community of practice.

Seeking Accountability for Sexual Violence During Periods of Unrest in Kenya

by Yvonne Oyieke, Executive Director of Utu Wetu

Kenya has a history of violence during elections since 1992 when we held our first multi-party ballot. In December 2020, the High Court in Kenya delivered a landmark judgement in the Constitutional Petition 122 of 2013 ([The COVAW Case](#)). The court found the Government of Kenya responsible for failing to conduct independent and effective investigations and prosecutions of SGBV [sexual and gender-based violence]-related crimes during the post-election violence in 2007.



Four of the eight individual petitioners who suffered direct violations at the hands of the state were each awarded compensation of KES 4 million, (approximately USD 35,000) for the violation of their constitutional rights to life, freedom from torture, inhuman and degrading treatment, and the security of person. This judgment marked the first time that post-election sexual violence in Kenya was legitimately recognized by the government and that survivors were awarded compensation for the harm they suffered.

However, four years after the High Court's decision, the petitioners are still waiting for the implementation of this judgment. Efforts continue to be made to request the Ministry of Interior to release the necessary funds and facilitate the compensation of these survivors for the violations they experienced.

In 2021, a partial appeal challenging the lower court's decision to only consider state liability with respect to direct action by its agents was filed on behalf of the four petitioners that were not awarded compensation. Despite several communications to the Registrar and President of the Court of Appeal of Kenya, the matter is yet to be set for hearing. This is nearly three years after the filing of the appeal.

Accountability has been slow in this respect, but we continue to advocate and engage relevant government representatives so that the petitioners can receive their compensation and that the appeal can be set down for hearing, in the quest for justice.

WEEKEND READS

Centring Survivors in ICC Reparation Processes - The Case of Dominic Ongwen By Alejandra Vicente and Renata Politi (REDRESS)

This article examines the importance of a survivor-centred approach and inclusive participation in reparation design and implementation as part of the symposium on Dominic Ongwen case, organised by Tallawah Justice for Women.

[Read the article](#)

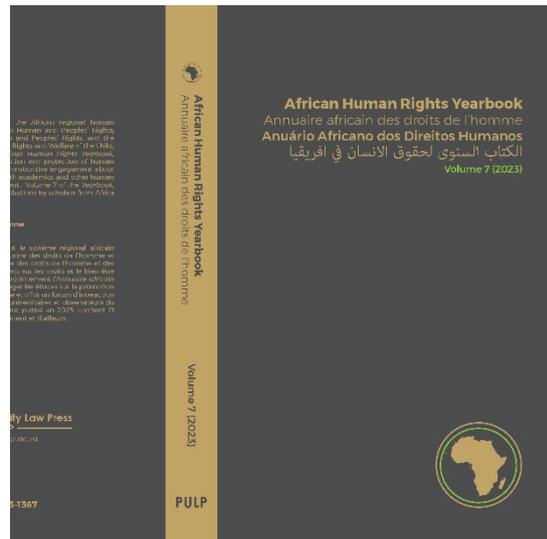


The Notion of Fairness in Reparation Litigation before the African Court on Human and Peoples' Rights

by **Joris Joël Tala Fomba**

The article (Page 52 of the African Human Rights Yearbook) seeks to determine what the concept of fairness encompasses in African human rights law. Through an analysis of case law, the article then explores how the African Court applies this concept in disputes concerning reparation.

[Read the Book](#)



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