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Post-Conflict Justice
Fall 2025
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Reparations for Survivors of Conflict-Related Sexual Violence: An Unfulfilled Right

Introduction

“They first locked me in a room. Then, over four days, I was raped repeatedly. At the end, they poured acid on my head.” This is the harrowing account of Hana, a Tigrayan woman aged twenty-one when featured by the Guardian in 2025.¹ Hana was abducted by ten Eritrean soldiers, confined on a military base with approximately sixty women, and abused for four days until soldiers left her to die on the street.²

Hana’s story is one of many brutal accounts of conflict-related sexual violence (“CRSV”) emerging from Ethiopia’s northern Tigray Province. The region was mired in violence from 2020 to 2022 after Ethiopian and Eritrean forces invaded the region to oust the ruling Tigray People’s Liberation Front.³ The atrocities in Tigray were appalling: Medical personnel have extracted from the uterus of Tigrayan women rusted screws, nail clippers, and letters by Eritrean forces vowing to “make Tigrayan females infertile.”⁴ The women interviewed by the Guardian were usually raped, then implanted with foreign objects.⁵ Other women were burned alive after soldiers beat and sexually assaulted them.⁶

Tigray is cited here as a recent and overlooked example of an armed conflict involving CRSV. CRSV, which refers to a range of sexual offenses committed during a period of conflict, has been a

¹ Tess McClure, *Rusted Screws, Metal Spikes and Plastic Rubbish: The Horrific Sexual Violence Used Against Tigray’s Women*, THE GUARDIAN (June 30, 2025), <https://www.theguardian.com/global-development/2025/jun/30/sexual-violence-tigray-women-abuse-gang-rape-ethiopia-eritrea>

² *Id.*

³ *Conflict in Ethiopia*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia> (last updated Mar. 20, 2025). Although the Biden administration and U.S. allies succeeded at brokering a ceasefire in 2022, new political tensions in Tigray, this time between Eritrea and Ethiopia, threaten to engulf the region in war. *See Ethiopia is Perilously Close to Another War*, THE ECONOMIST (Nov. 13, 2025), <https://www.economist.com/middle-east-and-africa/2025/11/13/ethiopia-is-perilously-close-to-another-war>

⁴ McClure, *supra* note 1.

⁵ *See id.*

⁶ *Id.*

feature of dozens, if not hundreds or thousands, of conflicts across nations and centuries.⁷ Often viewed (erroneously) as endemic to armed conflict,⁸ and wielded to humiliate and demoralize opponents, CRSV forces its survivors to confront distinct challenges. Aside from reckoning with the more typical effects of war—loss of life, loss of property, loss of livelihood, displacement—survivors of CRSV are left with hardships attributable specifically to the CRSV that they endured. These challenges may include permanent reproductive harm or physical disability, chronic PTSD, the rearing of children born of rape,⁹ and socioeconomic ostracization rooted in honor culture.¹⁰

In too many cases, survivors of CRSV suffer in silence without redress and without justice.¹¹

Over the last few decades, the international community has at last moved beyond mere recognition of CRSV as a violation of international law and taken steps toward addressing the needs of survivors in post-conflict situations. In 2005, for example, the United Nations recognized the right to reparation for

⁷ Professors Tonia St. Germain and Susan Dewey write that “conflict-related sexual violence permeates human cultural consciousness even in the earliest accounts of war.” appearing in ancient literary classics such as the *Odyssey* and the *Ramayana*. Tonia St. Germain & Susan Dewey, *Introduction to CONFLICT-RELATED SEXUAL VIOLENCE INTERNATIONAL LAW, LOCAL RESPONSES 2* (Tonia St. Germain & Susan Dewey eds., 2012).

