

Reparations for Atrocity Victims in Ukraine: Survivors' Aspirations and the Emerging Legal Framework

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Introduction

Russia's aggression against Ukraine, especially its full-scale unfolding since 2022, has highlighted many important issues of international law. Among them is a question as to how reparations—which are at the crux of transitional justice's survivor-centric ethos—can be effectively provided to atrocity victims amid ongoing hostilities. This article analyses the viability and modalities of individual reparations in the Russia-Ukraine armed conflict in three parts. First, it situates the right to remedy and reparation under international law and Ukraine's and Russia's respective obligations. This section argues that, under current international law, urgent interim reparations and certain other transitional justice measures can and, in the context of Ukraine, should be implemented while the armed conflict is still ongoing. Second, the article discusses key developments in Ukraine's transitional justice and reparations vision during the first phase of the armed conflict in 2014–2021. Special attention is paid to how the timing and modalities of Ukraine's proposed transitional justice measures—and, in particular, reparations—were impacted by geopolitical constellations at the time. Finally, the article discusses key developments, challenges, and ways forward concerning introducing individual reparations in Ukraine post-full-scale invasion. The piece concludes that to provide effective redress, such reparations should be gender-sensitive, intersectionally consider structural inequalities, and apply equally to persons harmed since the beginning of Russia's aggression in 2014.

I. Atrocity Victims' Right to Remedy and Reparation under International Law

Reparations under international law are two-pronged. First, there are interstate reparations, which are channelled into rebuilding state infrastructure and institutions, compensating for the loss of

production, impeded trade, and other system-wide harms caused by an armed conflict or an atrocity situation. Second, there are individual reparations, which are due to individual victims or their groups who have suffered gross violations of their human rights.

Individual reparations are a part of a person's wider right to remedy. The right to remedy also includes equal and effective access to justice and the availability of information about what constitutes a violation of one's rights and what reparative measures are available to redress them.¹

In the *Chorzów Factory* dispute between Germany and Poland, the Permanent Court of International Justice confirmed that 'it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation'.² The Court went further, explaining that 'reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself'.³ In the early 20th century, the 1907 IV Hague Convention respecting the Laws and Customs of War on Land established the precursors for individual redress for endured harm. The IV Hague Convention confirmed the 'Contracting Powers's responsibility for the activities of their military, including for the alleged breaches of the rules governing the conduct of hostilities, treatment of POWs and civilians and occupation'.⁴ Given the state-centric nature of

1 UNGA Res 60/147, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), para 11.

2 *Case Concerning the Factory at Chorzów* (Germany v Poland) (Merits) PCIJ Rep Series A No 17, 29.

3 *ibid.*

4 'A belligerent party which violates the provisions of the said Regulations

international law of the time, the IV Hague Convention formulated the respective redress provision not around a person's right to seek vindication for a suffered violation but around the respective state party's obligation to compensate.⁵

It was not until the middle and the second half of the 20th century, with the adoption of the international human rights law (IHRL) and international humanitarian law (IHL) treaty frameworks, as well as the Rome Statute of the International Criminal Court (ICC) that a delineation between interstate and individual reparations solidified. The humanisation of international law has been unfolding alongside the growing recognition of a human right to remedy and reparation. A person's right to get the alleged violations of their rights considered by a court or another designated state authority and, if a violation is confirmed, to receive prescribed remedy is recognised in the key IHRL instruments such as the 1948 Universal Declaration of Human Rights (article 8), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (article 6), the 1966 International Covenant on Civil and Political Rights (article 2(3)), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 14), and the Convention on the Rights of the Child (article 39).

Compared to the aforementioned IHRL instruments, IHL regulation of the right to remedy is different in its verbalisation and scope. Additional Protocol I to the 1949 Geneva Conventions applicable to international armed conflicts essentially reiterates the wording of the IV Hague Convention. The Protocol specifies that a warring state party is responsible for the acts of its military and, if it violates the Geneva Conventions or this Protocol, must pay compensation.⁶ The Additional Protocol II, applicable in non-international armed conflicts, does not have a similar provision. This raises questions about the availability and scope of remedies and reparations for harms caused exclusively by non-state actors. In the absence of immediate IHL regulation, the regular IHRL remedy framework discussed above remains applicable.

