

Russian Aggression and Individual Reparations: Victims' Needs and Ways to Address Them Under International Law

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This article analyzes Ukraine's progress in ensuring prosecution for breach of laws and customs of war and international crimes committed during Russian aggression. A special prism of the research is the dynamics of Ukraine's success in organizing reparations programs to support the victims. First, detailed key obligations of Ukraine and Russia and the requirements of international law to provide effective remedies to victims, in particular, in the context of transitional justice, are disclosed. The gradual expansion of the focus of the Ukrainian authorities and the human rights community on criminal justice to more comprehensive support for different groups of victims is considered. Ukraine needs to urgently develop the whole spectrum of reparation measures without focusing only on compensation. This publication also explains why more reparations should be provided through a simplified administrative procedure rather than a judicial one, why Ukraine should provide urgent interim reparations as soon as possible, and why the voice of victims and a sensitive gender prism are key at all stages of these processes.

Introduction. More and more discussions and efforts are focused on forcing the Russian Federation to compensate Ukraine for the large-scale and multilevel damage caused by the armed aggression²⁶⁸. In this context, as Dmytro Kuleba, the Minister of Foreign Affairs of Ukraine, notes, it is necessary to consider the entire temporal spectrum of Russian aggression and its consequences – since 2014²⁶⁹.

This focus area and the ever more frequent mention of the word “reparations” associated with it is critical²⁷⁰. However, such initiatives, in particular the large-scale Ukraine Recovery Conference in the Swiss city of Lugano²⁷¹, currently concern mainly the infrastructure reconstruction of Ukraine and the provision of reparations to Ukraine as a state. Such thinking of the Ukrainian government and its international partners should be expanded. It should be

²⁶⁸ Address by the President of Ukraine, May 20, 2022, “We urge the partner states to recognize that Russia must be held financially responsible for the crimes it committed.” URL: <https://www.president.gov.ua/news/proponuyemo-derzhavam-partneram-viznati-sho-rosiya-povinna-p-75221>; Joint Statement from Denmark, the Kingdom of the Netherlands, Germany, and Ukraine on the High-Level Side Event: Cooperation for Accountability in Ukraine (September 22, 2022). URL: <https://www.government.nl/documents/diplomatic-statements/2022/09/22/joint-statement-cooperation-for-accountability-in-ukraine?fbclid=IwAR3OJCFewUbBVNSyiqGssJkmgCannPUerSqeZdYD99MWFcoOHTedl8yJSc>

²⁶⁹ Kuleba Suggests Creation of a Special Tribunal for the Russian Government and Lays Out 5 of Its Parameters, *European Pravda* (July 14, 2022). URL: <https://www.euointegration.com.ua/eng/news/2022/07/14/7143176/>

²⁷⁰ Chiara Giorgetti, Markiyano Kliuchkovsky, Patrick Pearsall, Launching an International Claims Commission for Ukraine, *Just Security* (May 20, 2022). URL: <https://www.justsecurity.org/81558/launching-an-international-claims-commission-for-ukraine/>

²⁷¹ Ukraine Recovery Conference. URL: <https://ua.unc2022.com/>

emphasized that Ukraine's reconstruction must certainly include support for specific persons – victims of crimes committed during the russian-Ukrainian armed conflict since 2014 and related to it.



Women who have suffered conflict related sexual violence in other countries face daily problems of access to justice and providing reparations to the survivors. (note - JurFem)
Photo: [Gwenn-Dubourthoumieu/IRIN](#)

Methodology. This research analyzes international legal requirements for ensuring reparations for victims of gross human rights violations, war crimes, crimes against humanity, and genocide, and (non-)compliance with these requirements for victims of the russian-Ukrainian armed conflict. This analytics also demonstrates key issues that are likely to arise during determining categories of victims of the crime of aggression and their potential rights to reparations in case of the launch of a special tribunal for the crime of aggression, which Ukraine is actively calling for²⁷².