⁸ Commentators have remarked that armed conflict seems to amplify the “brutality, repetitiveness, public spectacle and likelihood” of CRSV by “diminish[ing] sensitivity to human suffering . . . and giv[ing] social license to rape.” Elizabeth D. Heineman, *Introduction: The History of Sexual Violence in Conflict Zones*, in *SEXUAL VIOLENCE IN CONFLICT ZONES: FROM THE ANCIENT WORLD TO THE ERA OF HUMAN RIGHTS 2* (Elizabeth D. Heineman, ed., 2011) (quoting Rhonda Copelon, *Surfacing Gender: Reconceptualizing Crimes Against Women in Time of War*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA 197–218* (Alexandra Stiglmeier, ed., Marion J. Faber, trans., 1994)). However, an empirical study covering the years 2010 to 2015 indicated that CRSV did not arise in all conflicts during that period, suggesting sexual violence “is not inevitable in war.” Raghild Nordås & Robert U. Nagel, *CONTINUED FAILURE TO END WARTIME SEXUAL VIOLENCE 2* (Peace Rsch. Inst. Oslo, Policy Brief, 2018), <https://cdn.cloud.prio.org/files/6602e342-5de5-4c2a-b4d8-a07c2d304ab1/Nord%C3%A5s%20Nagel%20Cohen%20-%20Continued%20Failure%20to%20End%20Wartime%20Sexual%20Violence%20PRIO%20Policy%20Brief%207-2018.pdf?inline=true>

⁹ These children (and their families) face challenges ranging from their lack of legal identity, health issues related to the circumstances of their conception—which sometimes involve botched abortion attempts—and social stigmatization. See generally GLOBAL SURVIVORS FUND, *BRIEFING ON REPARATION FOR CHILDREN BORN OF CONFLICT-RELATED SEXUAL VIOLENCE* (2024), https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Policy_Briefs/Briefing_on_children_born_of_CRSV_web_Final.pdf.

¹⁰ In Nepal, for example, sexual violence is “seen as a stain not only on the individual victim, but also on their family and community” and is best kept hidden or expelled when made known. See ELENA NAUGHTON & SUSAN RISAL, *NEPAL STUDY ON OPPORTUNITIES FOR REPARATIONS FOR VICTIMS AND SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE 11* (2022), https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Global_Reparation_Studies/GSF_Report_Nepal_EN_June2022_WEB.pdf [hereinafter Nepal Report].

¹¹ See Rhonda Copelon, *Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law*, 5 HASTINGS WOMEN’S L.J. 243–44 (1994).

survivors of gross violations of international human rights law and international humanitarian law, a right that extends to individual survivors of CRSV.¹²

Today, the reparation right is rarely respected or fulfilled, especially for CRSV survivors. In light of the continued prevalence of CRSV and inadequacy of reparations, this paper will provide a stocktake of the reparation right as it pertains to CRSV survivors. Part I will provide an overview of CRSV. Part II will discuss the reparation right for CRSV survivors: the international and regional legal frameworks enshrining this right, the development of jurisprudence around CRSV and reparations, and the best practices recommended for reparations programs. Part III will consist of a case study, an analysis of the extent of alignment between reparations programs in Bosnia and Herzegovina (“BiH”) and the best practices outlined in Part II.

I. CRSV Defined

CRSV is most classically associated with rape, but the UN’s definition of CRSV encompasses a range of acts besides rape, including “sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity . . . that is directly or indirectly linked to a conflict.”¹³ The UN definition, agnostic as to gender or age,¹⁴ allows for flexibility in establishing the connection of a sexually abusive act to conflict. The UN says that this “link” can be inferred from the identity of the perpetrator, who might be affiliated with a “State or non-State armed group,” including “terrorist entities”; the identity of the victim, “who is frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity”; the culture of impunity that “is

¹² See G.A. Res. 60/147, 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 (Dec. 16, 2005) [hereinafter Basic Principles].

¹³ U.N. Secretary-General, *Conflict-Related Sexual Violence: Rep. of the Secretary-General*, ¶ 4, U.N. Doc. S/2019/280 (Mar. 29, 2019) [hereinafter 2019 Secretary-General Report].