The issue of equal access to remedies in all armed conflicts and atrocity situations was further clarified by the International Criminal Court (ICC), which exercises jurisdiction over the gravest crimes under international law—war crimes, crimes against humanity, genocide and, in certain instances, aggression. The ICC's Rome Statute and Rules of Procedure and Evidence make reparations available to direct and indirect victims regardless of the type of context in which they were harmed.⁷ Instead, the ICC considers 'the scope and extent of any damage, loss or injury' suffered by victims, individually or collectively, from the crimes falling within the jurisdiction of the Court and victims' respective needs.⁸ The ICC's reparations may include restitution, compensation, and rehabilitation,⁹ suggests

the room for the needed flexibility of reparations' types and combinations in a particular context.¹⁰

2005 became a milestone year for the right to remedy. The UN General Assembly (UNGA) adopted, without a vote, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law and Serious Violations of International Humanitarian Law (Basic Principles). As Clara Sandoval explains, this instrument, adopted in the form of the UNGA non-binding resolution, was a result of a 14-year-long collaboration between states, intergovernmental organisations, NGOs and academics.¹¹ Symbolically, this work was co-initiated by Cherif Bassiouni, one of the shapers of international criminal law and the ICC framework.¹² Bassiouni's push for a wholistic redress for victims is significant given the tendency to see atrocity trials as a unique or even exclusive form of justice, to the detriment of their mutually catalysing interplay with truth-seeking, reparations, and guarantees of non-repetition. The Basic Principles state that they do not create new obligations but are based on existing ones formulated in the discussed IHRL and IHL instruments and the Rome Statute. The Basic Principles root the right to remedy and reparation in states' obligation to respect and ensure respect for and implement IHRL and IHL.¹³ This includes domestic incorporation of IHRL and IHL and maintaining related procedures, including access to justice, fairness, equality, and swiftness.¹⁴ The UNGA instrument specifies five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, and emphasises their role in atrocity prevention.¹⁵ Crucially for the Russia-Ukraine armed conflict and other atrocity situations, a violator's inability to provide reparations immediately should not stall the reparations process.¹⁶ The solidifying humanisation of international law and survivor-centricity of redress and wider transitional justice measures require that states establish national reparation and assistance programmes as soon as possible and then get compensation from the responsible party.

The above instruments have catalysed further sensitisation of individual reparations at international, regional, and domestic levels. In 2014, the UN Secretary-General presented the Guidance Note on one of the most stigmatised, underreported, and unaddressed crimes—conflict-related sexual violence (CRSV).¹⁷ Dr Denis Mukwege and Nadia Murad, the recipients of the 2018 Nobel Peace Prize for combating sexual violence as a weapon of war, have emphasised the crucial role of urgent interim and wider reparations for CRSV survivors. The ICC reparations framework has been solidified through the cases of *Lubanga* (2012-2015), *Katanga* (2017), *Al Mahdi* (2017), and *Ntaganda* (2021).¹⁸ Colombia

shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces'. Convention (IV) relative to the Laws and Customs of War on Land and its annexe: Regulations concerning the Laws and Customs of War on Land (18 October 1907), article 3.

5 *ibid.*

6 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (8 June 1977).

7 ICC Rome Statute (21 July 1998), article 75; ICC Rules of Procedure and Evidence, Rule 85.

8 ICC Rules of Procedure and Evidence, Rules 97.1, 86.

9 Rome Statute (n 7), article 75.1.

10 ICC Rules of Procedure and Evidence, Rule 97.2.

11 Clara Sandoval, 'The Legal Standing and Significance of the Basic Principles and Guidelines on the Right to a Remedy and Reparation' (2018) 78 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (ZaöRV) 565.

12 *ibid.*

13 Basic Principles (n 1), paras 1-2.

14 *ibid.*, para 2.

15 *ibid.*, paras 15-23.

16 *ibid.*, paras 15-16.