Despite the tremendous increase in the patterns and territorial spectrum of international crimes and victimization following russia's full-scale invasion of Ukraine, the research examines the needs, progress, and challenges in providing reparations both during the first phase of russian aggression (2014–2021) and after February 24, 2022. This comprehensive approach is explained by the foundations

²⁷² President of Ukraine, Speech by the President of Ukraine at the General Debate of the 77th session of the UN General Assembly (September 22, 2022). URL: <https://www.president.gov.ua/en/news/vistup-prezidenta-ukrayini-na-zagalnih-debatah-77-yi-sesiyi-7790>

of transitional justice and its basic principle of the centrality of the role and interests of all victims²⁷³.

One terminological and translation clarification is also important. In international legal documents and analytics, one can often find a parallel use of the terms “victims” and “survivors” (which ideally would be translated into Ukrainian as “those who survived,”²⁷⁴ but is usually translated as “affected persons”)²⁷⁵. In international criminal proceedings, in particular, in the documents and case law of the International Criminal Court (hereinafter – the ICC), the term “victims” is used (e.g., “Victims and Witnesses Unit”, “reparations to victims”)²⁷⁶. However, in terms of support for people who have gone through gross violations of their rights, they are often referred to as survivors, that is, as those who have overcome difficulties and survived. Thus, a heavy linguistic and psychological emphasis is placed on the fact that the person has already won by surviving inhuman suffering. In Ukrainian usage, the term “those who survived” is not widespread, and the concept of “affected persons” has a narrower, criminal procedural character. Therefore, it so happened that the translations of “victim” and “affected person,” which have a heavy and, to a certain extent, revictimizing connotation associated with suffering, prevail in Ukrainian usage. In this article, the terms “victims” and “affected persons” are used interchangeably, except where their use is clearly defined by substantive and/or procedural law provisions.

Reparations to victims of crimes related to the russian-Ukrainian armed conflict

International law and global practice of providing reparations. Several international legal treaties provide for the obligation of State parties to guarantee individuals effective remedies, including compensation for damages and reparation, in case of violation of their rights. This requirement also applies to cases where the damage was caused by states themselves or their officials.

Effective remedies are guaranteed by instruments in the field of human rights (in particular, the International Covenant on Civil and Political Rights²⁷⁷, the UN Convention Against Torture²⁷⁸, the Convention on the Elimination of All Forms of Discrimination against Women²⁷⁹, and the Convention on the Rights of the Child²⁸⁰). These effective remedies are also provided for by multilateral treaties of

²⁷³ Guidance Note of the Secretary-General “United Nations Approach to Transitional Justice” (2010), Article 2. URL: <https://digitallibrary.un.org/record/682111?ln=en>

²⁷⁴ The word “survivor” is a russianism.

²⁷⁵ See e.g., The Murad Code. URL: <https://static1.squarespace.com/static/5eba1018487928493de323e7/t/5efa1554a8553428c9395936/1593447765159/English+DraftMuradCode%2BBackgroundPaper+June2020+Website.pdf>; The Hague Principles on Sexual Violence. URL: <https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>; The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. URL: <https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>

²⁷⁶ The Rome Statute of the International Criminal Court, 1998, Articles 43.6 and 75. URL: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

²⁷⁷ The International Covenant on Civil and Political Rights (1966), Article 2.3. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text

²⁷⁸ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Article 13. URL: https://zakon.rada.gov.ua/laws/show/995_085#Text

²⁷⁹ The UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 2. URL: https://zakon.rada.gov.ua/laws/show/995_207#Text

²⁸⁰ The UN Convention on the Rights of the Child, Article 39. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text

international humanitarian law (hereinafter – IHL), i.e., laws and customs of war (in particular, the Regulations respecting the Laws and Customs of War on Land of the Hague Convention (IV)²⁸¹ and the First Protocol to the Geneva Conventions²⁸²). Both Ukraine and Russia are parties to the aforementioned and other international treaties that require states to provide effective remedies and reparations for established violations.



Women and children who have suffered from the conflict related sexual violence feel constant shame and guilt. (note - JurFem)
Photo: [Roberto Schmidt/AFP](#)

Ukraine has also recognized the ICC's jurisdiction over events on its territory. According to the Rome Statute, the ICC is the first permanent International Criminal Court in which victims, along with prosecutors and the defense, are the participants in the process and can receive reparations based on its result²⁸³.