¹⁴ By contrast, and perhaps being a product of its time, the Fourth Geneva Convention does imply a gendered distinction. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 27, Aug. 12 1949, 75 U.N.T.S. 287 (calling for women to “be especially protected against any attack on their honour, in particular rape, enforced prostitution, or any form of indecent assault”).

generally associated with State collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement”¹⁵; and the trafficking in persons for sexual exploitation during conflict.¹⁵ The UN definition does not carry legal weight,¹⁶ but it is presented here to illustrate the various forms that CRSV can take.¹⁷

CRSV is diverse not just in the acts that constitute it, but also in the contexts in which it arises. Women and girls are the primary targets of CRSV, though there is increasing scholarship of CRSV committed against men and boys.¹⁸ In conflict settings, CRSV can range from isolated incidents at checkpoints or detention centers¹⁹ to mass atrocities perpetrated fully in public view.²⁰ It is clear today, however, that CRSV is not merely a byproduct of war, relegated to acts considered collateral to combat (such as looting and pillaging), but can be wielded as a method of war itself.²¹ Writing of “tactical rape” (appropriated here as “tactical CRSV” since CRSV is not limited to rape), Brenda Fitzpatrick notes that combatants may employ CRSV as a military strategy to “control, destabilise and even to destroy the social fabric of civilian communities.”²² This kind of CRSV is a “deliberate policy of attack, condoned by at least one party to a conflict[,]” and employed in some cases as a “weapon of genocide, of torture or of

¹⁵ 2019 Secretary-General Report, *supra* note 13, ¶ 4.

¹⁶ This definition of CRSV first appeared in a 2019 report by the Secretary-General (*see id.*) and has not yet been adopted in any resolutions. However, this definition appears to have become the UN’s preferred definition of CRSV. *See, e.g.*, UNITED NATIONS, HANDBOOK FOR UNITED NATIONS FIELD MISSIONS ON PREVENTING AND RESPONDING TO CONFLICT-RELATED SEXUAL VIOLENCE 5 (2020), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/2020.08-UN-CRSV-Handbook.pdf> (using the Secretary-General Report’s CRSV definition in a handbook for U.N. practitioners).

¹⁷ Aoláin et al. acknowledge that classifying sexual violence as conflict-related (or not) “tend[s] to obscure the continuum of violence” that women experience from “ordinary times, to time of conflict, and into post-conflict settings.” *See* Fionnuala Ní Aoláin, Catherine O’Rourke & Aisling Swaine, *Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice*, 28 *Harvard Human Rights Journal* 98, 105 (2015). While a worthwhile field of inquiry, such considerations fall outside the scope of this paper.

¹⁸ *See* PHILIPP SCHULZ, MALE SURVIVORS OF WARTIME SEXUAL VIOLENCE: PERSPECTIVES FROM NORTHERN Uganda 26 (2021).

¹⁹ Since Russia’s invasion of Ukraine in 2022, detainees in Russian facilities—primarily men—have been subjected to horrifying offenses including forced nudity in outdoor winter conditions, electric shocks and burns on genitals, and rape. Rep. of the Indep. Int’l Comm’n of Inquiry on Ukraine, ¶ 47–48, U.N. Doc. A/79/549 (Oct. 25, 2024).

²⁰ The Nanjing Massacre became infamous for the scale and brutality of rape perpetrated by Japanese forces, often in broad daylight. *See* Zhiyan He & Jingting Zhang, *Sexual Violence in the Nanjing Massacre: Emotional Narratives and Cultural Trauma*, 6 *VIOLENCE: AN INT’L J.* 65, 68 (2025).

²¹ NICOLA HENRY, WAR AND RAPE: LAW, MEMORY AND JUSTICE 62 (Jenny Edkins & Nick Vaughan-Williams, eds., 2011).

²² BRENDA FITZPATRICK, TACTICAL RAPE IN WAR AND CONFLICT: INTERNATIONAL RECOGNITION AND RESPONSE 5 (2016).

ethnic cleansing.”²³ World history is marred by numerous episodes of mass tactical CRSV, notably the Rwandan²⁴ and Bosnian²⁵ genocides. In other conflicts, CRSV accompanies the influx of an ideology that endorses misogynistic practices. The Taliban in Afghanistan²⁶ and the Lord’s Resistance Army in Uganda²⁷ are examples of groups employing CRSV in accordance with such beliefs.