17 Guidance Note of the Secretary-General 'Reparations for Conflict-Related Sexual Violence' (2014).

18 Marina Lostal, 'The Ntaganda Reparations Order: a marked step towards a victim-centred reparations legal framework at the ICC' (*Blog of the European Journal of International Law*, 24 May 2021) <<https://www.ejiltalk.org/the-ntaganda-reparations-order-a-marked-step-towards-a-victim-centred-reparations-legal-framework-at-the-icc/>> accessed 8

exemplifies an effort to centre one's transitional justice framework around remedies.¹⁹ Regional courts have been cognisant of these developments, looking for ways to reconcile their jurisprudence with domestic reparation programmes.²⁰

II. The First Phase of Russia's Aggression against Ukraine, 2014-2021: The Precursors of Individual Reparations

Certain nations, including Eastern European ones, still associate reparations largely with massive post-war interstate compensations. This perception, coupled with the lack of international action on the initial acts of Russia's aggression in Ukraine's Crimea and Donbas region in 2014-2021,²¹ could have hardly shaped survivors' coherent demands for specific individual reparations, let alone channelled the funding needed for them. The lack of international attention to the first phase of Russia's aggression and accompanying crimes often overlooked in the post-2022 debates on political, military, and legal aid for Ukraine has also played a role in Ukraine's domestic policy choices. With limited resources and only burgeoning expertise on atrocity crimes, in 2014-2021, Ukraine's prosecution and civil society focused on the documentation of alleged war crimes and crimes against humanity, development of domestic proceedings, and submitting communications to the ICC to catalyse the Court to open a fully-fledged investigation—which it did only after the all-out invasion.²²

Essentially, in 2014 Kyiv faced the unparalleled situation of an international armed conflict, the comprehensive justice response to which required financial resources and expertise, which Ukraine, as a state and human rights community, did not have at the time. In such circumstances, it is only natural that policymakers, prosecution, and civil society choose to make the first steps in the most familiar domain—criminal justice. Even with very limited resources available during the initial eight years of the armed conflict, which might be hard to imagine compared to the outpouring of support since 2022, Ukrainian investigators, prosecutors, and human rights lawyers focused on capturing the facts and patterns of and intentions behind Russian crimes, to facilitate international understanding and action. With time, however, Ukrainian state and civil society stakeholders, catalysed by the solidifying voices of the survivor community, realised that justice had wider, mutually nourishing dimensions. This realisation became more nuanced with Ukraine's emerging transitional justice discourse and the solidifying of the Women, Peace, and Security agenda.

January 2024.

19 Nelson Camilo Sánchez León and Clara Sandoval-Villalba, 'Go Big or Go Home? Lessons Learned from the Colombian Victims' Reparation System' in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill 2020) 569-570.

20 Clara Sandoval, 'Two steps forward, one step back: Reflections on the Inter-American Court of Human Rights jurisprudential turn on domestic reparation programmes' (2018) 22(9) *The International Journal of Human Rights* 1192-1208.

21 Kateryna Busol, 'If Ukraine's Fate Is not a Menu à La Carte, then Ukrainian Voices Must Be Heard' (*Blog of the European Journal of International Law*, 20 June 2022) <<https://www.ejiltalk.org/if-ukraines-fate-is-not-a-menu-a-la-carte-then-ukrainian-voices-must-be-heard/>> accessed 8 January 2024.

22 Iryna Marchuk and Aloka Wanigasuriya, 'Venturing East: The Involvement of the International Criminal Court in Post-Soviet Countries and Its Impact on Domestic Processes' (2021) 44 *Fordham International Law Journal* 756.

Noticing the lack of cohesion even within the criminal accountability domain and the need for a more harmonised and layered justice vision, in 2019, the newly elected President Zelensky announced that Ukraine would be developing a transitional justice policy.²³ The precursors for such a policy task came from the civil society and academic community, who already, in 2016 and 2017, raised the issues of other dimensions of justice, such as truth-telling and reparations. Zelensky's efforts helped transform academic and civil society debates into policy mapping. Two foundational drafts incorporating key pillars of transitional justice were developed. However, Ukraine did not manage to approve, let alone implement them before 2022. Naturally, the drafts would require substantive reshaping, considering the new challenges and needs brought about by Russia's all-out aggression.