This growing strengthening of the voice of victims and their rights to reparations, in particular in the ICC's case law, has contributed to the adoption of specialized international legal instruments on reparations. The 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, adopted by the UN General Assembly in 2005

²⁸¹ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (1907), Article 3. URL: https://zakon.rada.gov.ua/laws/show/995_222#Text

²⁸² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, Article 91. URL: https://zakon.rada.gov.ua/laws/show/995_199#Text

²⁸³ The Rome Statute of the International Criminal Court (1998), Articles 68, 75. URL: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

(hereinafter – the Basic Principles on Reparations)²⁸⁴ became the key document. In 2014, the UN Secretary-General published another important – and more specialized – document: The Guidance Note on Reparations for Conflict-Related Sexual Violence (hereinafter – CRSV)²⁸⁵.

The emphasis on reparations and detailing their forms and procedures increased in parallel with the intensification and formalization of transitional justice processes. Transitional justice is a system of judicial and, most importantly, non-judicial methods of overcoming trauma and strengthening social cohesion in response to difficult events such as armed conflict or the change of a repressive regime and the reset of the state and social structure. Transitional justice encompasses several key components: accountability, truth-seeking and memorialization, institutional reforms and guarantees of non-recurrence, and reparations for victims²⁸⁶.

In 2012, the UN Human Rights Council created the position of Special Rapporteur on the Promotion of Truth, Justice, and Reparations²⁸⁷. Back in 2014, the Special Rapporteur presented the Report on Reparations for Gross Human Rights Violations and Serious Violations of IHL. The Special Rapporteur emphasized in the report that despite the growing international legal regulation of reparation issues, the actual dynamics of their provision in practice remains “scandalously” low²⁸⁸.

Main types of reparations²⁸⁹:

1. *Restitution* means restoration of the violated right, such as the resumption of work or creation of conditions for returning to the territory from which a person was illegally expelled, reconstruction of destroyed property, and maximum return to the state of affairs that existed before the violation.

2. *Compensation* means financial reimbursement for pecuniary and non-pecuniary damage, especially when a return to the original state of affairs before the violation is impossible or incomplete.

3. *Rehabilitation* means support for the recovery of a person whose rights have been violated. Examples of rehabilitation include providing quality medical and psychological assistance to victims of torture or providing

²⁸⁴ 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, UNGA Res 60/147 (2005). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

²⁸⁵ Guidance Note of the Secretary-General “Reparations for Conflict-Related Sexual Violence” (2014). URL: <https://www.ohchr.org/sites/default/files/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>. For more information, see Fionnuala Ní Aoláin, Catherine O’Rourke, Aisling Swaine, Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice (Harvard Human Rights Journal, Vol. 28/2015), pp.97-146. URL: <https://harvardhrj.com/wp-content/uploads/sites/14/2009/09/transforming-reparations-for-conflict-related-sexual-violence-principles-and-practice.pdf>

²⁸⁶ Report of the Secretary-General “The rule of law and transitional justice in conflict and post-conflict societies”, S/2011/634 (2011), p. 17. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/542/87/PDF/N1154287.pdf?OpenElement>

²⁸⁷ OHCHR, Special Rapporteur on Truth, Justice and Reparation. URL: <https://www.ohchr.org/en/special-procedures/sr-truth-justice-reparation-and-non-recurrence>

²⁸⁸ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence: Reparations for gross human rights violations and serious violations of international humanitarian law, 2014 (A/69/518), pp. 6, 48, 80, 81. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/564/67/PDF/N1456467.pdf?OpenElement>

²⁸⁹ Guidance note of the Secretary-General “The rule of law and transitional justice in conflict and post-conflict societies” (2010), Articles 8–9. URL: <https://digitallibrary.un.org/record/682111?ln=en>

psychological counseling (couple counseling) for couples in which one of the members has experienced CRSV.

4. *Satisfaction* means implementing important symbolic steps that help victims feel that their rights have been recognized and/or restored. Examples of satisfaction include granting a person the status of a combatant or a victim of a certain category of crimes, such as torture or CRSV (which may include additional benefits). Satisfaction is also the recognition of a person's role in helping the army or an insurgency. Such recognition can be secured by special status or, for example, emphasized in public events or educational programs, in particular in history courses. Senior officials' public admissions of guilt and apologies for criminal or destructive policies are also important forms of satisfaction. Public apology as a form of satisfaction has become especially important for countries that have undergone a transition from a repressive/militaristic regime to a democratic one, as well as in the context of decolonization and the recognition by former metropolises of their guilt – and often lasting benefit – from enslaving other peoples.