Quantifying the scope of CRSV worldwide is difficult because so there are so many potential survivors and because CRSV is notoriously underreported. Survivors of CRSV might be unable to report incidents because they lack access to reliable reporting mechanisms,²⁸ fear reprisals by perpetrators,²⁹ believe that their abusers will not be held accountable,³⁰ risk exposing themselves to social stigma by disclosing their status as survivors,³¹ or fear retraumatization by recounting a traumatizing experience.³²

²³ *Id.*

²⁴ Jean-Paul Akayesu, a mayor who facilitated killings in his village of Taba, was the first individual ever to be charged with genocide. Henry, *supra* note 21, at 92.

²⁵ Among other violations of international humanitarian law, rape was employed in BiH as part of a “widespread campaign of ethnic cleansing” to “remove entire ethnic populations and ensure they would not return.” *Id.* at 64. The majority of documented cases of rape during the Bosnian war involved Serb forces as perpetrators and Muslim women as victims. *Id.*

²⁶ See Carol Mann, *The Afghan State and the Issue of Sexual Violence Against Women*, in CONFLICT-RELATED SEXUAL VIOLENCE INTERNATIONAL LAW, LOCAL RESPONSES 128–29 (Tonia St. Germain & Susan Dewey eds., 2012).

²⁷ The LRA, a Christian extremist group, engaged in a pattern of abducting young girls and forcing them to marry LRA commanders, strictly controlling sexual behavior within the group’s ranks to maintain its purity. MARIANNE AKUMU ET AL., UGANDA STUDY ON OPPORTUNITIES FOR REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE 19 (2022), https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Global_Reparation_Studies/GSF_Report_Uganda_EN_May2022_WEB.pdf.

²⁸ See, e.g., U.N. Secretary-General, *Conflict-Related Sexual Violence: Rep. of the Secretary-General*, ¶ 77, U.N. Doc. S/2025/389 (July 15, 2025) [hereinafter 2025 Secretary-General Report] (citing Tigray as an example where survivors refrained from reporting CRSV because they distrusted local law enforcement).

²⁹ See *id.* at ¶ 42 (Mali).

³⁰ See Nepal Report, *supra* note 10 (account of a Nepali woman’s attempt to file a claim with the district court, during which officials laughed at her and dismissed her claim because such incidents “happen in the time of conflict”).

³¹ Women who experienced CRSV during Nepal’s 1996–2006 civil war were often thrown out of their households when their status as survivors became known. See *id.* at 48–49.

³² Retraumatization is the reliving of stress reactions related to a traumatic experience. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, TIPS FOR SURVIVORS OF A DISASTER OR OTHER TRAUMATIC EVENT: COPING WITH RETRAUMATIZATION (2017), <https://library.samhsa.gov/sites/default/files/sma17-5047.pdf>. This can occur when people are “exposed to their traumatic histories without sufficient tools . . . to manage emotional, behavioral, and physical reactions.” CENTER FOR SUBSTANCE ABUSE TREATMENT, TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES (2014), https://www.ncbi.nlm.nih.gov/books/NBK207201/pdf/Bookshelf_NBK207201.pdf.

Even if the scale of CRSV cannot be fully ascertained, it is clear that the scourge of CRSV remains prevalent today.³³ In a report discussing trends in CRSV during 2024, the UN Secretary-General notes that the UN received credible reports of CRSV in Haiti, Nigeria, Burkina Faso, Mali, Mozambique, Iraq, Myanmar, Syria, Ukraine, Somalia, Yemen, Sudan, South Sudan, Israel, and Occupied Palestinian Territory.³⁴ Additionally, the report's annex names sixty-three state and non-state actors whom the UN credibly suspects of perpetrating CRSV, a list that the Secretary-General acknowledges is not comprehensive.³⁵ The Secretary-General does not provide aggregated totals of the number of incidents reported to the UN in 2024, but the figures for individual countries are illustrative. In Haiti, the UN received 523 cases of CRSV involving girls, 142 involving women, and 43 involving boys; humanitarian service providers in Haiti independently registered 3,598 cases across victim categories.³⁶ In Ethiopia, the UN verified 71 cases of CRSV involving girls, 29 involving women, and two involving boys, while humanitarian service providers registered 2,701 total cases of CRSV.³⁷