Even without formal approval, Ukraine's pre-2022 transitional justice work was important. First, it verbalised the key components of holistic justice—reparations, truth-seeking, criminal accountability, memorialisation, and guarantees of non-repetition—for Ukraine's policymakers, general public, and, crucially, survivor community. It was through the initial transitional justice policymaking that these persons, especially individuals affected by Russia's atrocities, got a more layered understanding of what redress meant and what measures they were entitled to—and could demand. Second, the very wording 'reparations' was increasingly used. For the first time, such term use demonstrated reparations' connection with not only interstate but also individual redress. Third, transitional justice and its components were increasingly mentioned in Ukraine's by-laws and other policy instruments. Such instruments include the National Human Rights Strategy, the Strategy on the De-Occupation and Reintegration of Crimea and Women, and Peace and Security National Actions Plans (WPS NAPs).²⁴ With respect to reparations, these instruments sometimes use euphemisms or refer to specific forms of reparations, e.g., 'the compensation of damage caused in connection with the armed aggression of the Russian Federation', 'the protection and restoration of violated rights' or 'rehabilitation'.²⁵ Such word use has several important considerations. The variations in the wording 'compensation of damage/harm/injury' are perhaps the clearest in terms of the word's ordinary meaning. Without additional prior 'explainers' on reparations terminology, the general

23 Kateryna Busol, 'Mariupol and the Origins and Avenues of Ukraine's Transitional Justice Process' (*Just Security*, 1 June 2021) <<https://www.justsecurity.org/81680/mariupol-and-the-origins-and-avenues-of-ukraines-transitional-justice-process/>> accessed 8 January 2024.

24 Order of the President of Ukraine 'On the National Human Rights Strategy' №119/2021 (24 March 2021) Section 4. Strategies dimensions <<https://zakon.rada.gov.ua/laws/show/119/2021#Text>> accessed 8 January 2024 (On the National Human Rights Strategy); Order of the President of Ukraine 'On the Decision of the National Security and Defence Council of Ukraine of 11 March 2021 On the Strategy of the De-Occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol', No. 117/2021 (21 March 2021), paras 15, 35, 38 <<https://www.president.gov.ua/documents/1172021-37533>> accessed 8 January 2024 (On the Strategy of the De-Occupation and Reintegration of Crimea); Order of the Cabinet of Ministers of Ukraine No. 1544-r 'On the Approval of the National Action Plan for the Implementation of the UN Security Council Resolution 1325 on Women, Peace, and Security for the period until 2025' (28 October 2020) Operational Goal 3.3, para 27 <<https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/2023/29.03.2023/updated-nap-1325-women-peace-and-security-until-2025.pdf>> accessed 8 January 2024 (2021-2025 WPS NAP).

25 On the National Human Rights Strategy (n 24) Section 4. Strategies dimensions; On the Strategy of the De-Occupation and Reintegration of Crimea (n 24), paras 15, 35, 38.

public and especially survivors would likely understand this phrasing as redress for the harm they suffered because of atrocities. While the clarity and understanding by those most affected are important, the ‘compensation’ wording is also misleading, for it essentially narrows reparations to financial compensation to the detriment of their other important forms such as restitution, rehabilitation, satisfaction, and non-repetition guarantees. The narrowing of reparations to ‘harm compensation’ wording does not seem to be the malice of Ukraine’s policymakers. Instead, it appears to be a transitional compromise that introduces individual reparations thinking, taking the time for the more specific new terminology and its perception to sink in.

Notably, both before and after the full-scale invasion, it has been largely the WPS and initiatives addressing conflict-related sexual violence (CRSV) that have been using the term ‘reparations’ consistently, as envisaged in international law. Ukraine’s CRSV survivor community, especially their female representatives, have turned out to be rather organised and vocal about the harms they suffered and, thus, engaged with international peers and their reparations experiences quickly.²⁶ Ukrainian CRSV survivors from SEMA Network Ukraine have collaborated closely with Dr Denis Mukwege, a strong proponent of holistic justice and healing. The Mukwege Foundation and Global Survivors Fund, co-founded by Nadia Murad and Dr Denis Mukwege, have supported reparations thinking among survivors since way before the full-scale invasion. Together with survivors and Ukraine’s leading human rights NGOs Truth Hounds, Blue Bird, and the Eastern-Ukrainian Centre for Civic Initiatives, the Global Survivors Fund conducted the first study of reparations needs and preferences among Ukrainian CRSV survivors.²⁷ These processes reverberated with policymakers: the Government Commissioner on Gender Equality Policy supported the inclusion of the reparations focus and language into Ukraine’s WPS NAPs and discourse even before 2022. Such policy normalisation of reparations language and, thus, readiness for overdue reparations framework have proved particularly useful with the full-scale invasion.