5. *Guarantees of non-recurrence* means the organization of legal and broader social changes in society to ensure the strict and sustainable rule of law and the impossibility of recurrence of human rights violations, repressive regimes, and/or armed conflict.

Reparations can be individual and collective, i.e., when the recipient is a particular community, region, or, for example, in the case of decolonization processes, the broader population of the state.

Reparations may be imposed by a court decision or through administrative procedures. The second non-judicial option is a priority due to the non-bureaucratization, which means faster assistance to a wider range of victims.

The urgent interim reparations belong to a separate category²⁹⁰. They include the provision of urgent assistance to eliminate or at least mitigate the acute problem caused by the violation, such as emergency contraception, safe abortion services, and the opportunity to be tested for sexually transmitted infections²⁹¹. Urgent interim reparations are significant for victims of specific categories of crimes that require emergency assistance, such as victims of torture or CRSV.

All elements of transitional justice and all categories of reparations should be complementary and transformative. For example, Sierra Leone's Truth and Reconciliation Commission recommended that the government provide comprehensive, transformative reparations that would improve the situation and strengthen the subjectivity and proactivity of women and children, victims of sexual violence, and women who lost their breadwinners due to the armed conflict. In addition to improving healthcare and mental healthcare, as well as

²⁹⁰ Guidance Note of the Secretary-General "Reparations for Conflict-Related Sexual Violence" (2014), pp.12-13. URL: <https://www.ohchr.org/sites/default/files/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

²⁹¹ Guidance Note of the Secretary-General "Reparations for Conflict-Related Sexual Violence" (2014), p.12. URL: <https://www.ohchr.org/sites/default/files/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

educational support, Sierra Leone authorities have adopted legislation to provide special micro-credits to victims, ensure gender equality and increase women's involvement in public administration²⁹². Colombia has adopted an ambitious and wide-ranging reparations program that includes land restitution, truth-seeking, and the ability of those accused of international crimes to influence the sentence by cooperating with the investigation, honest disclosure of facts, and providing their own funds to compensate victims of their crimes²⁹³. In its 2005 Comprehensive Reparations Plan, the Peruvian government identified a wide range of reparations beneficiaries: in addition to the victims themselves and their relatives, children born from rape, children conscripted by self-defense committees, those unfairly convicted under terrorism or treason charges, and those who became undocumented as the result of the conflict were eligible for reparations²⁹⁴.

Thus, the existing international law and state practice in the field of transitional justice prove that reparations and other elements of transitional justice should be sensitive to different categories of victims depending on age, sex, gender, ethnicity, religion, social and regional characteristics, and type of victimization. The centrality of the voice of victims in the design and implementation of transitional justice programs is the basis for embedding such programs in the national context and the needs of real people, and therefore the foundation for their effective assistance.

State of ensuring reparations in Ukraine. Currently, Russia is the main violator of international law in the ongoing armed conflict²⁹⁵ and is therefore responsible for compensating for the damage caused to Ukraine as a state and numerous individual victims and their communities. However, as long as Russia – as a state and its senior political and military leadership – may be held accountable and recover the necessary compensation in practice, Ukraine, with the help of international partners, must work to ensure reparations to victims of the most serious crimes. This requirement of international law is based on the aforementioned fundamental principle of transitional justice and providing reparations as an integral element of it – the principle of the centrality of the voice, needs, and interests of victims (a survivor-centric approach)²⁹⁶.