The UN report covers incidents from one year. Over the course of an entire conflict, armed actors can subject tens of thousands of people to CRSV.³⁸ As mentioned in the introduction, CRSV inflicts life-altering harm on survivors, for whom reparations are not just beneficial but necessary. While it is unclear to what extent reparations contribute to the success of post-conflict reconstruction at the state level,³⁹ reparations are more than gestures of goodwill by states. They are in fact legal obligations that states bear

³³ In 2018, researchers concluded that little progress had been made toward the abatement of CRSV as new hotspots emerged in Africa and the Middle East. *See Nordås & Nagel, supra* note 8, at 4. Their study also indicated that the number of insurgent groups responsible for incidents of CRSV tripled from 2010 to 2015, though state actors continued to account for the majority of incidents. *See id.* at 2.

³⁴ 2025 Secretary-General Report, *supra* note 28, ¶¶ 11–13.

³⁵ *Id.* at 30 (Annex).

³⁶ *Id.* at ¶ 80.

³⁷ *Id.* at ¶ 77.

³⁸ During the Rwandan genocide, for example, as many as 250,000 women were raped. OUTREACH PROGRAMME ON THE RWANDA GENOCIDE AND THE UNITED NATIONS, SEXUAL VIOLENCE: A TOOL OF WAR, (United Nations, Background Note, 2014), <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Sexual%20Violence%202014.pdf>.

³⁹ *See* Peter Dixon, Luke Moffett & Adriana Rudling, *Postconflict Reparations*, in *Oxford Research Encyclopedia of International Studies* 20–21 (2019), *available at* https://pureadmin.qub.ac.uk/ws/portalfiles/portal/159631779/PJD_2018.09.20_Dixon_Moffett_Rudling_Postconflict_Reparations_MSS03b.pdf.

toward the people that they failed to protect, a means of providing survivors with material and symbolic tools to aid their rehabilitation.⁴⁰

II. Reparations

A. An Overview of Reparations

Former UN Special Rapporteur Pablo de Greiff notes that the word “reparation” can be used in two contexts.⁴¹ Reparation in the broader sense, often used in international law, refers to “all those measures that may be employed” to redress the harm inflicted on victims of a specific crime.⁴² Reparations in this broader sense take one of four forms: restitution (measures aimed at restoring a survivor to a state comparable to that before the violation), compensation (measures to cover economic and other losses sustained as a result of the violation), rehabilitation (measures to provide medical, social, and legal services), satisfaction (measures to “repair immaterial damages” resulting from the violation⁴³), and guarantees of nonrecurrence (measures to prevent repetition of the violation).⁴⁴

By contrast, reparation in the narrower sense can be used in the context of the design of reparative programs, especially those intended for “massive coverage.”⁴⁵ Reparations in this context are often classified as material (such as cash or service packages) or symbolic (such as official apologies and monuments), and as individual (delivered directly to a person or household) or collective (delivered to a victim group as a whole).⁴⁶ De Greiff favors the use of the narrower sense of “reparation” to distinguish from reparative measures that do not directly benefit survivors, such as institutional reforms, since these

⁴⁰ Observers have criticized the U.N.’s discourse on CRSV because, until recently, it has tended to emphasize the effects of CRSV on communities while failing to acknowledge the harm of CRSV on survivors themselves. *See* Karen Engle, *The Grip of Sexual Violence in Conflict* 139 (2020). The intent of this paper, by focusing on the state obligation to award reparations, is not to diminish the experiences of individual survivors or to instrumentalize them as elements hindering or facilitating post-conflict reconstruction efforts. Rather, the intent here is to emphasize their right as survivors and to suggest that this right is inadequately fulfilled.

⁴¹ *See* Pablo de Greiff, *Justice and Reparations*, in *THE HANDBOOK FOR REPARATIONS* 451, 452 (Pablo de Greiff ed., 2006).