Moving away from policy instruments, it is important to comment on whether and how they translated into actual reparations initiatives on the ground. As Ukraine had not approved even a framework transitional justice policy, of which reparations would be an integral part, the country had not set a nationwide reparations programme before the all-out invasion. Instead, Ukraine had the precursors of reparations in the form of what could be rather described as sporadic assistance initiatives.²⁸ The most notable of such initiatives focused on helping victims of Russia’s unlawful detention with a one-time financial support of 100,000 UAH (a little more than 3,300 EUR at the time). While not completely devoid of bureaucratic protraction, the commission assessing compensation claims worked rather swiftly. Commendably, its members included not only state officials but also human rights lawyers, civil society representatives, and psychologists, all of whom worked with detention survivors and understood their trauma and needs.

While this initiative demonstrated Ukraine’s resolve to support survivors amid limited resources and the uncertainties of the ongoing aggression, it had several issues. First and most obviously, the programme was available only to survivors of Russia’s unlawful detention, which left the trauma and needs of other victims unaddressed. Second, to qualify for support, a survivor had to prove that they were detained for their pro-Ukrainian position. While, as survivor stories confirm, Russia indeed targeted most of them for the actual or alleged support of Ukraine, it is important that state programmes remedy all survivors, even those captured for other reasons or by accident. Third, the effects of detention—low temperature, moist, overcrowdedness, undernourishment, lack of general and gender-specific hygiene, let alone widespread torture and other atrocities—require long-term costly treatment. The 3,300 EUR available under the initiative can rarely cover this.

Other assistance programmes included symbolic modest scholarships for pro-Ukrainian political prisoners—ethnic Ukrainians and indigenous Crimean Tatars.²⁹ Scholarships were payable for a year to liberated survivors and accumulated for the period of captivity, and payable for a year after liberation for those still held in Russian captivity. While commendable as a step in the right direction, this initiative had many of the shortcomings discussed in relation to the detention compensation programme above.

All in all, Ukraine’s Government and civil society were approaching the full-scale invasion with the correct survivor-centric thinking and a burgeoning transitional justice framework. Even if certain assistance initiatives were not holistic and the national reparations programme had not yet been adopted, they formed the right values-, understanding- and purpose-based foundation with which Ukrainian society met Russia’s all-out assault on 24 February 2022.

III. 2022 onwards: Solidifying the Individual Reparations Framework

24 February 2022 has generated an amplified set of challenges connected with the gravity and territorial scale of the crimes and the number of people, fauna, flora, and cities and villages affected. Atrocity documentation initiatives by various Ukrainian and international actors and not just domestic human rights NGOs have skyrocketed.³⁰ Even the most well-intentioned initiatives, given their sheer number, intensity, and combination, have often caused re-traumatisation. The severity of crimes, the number of survivors and the scale of infrastructural destruction have made the scale of Russia-caused harm impossible to ignore anymore. These developments have revitalised domestic and international discussions on reparations—and their urgency.

Several notable developments around individual reparations have taken place since 2022. First, the clear decision has been reached that Russia must pay for all the damage caused, and discussions have taken place regarding the legal avenues via which Russia’s assets could be repurposed to fund the infrastructural recovery of Ukraine

26 Predominantly in Russia-controlled detention centres and occupied territories in Donbas, Eastern Ukraine.

27 Amal Nassar, Kateryna Busol, and Alexa Sydor-Czartorysky, ‘Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence’ (*Global Survivors Fund*, May 2022) 61 <https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Global_Reparation_Studies/GSF_Report_Ukraine_EN_June2022_WEB.pdf> accessed 8 January 2024.

28 *ibid.*

29 Order of the President of Ukraine ‘On Awarding State Levko Lukianenko Scholarships’ №662/2021 (16 December 2021) <<https://www.president.gov.ua/documents/6622021-40961>> accessed 8 January 2024.