Ukraine has not implemented a comprehensive reparations program since 2014. However, various state initiatives to support different categories of victims began to appear, and their number grew over time, especially in 2019–2021. This is explained by two main factors. First, by the gradual formalization of Ukraine's

²⁹² Guidance Note of the Secretary-General "Reparations for Conflict-Related Sexual Violence" (2014), p. 9. URL: <https://www.ohchr.org/sites/default/files/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

²⁹³ Reparations, Responsibility & Victimhood in Transitional Societies, Colombia. URL: <https://reparations.qub.ac.uk/countries/colombia/#:~:text=With%20the%20peace%20agreement%20with,slated%20to%20run%20until%202021>

²⁹⁴ International Center for Transitional Justice, Reparations in Peru: From Recommendations to Implementations (2013), Article 6. URL: https://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf

²⁹⁵ OHCHR, Ukraine: Update to the Human Rights Council Special Session (12.05.2022). URL: <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-update-human-rights-council-special-session>

²⁹⁶ Guidance Note of the Secretary-General "United Nations Approach to Transitional Justice" (2010), Article 2. URL: <https://digitallibrary.un.org/record/682111?ln=en>

policy on transitional justice. Second, the increased visibility of victims of various categories of crimes, including illegal detention, torture, and CRSV, and the growing advocacy by these victims of their interests and demands for appropriate support from the state.

Ukraine has launched a wide range of different lawfare initiatives in response to Russia's armed aggression in all available international judicial and arbitration platforms. The results of some of these initiatives, for example, in the ICC or the European Court of Human Rights, may determine specific victims and reparations for them. However, first, such determinations in the available international courts take a long time. Second, it constitutes a decision in a specific case, does not provide a holistic view of the scale of victimization, and does not ensure the formation of a coherent policy of a multi-level legal response to violations (although it may contribute to such a response).

Recognizing the need to synchronize legal initiatives to respond to Russian aggression, in 2019, President Zelenskyi initiated the development of a roadmap for transitional justice in Ukraine. The ad hoc working group within the Legal Reform Commission²⁹⁷ was tasked with harmonizing the foundations of all four pillars of transitional justice, including reparations, in this document. After the approval of the roadmap by the President, the Government will develop a detailed action plan based on it. Although the roadmap is currently non-public, the comments of its authors give the impression²⁹⁸ that the document prioritizes financial compensation among the various types of reparations. The document also refers to different types of previously non-prioritized crimes and the gender prism of transitional justice and post-conflict reconstruction in Ukraine. Such a vision is important for the visibility of certain categories of victims, including those of CRSV, and for the sustainable involvement of women at all stages of the development and implementation of relevant reparations and transformation initiatives.

The Ukrainian authorities have also tried to accelerate the processes of transitional justice, development of reparations, and strengthening of the gender prism in matters of responsibility and reconciliation by adopting the draft Law "On State Policy of the Transitional Period." However, the draft law has received considerable criticism from the human rights community in Ukraine as insufficiently detailed and inconsistent with the roadmap²⁹⁹. The Venice Commission and the UN emphasized that the draft law was not sufficiently victim-centered. Its authors did not have a targeted strategy to involve different

²⁹⁷ Issues of the Legal Reform Commission: Decree of the President of Ukraine of September 7, 2019, No. 584/2019. URL: <https://www.president.gov.ua/documents/5842019-28949>

²⁹⁸ Punishment for war criminals, compensation for victims, and monuments for heroes — this is what justice will look like after the war. Interview with the Permanent Representative of the President in Crimea, Anton Korynevych (July 8, 2020). URL: <https://babel.ua/texts/46817-pokarannya-dlya-voyennih-zlochinciv-kompensaciji-dlya-zhertv-i-pam-yatniki-dlya-gerojiv-yaki-m-bude-pravosudya-pislya-vijni-interv-yu-postynogo-predstavnika-prezidenta-v-krimu-antona-korinevicha>

²⁹⁹ Right to Protection, Analysis of the Draft Law of Ukraine "On the Principles of the State Policy of Transition Period" (20.09.2021). URL: <https://r2p.org.ua/transition-period-policy-analysis/?lang=en>

categories of victims in its development and did not adequately detail the policy on reparations³⁰⁰.

A number of other national legal acts, including the National Human Rights Strategy and the Strategy for the De-Occupation and Reintegration of the Autonomous Republic of Crimea, gradually recognize the problem of reparations³⁰¹. But, like the aforementioned transitional justice roadmap, these instruments mostly associate reparations (wrongly) exclusively with compensation. A positive aspect is a fact that both mentioned documents emphasize the need to introduce a transitional justice policy in Ukraine, which automatically means the introduction of comprehensive reparation measures and not just one type of reparations in the form of compensation.