⁴² *Id.*

⁴³ Cristina Hoss, *Satisfaction*, *OXFORD PUBLIC INTERNATIONAL LAW* (last updated Apr. 2011), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1099>.

⁴⁴ De Greiff, *supra* note 42, at 452.

⁴⁵ *Id.* at 453.

⁴⁶ *Id.*

indirect measures typically do not fall within the scope of a mass reparation program intended to work with individuals themselves.⁴⁷

Regardless of the sense in which the term is used, reparations are said to be victim- or survivor-centered measures since they “focus[] on redressing victims’ harm by acknowledging their suffering and [by] providing services, benefits and support[.]”⁴⁸ Reparation is therefore distinct from other mechanisms of transitional justice such as vetting, lustration, prosecution, and demobilization, all of which revolve around the perpetrators of a violation.⁴⁹

State actors have typically been the entity responsible for fulfilling the right to reparation.⁵⁰ However, there is emerging customary practice permitting reparation claims against non-state actors,⁵¹ which is especially important since non-state actors have become responsible for an increasing share of CRSV incidents.⁵² Under international criminal law, individual defendants may also be liable to pay reparations.⁵³

Since survivors of any kind of wartime violence can number in the millions after a conflict, determining who is eligible for reparations can become a fraught “logistical, moral, and political” calculus for post-conflict societies.⁵⁴ Faced with severe budgetary constraints, states in this position have generally focused reparative measures on survivors of the gravest violations of international human rights or international humanitarian law.⁵⁵

⁴⁷ *See id.*

⁴⁸ Luke Moffett, *Reparations in Transitional Societies*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE 283, 283 (Cheryl Lawther & Luke Moffett eds., 2023).

⁴⁹ *Id.*

⁵⁰ *See* Aoláin, O’Rourke & Swaine, *supra* note 17, at 99.

⁵¹ Moffett, *supra* note 49, at 285.

⁵² *See* Nordås & Nagel, *supra* note 8, at 2 (indicating that the number of insurgent groups responsible for incidents of CRSV tripled from 2010 to 2015, though state actors continued to account for the majority of incidents in that period).

⁵³ *Id.*

⁵⁴ *Id.* at 290–91.

⁵⁵ *Id.* at 291.

Professor Luke Moffett outlines four main avenues by which reparations can be awarded.⁵⁶ First, courts may order reparations against individual defendants in civil or criminal cases.⁵⁷ Judicial reparations are not conducive to addressing mass violations because they are awarded in individual cases on often protracted timelines.⁵⁸ Second, while truth commissions themselves are not usually charged with issuing reparations, they can serve as “an apt forum” for fact-finding, gauging public opinion, and formulating recommendations for administrative reparations.⁵⁹ Third, administrative reparation programs are politically negotiated bodies and as such cast the state as assuming responsibility for the reparations.⁶⁰ Administrative reparations are typically smaller than judicial monetary awards but are advantageous to survivors in the sense that these programs pose a lesser evidentiary and logistical burden than litigation.⁶¹ Fourth, in cases of international conflict, inter-state mechanisms such as arbitration bodies and peace agreements can order reparations once hostilities have concluded, but this avenue is often encumbered by state claims of sovereign immunity and overlapping processes for redress.⁶²

Each of these mechanisms offers distinct advantages and disadvantages. Whatever mechanism is used, scholars have identified a few key best practices that they recommend to states interested in providing reparations in a way that works for survivors. Before these principles are articulated here, especially as they pertain to CRSV survivors, it is necessary to discuss the legal framework underpinning the reparation right and the gendered dimensions with which it has become associated.

B. Legal Framework: The CRSV-Reparations Link

The right to reparation appears in international treaties spanning international human rights law, international humanitarian law, and international criminal law.⁶³ Generally framed as a right to remedy for breaches of state responsibility, the right to reparation is affirmed in the Universal Declaration of

⁵⁶ *See id.* at 301.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 302.

⁶² *Id.* at 302–03.