30 Justin Hendrix, ‘Ukraine May Mark a Turning Point in Documenting War Crimes’ (*Just Security*, 28 March 2022) <<https://www.justsecurity.org/80871/ukraine-may-mark-a-turning-point-in-documenting-war-crimes/>> accessed 8 January 2024.

and redress to survivors.³¹ On 14 November 2022, the UNGA adopted the resolution 'Furtherance of remedy and reparation for aggression against Ukraine'.³² The resolution recognises the need to create 'an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine'.³³ The instrument further recommends that the UN member states cooperate with Ukraine to create 'an international register of damage' to record '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 the internationally wrongful acts of the Russian Federation in or against Ukraine'.³⁴ Such a register of damage was created under the Council of Europe framework, together with the EU, Canada, Japan, and the US, on 16 May 2023.³⁵ The Register is situated in The Hague and is 'the first component of a future international compensation mechanism'.³⁶

Second, Ukraine's Parliament adopted the law on the compensation for damage or destruction of property caused by Russia's aggression.³⁷ The state has aimed to make the procedure swift and administrative in nature, with the possibility of submitting claims via the state digital platform Dia.³⁸ The initiative is truly pertinent and addresses one of the most pertinent and foundational needs: housing. Concerns, however, have been raised about the length of required expert assessment of the affected property as well as about the programme's (un)availability for Ukrainians residing in occupied territories.³⁹

Third, the policymaking focus on urgent interim reparations, which could meet survivors' most pressing needs and avoid irreparable harm, has increased. CRSV survivors have become co-shapers and

are expected to become the first recipients of such pilot urgent interim measures.⁴⁰

The described developments paving the way for individual survivors are commendable. Fundamentally, following the ethos of the Basic Principles and realising that Russia is not going to provide reparations now, Ukraine has assumed its responsibility to ensure redress to survivors, as much as possible during ongoing hostilities. The implementation of this responsible vision, however, has not been devoid of challenges.

Despite the pre-2022 transitional justice policymaking and awareness raising discussed in Section II, Ukrainians still predominantly associate reparations with post-war interstate payments, which are ordinarily channelled at infrastructural recovery. This narrow vision has impacted post-2022 survivors' perception of what they can—and should—demand. Similarly, it has impacted the speed and creativity of policymakers' responses. Hence, the confusion of interstate, reconstruction-oriented and individual reparations noticeable in 2014-2021 lingers. The UN Commission of Inquiry notes that it is apparent even in respective UNGA and Council of Europe instruments.⁴¹ It is in the utmost interests of Ukraine, with a view to both avoiding societal fractions and, crucially, helping its own people, to clarify the difference between reparative frameworks—and ensure the provision of individual reparations, starting with urgent interim ones.

As the Chair of the UN Commission of Inquiry on Ukraine has aptly put it, Ukraine and its international partners should make sure that 'recognisably necessary national reconstruction programmes or property restitution programmes are not designed to the detriment of victims' reparations'.⁴² Ukraine 'should initially concentrate on the harms and violations that are more central to the victims' dignity and well-being rather than on property issues'.⁴³ For that, a non-bureaucratic and user-friendly victim registry should finally be established. This process should be accompanied by explanations of the nature and scope of harm, for survivors do not always define certain conduct—such as forced nudity, threat of sexual violence, or being compelled to watch it—as violations. Many aspects of urgent support, such as general mental health advice, couple counselling, and special support for parents or persons with caring obligations, can already be provided based on such a victim registry.

It might be potentially problematic that workstreams on reparations for certain types of international crimes are more dynamic than for others. Both before and after the full-scale invasion, Ukrainian CRSV survivors (SEMA Ukraine) and their domestic (Ukrainian Women Lawyers Association 'JurFem', Eastern Ukrainian Center for Civic Initiatives) and international (Global Survivors Fund, the Mukwege Foundation, REDRESS) partners have been particularly proactive in advancing individual reparations.⁴⁴ As the CRSV

31 Artem Ripenko, 'Funding Ukraine's Aid: New Challenges' (*Blog of the European Journal of International Law*, 7 December 2023) <<https://www.ejiltalk.org/funding-ukraines-aid-new-challenges/>> accessed 8 January 2024; Human Rights Council, Independent International Commission of Inquiry on Ukraine (UN Commission of Inquiry), Conference Room paper of the Independent International Commission of Inquiry on Ukraine (29 August 2023) A/HRC/52/CRP.4 (UN Commission of Inquiry on Ukraine, Conference Room Paper), para 972.

32 UNGA Res ES-11/5, Furtherance of remedy and reparation for aggression against Ukraine (2022), para 3.

33 *ibid*, para 3.