For the gender prism of transitional justice and reparation policy, it is important that in 2016 and 2020, Ukraine adopted national action plans to implement the “Women, Peace, and Security” agenda in accordance with UN Security Council Resolution No.1325³⁰². These documents also do not detail a comprehensive understanding of the Ukrainian government's policies and steps on restitution, satisfaction, compensation, rehabilitation, and guarantees of non-recurrence. However, both action plans repeatedly emphasize the issues of CRSV, women’s participation in peacebuilding, and the need to implement a gender-sensitive transitional justice policy as soon as possible. The latter, according to international law, provides for the full introduction of different types of reparations with different procedures for their provision.

As briefly mentioned above, Ukraine has not yet implemented a comprehensive reparations program but has scattered initiatives to support various victims. Thus, at the end of 2019, the Government announced a new program to protect people who were illegally deprived of their liberty as a result of Russia’s armed aggression³⁰³. As per its terms, based on the results of the state and public assessment of the victim's case, a person released from detention could receive a one-time financial aid in the amount of UAH 100,000.00. As of December 2021, 209 victims had already benefited from this program, and 46 more

³⁰⁰ OHCHR, Report on the Human Rights Situation in Ukraine (1 August 2021–31 January 2022), pp.46–49. URL: <https://reliefweb.int/report/ukraine/report-human-rights-situation-ukraine-1-august-2021-31-january-2022>; European Commission for Democracy Through Law (Venice Commission), Ukraine - Opinion on the draft law “On the Principles of State Policy of the Transition Period” adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15–16 October 2021), pp. 17, 51, 62. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)038-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)038-e)

³⁰¹ On the National Human Rights Strategy: Decree of the President of Ukraine of March 24, 2021, No. 119/2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>; On the Decision of the National Security and Defense Council of Ukraine of 11 March 2021, “On the Strategy for De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol”: Decree of the President of Ukraine of March 24, 2021, No. 117/2021. URL: <https://www.president.gov.ua/documents/1172021-37533>

³⁰² On Approval of the National Action Plan for the Implementation of UN Security Council Resolution 1325 “On Women, Peace, and Security” for the Period up to 2020: Resolution of the Cabinet of Ministers of Ukraine of February 24, 2016, No. 113-r. URL: <https://zakon.rada.gov.ua/laws/show/113-2016-%D1%80#Text>; On Approval of the National Action Plan for the Implementation of UN Security Council Resolution 1325 “On Women, Peace, and Security” for the Period up to 2025: Resolution of the Cabinet of Ministers of Ukraine of October 28, 2016, No.1544-r. URL: <https://zakon.rada.gov.ua/laws/show/1544-2020-%D1%80#Text>

³⁰³ Some Issues of Social and Legal Protection of Persons Deprived of Their Liberty as a Result of Armed Aggression Against Ukraine after Their Release: Resolution of the Cabinet of Ministers of Ukraine of December 11, 2019, No. 1122. URL: <https://zakon.rada.gov.ua/laws/show/1122-2019-%D0%BF#Text>.

applications were pending³⁰⁴. Also, in 2018, state scholarships named after Levko Lukianenko were introduced³⁰⁵. Up to 100 monthly payments in the amount of three subsistence minimums could be granted annually to people who were or still are illegally imprisoned by Russia or forces controlled by it because of their civic stance³⁰⁶.

Such programs are an important step forward in forming a reparation policy, but they also have obvious shortcomings. In particular, they are rather insignificant in their assistance and are often limited in time. Also, these programs are available only to certain groups of victims of certain crimes (often illegal detention in places of deprivation of liberty or torture). In addition, these programs often focus too much on the cause of victims' victimization, such as the manifestation of their proactive civic position. Instead, it is essential to ensure that in a general system of reparations, all victims of gross human rights violations, serious violations of IHL, and international crimes are entitled to reparations, regardless of whether they express their political beliefs.

Achievements and challenges of the development and implementation of the listed initiatives should be taken into account to establish a comprehensive reparations program for all victims in Ukraine.