⁶³ *See* Aoláin, O’Rourke & Swaine, *supra* note 17, at 113.

Human Rights (1948),⁶⁴ the International Covenant on Civil and Political Rights (1966),⁶⁵ I Protocol Additional to the Geneva Conventions (1977),⁶⁶ the International Convention on the Elimination of All Forms of Racial Discrimination (1979),⁶⁷ the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984),⁶⁸ and the Rome Statute (1998).⁶⁹ Of these instruments, only those that touch international criminal law—the Rome Statute⁷⁰ and the Geneva Conventions⁷¹—expressly recognize CRSV as a violation giving rise to the right to reparation.

Regional and domestic legal instruments supplement the international framework for the right to reparation.⁷² On the regional level, the right to reparation is affirmed in the European Convention on Human Rights,⁷³ the Inter-American Convention on Human Rights,⁷⁴ and the African Charter on Human and People’s Rights.⁷⁵ Individual states have adopted domestic policies on reparation as well. Ukraine, for example, passed two bills in 2024 laying the legal foundation for the establishment of a reparations fund for survivors of CRSV perpetrated after February 20, 2014, in relation to Ukraine’s protracted struggle with the Russian Federation.⁷⁶ The laws remain unimplemented, but Ukraine is a rare example of a state

⁶⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 8 ((Dec. 10, 1948). (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”)

⁶⁵ International Covenant on Civil and Political Rights art. 2, ¶ 3, Dec. 16, 1966, 999 U.N.T.S. 171 (“Each State Party . . . undertakes . . . to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has by committed by persons acting in an official capacity[.]”)

⁶⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 91, Dec. 7, 1979, 1125 U.N.T.S. 3.

⁶⁷ International Convention on the Elimination of All Forms of Racial Discrimination art. 6, Mar. 7, 1966, 660 U.N.T.S. 195.

⁶⁸ Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment art. 14, Dec. 10, 1984, 108 Stat. 382, 1465 U.N.T.S. 85.

⁶⁹ Rome Statute of the International Criminal Court arts. 68, 75, July 17, 1998, 2187 U.N.T.S. 90.

⁷⁰ *Id.* arts. 7, 8.

⁷¹ IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 27, of Aug. 12, 1949 U.N.T.S. 287.

⁷² Acknowledgement to Aoláin, O’Rourke & Swaine, *supra* note 17, at 113–14, for laying out the international and regional agreements enshrining the reparation right.

⁷³ European Convention on Human Rights art. 41, Nov. 4, 1950, 213 U.N.T.S. 221.

⁷⁴ Inter-American Convention on Human Rights art. 25, Nov. 22, 1969, 1144 U.N.T.S. 123.

⁷⁵ African Charter on Human and Peoples’ Rights art. 7, June 27, 1981, 1520 U.N.T.S. 217.

⁷⁶ *Ukraine*, GLOBAL SURVIVORS FUND <https://www.globalsurvivorsfund.org/our-work/ukraine> (last visited Dec. 1, 2025).

attempting reparation during active conflict.⁷⁷ Nepal, too, recently passed reparation-related legislation after reopening its truth commission and has begun forming a reparations fund.⁷⁸

The link between CRSV and the right to reparation took several decades to crystallize, in part because CRSV as a concept did not gain widespread recognition until the 1990s.⁷⁹ Before then, the international community was inconsistent in prosecuting CRSV despite the existence of fledgling norms prohibiting its use by combatants. The Lieber Code (1863), one of the first attempts at tabulating the laws of war, included two articles expressly forbidding rape.⁸⁰ Although the Lieber Code was binding only on the United States, it spurred international momentum toward the codification of the laws of war in the Hague Conventions of 1899 and 1907.⁸¹ The Hague Conventions contained only the vaguest reference to sexual violence: “*Family honours and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.*”⁸²

In the aftermath of World War II, international law in general saw little progress toward the recognition or prosecution of CRSV despite its pervasiveness during and after the conflict. Neither the treaty establishing the International Military Tribunal at Nuremberg nor the Tribunal’s Charter mentioned rape at all despite “compelling” evidence that both Axis and Allied forces had perpetrated sexual violence.⁸³ The Charter of the International Military Tribunal for the Far East also omitted any mention of rape.⁸⁴ Although the Tribunal for the Far East considered evidence of rape and even discussed rape in its