34 *ibid*, para 4.

35 Council of Europe, Committee of Ministers, Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, CM/Res (2023) 3 (12 May 2023) (Council of Europe, Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine).

36 *ibid*, para 2.5.

37 Law of Ukraine 'On the Compensation for Damaging or Destroying Some Categories of Immovable Property Resulting from Hostilities, Terrorist Acts, Sabotage Acts Caused by the Armed Aggression of the Russian Federation against Ukraine, and the State Registry of Property Damaged or Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Acts Caused by the Armed Aggression of the Russian Federation against Ukraine' N 2923-IX (23 February 2023) <<https://zakon.rada.gov.ua/laws/show/2923-20#Text>> accessed 8 January 2024 (Law of Ukraine 'On the Compensation for Damaging or Destroying Some Categories of Immovable Property Resulting from Hostilities').

38 Diia, 'How to Get Compensation for Property in Ukraine Destroyed by War' <<https://shorturl.at/alsJV>> accessed 8 January 2024.

39 'The Delivery of Reparation for Ukraine: Briefing Paper' (Redress, November 2023) 8 <https://redress.org/wp-content/uploads/2023/12/Reparations-Briefing_EN-v.5.pdf> accessed 8 January 2024.

40 Draft Law 'On the Status of Persons Affected by Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations', No. 10132 (9 October 2023) <<https://itd.rada.gov.ua/billInfo/Bills/Card/42862>> accessed 8 January 2024.

41 UN Commission of Inquiry on Ukraine, Conference Room Paper, para 969; Erik Mose, 'Update by the Chair of the Independent International Commission of Inquiry on Ukraine, at the 54th session of the Human Rights Council' (OCHR, 25 September 2023) <<https://www.ohchr.org/en/statements/2023/09/update-chair-independent-international-commission-inquiry-ukraine-54th-session>> accessed 8 January 2024.

42 UN Commission of Inquiry on Ukraine (n 41), para 969.

43 *ibid*, para 972.

44 Pip Cook, 'Seeking justice for survivors of sexual violence in Ukraine'

has, sadly, become much graver and visible since 2022, survivors' willingness to bring the reparations process to at least some degree of fruition has amplified. As of January 2024, it is viable that CRSV survivors will set a pilot for the victim registry and, to begin with, for urgent interim reparations.⁴⁵ This development is commendable and welcomed, including by the UN Commission of Inquiry on Ukraine,⁴⁶ and is particularly impressive at this moment, given how stigmatised, underreported, and unaddressed CRSV usually is. However, it is important that, in relation to CRSV, these promising reparation initiatives focus not only on women and girls but also intersectionally address sexual violence perpetrated against men, boys, and LGBTQI+ persons. Furthermore, it is crucial that reparations advocacy and pilots do not cease with the currently more proactive CRSV community. Ukraine and its partners must make urgent interim reparations and wider reparations programmes available to all survivors of atrocity crimes perpetrated amid Russia's aggression as soon as possible.

Finally and crucially, certain reparation initiatives seem to—wrongly—focus on harms committed since the full-scale invasion. For instance, this temporal threshold seems to have been adopted for the damage registry established by the Council of Europe⁴⁷ and for Ukraine's destroyed or damaged property compensation scheme.⁴⁸ Such an approach mirrors the wider—misguided—view of Russia's aggression against Ukraine exclusively through the prism of the developments and crimes unfolding since 24 February 2022. This is factually and legally wrong. Russia occupied Crimea⁴⁹ and established effective control over some Donbas regions in 2014.⁵⁰ These initial acts of aggression were complemented and expanded in 2022. The 2014 and 2022 acts of aggression 'are inseparable and form one situation, which also corresponds to the temporal scope of the situation of Ukraine before the ICC'.⁵¹

The same continuity applies to the patterns of conflict-related crimes and related victimhood. Any artificial division of the 2014–2021 and post-2022 events blurs Russia's intentions, crimes and respective reparation obligations owed to Ukrainian victims and their families. Solidifying this division in the individual reparations domain will

be detrimental to other crucial issues. Among such adjacent issues are the temporal scope of a prospective aggression tribunal and Russia's interstate reparations owed to Ukraine. Furthermore, some of the most activist survivor communities are led by those assaulted in Crimea and Donbas before the all-out invasion. If maintained, the focus exclusively on post-2022 violations might inadvertently create victim competition and, thus, cause deep fractions in Ukraine's survivor community and wider social fabric. Crucially, this approach undermines the whole survivor-centric and driven ethos of transitional justice. If Kyiv truly wants to gradually provide holistic support to the people affected by unimaginable crimes and keep its wounded yet resilient social fabric together, it should avoid any artificial delineation between those victimised before and after the full-scale invasion and ensure that all survivors have equal access to remedy and reparations.