Prospects for ensuring reparations in Ukraine. Ukraine needs to immediately resume and accelerate the approval of the concept of transitional justice in the form of the aforementioned roadmap and move on to approve a detailed implementation plan for all four of its components. The development of a comprehensive reparations program will be multilevel and complex. Among the many challenges, the main ones are as follows.

First, any further steps regarding transitional justice and its elements should be based on a thorough hearing and consideration of the wishes and needs of victims. The lack of a clear centralization of transitional justice and reparations initiatives around victims has been one of the main elements of criticism by the UN and the Venice Commission of previous draft laws of Ukraine on these issues³⁰⁷. Both the Ukrainian authorities and human rights organizations need to realize that, despite all good intentions, they cannot be the voice of the victims. Instead, a targeted, multi-level policy of direct involvement of victims in the crystallization and implementation of reparation measures designed to help them is needed. This process should ensure that different categories of victims are represented

³⁰⁴ Global Survivors Fund, *Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence* (2022), Article 61. URL: https://static1.squarespace.com/static/5ff7d9f4dd4cdc650b24f9a4/t/62c3d1610bf4cc740f73fb56/1657000313991/GSFReporUkraine_ENG.pdf

³⁰⁵ On State Scholarships Named after Levko Lukianenko: Decree of the President of Ukraine of December 7, 2019, No. 417/2018. URL: <https://zakon.rada.gov.ua/laws/show/417/2018#Text>

³⁰⁶ Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine, *Scholarships Named after Levko Lukianenko were awarded to 13 "Kremlin prisoners"* (January 21, 2022). URL: <https://minre.gov.ua/news/stypendiyi-imeni-levka-lukyanenka-za-sichen-otrymalo-13-branciv-kremlya>

³⁰⁷ OHCHR, *Report on the Human Rights Situation in Ukraine (1 August 2021–31 January 2022)*, pp. 46–49. URL: <https://reliefweb.int/report/ukraine/report-human-rights-situation-ukraine-1-august-2021-31-january-2022>; European Commission for Democracy Through Law (Venice Commission), *Ukraine - Opinion on the draft law "On the Principles of State Policy of the Transition Period" adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15–16 October 2021)*, pp. 17, 51, 62. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)038-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)038-e)

depending on the region, type of crime, age, sex, gender, religion, and other important identifying characteristics.

Second, any reparations program – and, more broadly, the vision of transitional justice – should take into account in detail the victimization and needs of victims since the beginning of the Russian aggression, i.e., since 2014.

Third, while the prevailing amount of evidence indicates that Russia committed numerous violations of laws and customs of war and international crimes³⁰⁸, transitional justice, and reparations policies should cover all victims, including those who may have suffered from violations by the Ukrainian side³⁰⁹.

Fourth, a separate issue may arise with the definition of victims of the crime of aggression and the scope of their rights to reparations. If the initiative of Ukraine and its international partners to establish a special tribunal to ensure the responsibility of Russia's top political and military leadership is successful, it will be necessary to define the range, role, and rights of victims at various stages of its work to launch the tribunal. Historically, international law has seen the state as the victim of the crime of aggression. However, the creation of the ICC and the inclusion of the crime of aggression in its jurisdiction, along with war crimes, crimes against humanity, and genocide, indicates a possible new development. Namely, specific victims can not only claim victim status and participate in the ICC aggression proceedings but also claim reparations based on its results³¹⁰. The question of who exactly can be considered a victim of Russian aggression may also arise. Likely, these are not only the direct victims of international crimes but also internally displaced persons and Ukrainians who were forced to become refugees. However, it is also likely that the issue of the possible inclusion of forcibly mobilized Russian military personnel, family members of such killed military personnel, or other persons in the categories of victims will be raised³¹¹. Although these issues within the framework of a potential special tribunal for aggression will not directly affect the definition of Ukraine's national reparation policy, their dynamics may influence the national debate on reparations and broader aspects of transitional justice.