Conclusions

Rooted in the post-World War II human rights framework, the ICC reparations-enhanced legal regime, regional courts' jurisprudence, and domestic transitional justice policies, the individual's right to remedy reparation for atrocities has solidified. These developments, together with the relentless proactivity of the survivor community, civil society, and policymakers, have allowed Ukrainian victims to demand individual reparations already amid the ongoing aggression. While backed by international law, meeting these demands is not devoid of external and internal difficulties. As of January 2024, Ukraine's state and societal standing is strong enough to implement reparation programmes. Any implementation should start with clarity—among Ukrainian stakeholders and their international partners, in their policy steps and public communication—about the difference between interstate and individual reparations. Among the underlying issues for both types of reparations is the question of funding—and an international resolve to repurpose Russia's frozen assets for that.⁵² Ukraine's partners must act upon assets repurposing to ensure that both Ukraine's multi-billion infrastructural recovery and redress to individual victims of Russia's atrocity crimes are funded by the perpetrator. However, the costs of individual reparations, especially urgent interim ones, are much lower than the funds needed for Ukraine's economic rebuilding. The needs of torture, CRSV, and other survivors are acute and pressing. Therefore, any protraction with assets repurposing should not be used as an excuse to delay the less costly support to individual victims, starting with urgent interim reparations. It is paramount that all such initiatives apply equally to all victims assaulted since the beginning of Russia's aggression in 2014, irrespective of the identity of the perpetrator. Both immediate, urgent, and more comprehensive individual reparation programmes should be intersectional and address multiple forms of harm and discrimination. Reparations should additionally be tailored to support particularly stigmatised victims such as women, girls, men, boys, and LGBTQI+ CRSV survivors and children born out of war. Addressing the deep wounds in a layered and inclusive way, which recognises the inherent gendered dimensions of victimisation and victims' needs, will help the Ukrainian society come out of this darkness even more devoted to the guiding values of human dignity and human rights for all.

(Geneva Solutions, 16 December 2022) <<https://genevasolutions.news/peace-humanitarian/seeking-justice-for-survivors-of-sexual-violence-in-ukraine>> accessed 8 January 2024.

45 Draft Law 'On the Status of Persons Affected by Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations', No. 10132 (9 October 2023) <<https://itd.rada.gov.ua/billInfo/Bills/Card/42862>> accessed 8 January 2024.

46 UN Commission of Inquiry on Ukraine (n 41), paras. 968, 973.

47 Council of Europe, Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, article 1.1.

48 Law of Ukraine 'On the Compensation for Damaging or Destroying Some Categories of Immovable Property Resulting from Hostilities' (n 37), Preamble.

49 International Criminal Court, Report on Preliminary Examination Activities (2016), para 158 <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf> accessed 8 January 2024.

50 European Court of Human Rights, *Ukraine and The Netherlands v. Russia*, Applications nos. 8019/16, 43800/14 and 28525/20, Decision, 20 November 2022, para 695.

51 Astrid Reisinger Coracini, 'The Case for Creating a Special Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part II)' (Just Security, 23 September 2022) <<https://www.justsecurity.org/83201/tribunal-crime-of-aggression-part-two/>> accessed 8 January 2024; Charlotte McDougall, 'The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine' (2023) 28 *Journal of Conflict & Security Law* 229.

52 Timothy Ash, 'Putin's \$300bn Belongs to Ukraine' (CEPA, 3 January 2024) <<https://cepa.org/article/putins-300bn-belongs-to-ukraine/>> accessed 8 January 2024; Andriy Moiseienko, International Lawyers Project, and Spotlight on Corruption, 'Frozen Russian Assets and the Reconstruction of Ukraine: Legal Options' (2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4149158> accessed 8 January 2024.