Conclusions. Ukraine has taken significant steps to overcome impunity for violations of laws and customs of war and international crimes committed during

³⁰⁸ OHCHR, Ukraine: Update to the Human Rights Council Special Session (12.05.2022). URL: <https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-update-human-rights-council-special-session>

³⁰⁹ OHCHR, Report on the Human Rights Situation in Ukraine (16 November 2019 to 15 February 2020), p. 60. URL: https://www.ohchr.org/sites/default/files/Documents/Countries/UA/29thReportUkraine_EN.pdf; Human Rights Watch, End Cluster Munition Attacks in Ukraine (11 May 2022). URL: <https://www.hrw.org/news/2022/05/11/end-cluster-munition-attacks-ukraine>; Bethan McKernan, Rape as Weapon: Huge Scale of Sexual Violence Inflicted in Ukraine Emerges (*The Guardian*, 4 April 2022). URL: <https://www.theguardian.com/world/2022/apr/03/all-wars-are-like-this-used-as-a-weapon-of-war-in-ukraine>

³¹⁰ Shane Darcy, Accident and Design: Recognising Victims of Aggression in International Law, *International & Comparative Law Quarterly* (Volume 70, Issue 1, January 2021, pp. 103–132). URL: <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/accident-and-design-recognising-victims-of-aggression-in-international-law/60C8B5B7B1BE92359651ABB20C2EAE1D>

³¹¹ Frédéric Mégret, What Is the Specific Evil of Aggression? in Claus Kreß and Stefan Barriga (eds), *The Crime of Aggression: A Commentary* (Cambridge University Press 2016). URL: <https://www.cambridge.org/core/books/abs/crime-of-aggression/what-is-the-specific-evil-of-aggression/50C0BD7610AB74B143B2B6C1025CC2B4>; Tom Dannenbaum, The Criminalization of Aggression and Soldiers' Rights, *European Journal of International Law* (Volume 29, Issue 3, August 2018). URL: <https://academic.oup.com/ejil/article/29/3/859/5165636>

the Russian aggression. Until recently, the main focus of these steps was on ensuring individual criminal liability of specific officials involved in the commission of these crimes. However, Ukraine gradually realized the need to harmonize such legal efforts in the field of responsibility and expand it. That is why in 2019, a comprehensive work was launched to formulate a transitional justice policy for Ukraine that would address the issues of ending impunity, truth-seeking, supporting institutional reforms, and ensuring reparations for victims.

Except for scattered initiatives aimed at assisting mainly victims of unlawful detention, as of October 2022, Ukraine does not have a comprehensive reparation policy. The development and immediate implementation of such a policy with a gender-sensitive approach that considers the interests of different groups of victims since 2014 shall be a priority for Ukraine and its international partners.

Recommendations. Before necessary reparations are collected from Russia to compensate for the damage caused by its armed aggression, Ukraine and its international partners should:

- Initiate national consultations on the priorities of the state reparation policy.
- Ensure direct participation in such consultations of different groups of victims, depending on the type of crime, age, sex, gender, region of origin, religion, and other important distinguishing features. The participation of civil society organizations at all stages of this process is also necessary, but such organizations should not be substitutes or repeaters of the victims' positions.
- Make sure that victims of various types of crimes have been involved in consultations since 2014 and not just after a full-scale invasion.
- Make sure that victims, civil society organizations, leading scientists, and practitioners are involved at all stages of both the development and implementation of the reparation policy.
- Arrange detailed social surveys on the attitudes of the Ukrainian population towards reconciliation, transitional justice, and reparations.
- Ensure that the victim support policy is not limited to compensation alone but includes other forms of reparations, such as restitution, satisfaction, rehabilitation, and guarantees of non-recurrence
- Identify categories of victims who need special support, including victims of conflict-related sexual violence (CRSV), children, the elderly, people with disabilities, and others. Reparation programs should be elaborated and implemented with maximum consideration for the special needs of these groups of victims.
- Ensure maximum liberalization in the provision of reparations, in particular, support their permissible provision in a simplified, administrative manner.
- Analyze which categories of victims need urgent interim reparations, determine the list of such urgent reparations for the relevant groups and ensure their expedited provision.

- Analyze how criminal justice, truth-seeking, and reparations processes can be mutually reinforcing. In particular, with regard to confessions, testimony, and the willingness of defendants to contribute their funds to compensation or otherwise to reparation measures.