⁷⁷ See Weronika Strzyżyńska, *Reparations to be Paid to Survivors of Wartime Sexual Violence in Ukraine*, THE GUARDIAN (Feb. 26, 2024), <https://www.theguardian.com/global-development/2024/apr/26/reparations-survivors-wartime-sexual-violence-by-russian-soldiers-ukraine-war-olena-zelenska>.

⁷⁸ Binod Ghimire, *Nepal Sets Up Long-Awaited Transitional Justice Fund*, KATHMANDU POST (Nov. 21, 2025), <https://kathmandupost.com/national/2025/11/21/nepal-sets-up-long-awaited-transitional-justice-fund>

⁷⁹ The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), established in 1993 and 1994, respectively, helped to increase the visibility of CRSV worldwide. Nicola Henry, *supra* note 21, at 64–90.

⁸⁰ General Orders No. 100 (Lieber Code) arts. 44, 47, Apr. 24, 1863.

⁸¹ INTERNATIONAL COMMITTEE OF THE RED CROSS, *Instructions for the Government of Armies of the United States in the Field (Lieber Code)*, 24 April 1863, <https://ihl-databases.icrc.org/en/ihl-treaties/liebercode-1863> (last visited Dec. 1, 2025).

⁸² Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 46, July 29, 1899 (emphasis added).

⁸³ Klearchos A. Kyriakides & Andreas K. Demetriades, *Survivor-Centered Approaches to Conflict-Related Sexual Violence in International Humanitarian and Human Rights Law*, 24 AMA J. ETHICS 495, 496 (2022).

⁸⁴ *Id.*

1948 indictment, this development was not considered a meaningful step toward justice for CRSV survivors because survivors themselves were excluded from the proceedings in Tokyo.⁸⁵ Furthermore, the Tribunal all but overlooked the mass trafficking of “comfort women” into brothels run by the Japanese military.⁸⁶

The adoption of the Fourth Geneva Convention (1949), while ineffective at inducing states to prevent or address CRSV, marked a milestone in the development of norms around wartime sexual violence.⁸⁷ The Convention’s provisions applied to protected persons within the meaning of the Convention “[w]ithout prejudice . . . to their health, age, and sex,” but Article 27 urged that “[w]omen be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”⁸⁸ In addition to hinting at a gender perspective to CRSV, the Convention was significant because it imposed a non-binding obligation on states to “undertake to enact any legislation necessary to provide effective penal sanctions” for perpetrators of “grave breaches” of the Convention.⁸⁹ The Convention was thus the first international treaty to order remedies for CRSV, but compliance was largely voluntary since the Convention lacked an enforcement mechanism.⁹⁰ Despite the Convention’s existence, CRSV continued to plague conflict-torn regions through the 1990s.⁹¹

That decade marked a watershed period as two international criminal tribunals, the first since Nuremberg and Tokyo, reshaped jurisprudence on CRSV. The International Criminal Tribunal for Rwanda (“ICTR”) was the first of these influential tribunals. In its 1998 judgment against Jean-Paul Akayesu, the ICTR wrote that “sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic[.]”⁹² The implications of this revelation were

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ IV Geneva Convention, *supra* note 70, art. 27. Naturally, the Convention might today be construed as essentializing women into the antiquated stereotype of potential rape victims whose honor needs protection. Nonetheless, the Convention was innovative in recognizing CRSV as a basis for reparation.

⁸⁹ *Id.* art. 146.

⁹⁰ Kyriakides & Demetriades, *supra* note 82, at 497.

⁹¹ The Soviet invasion of Afghanistan in 1979 and the U.S. intervention in the Vietnam War are cited as conflicts where “CRSV remained an odious feature.” *See id.* at 498.

⁹² Prosecutor v. Akayesu, ICTR-96-4-T, Judgment, ¶ 733 (Sep. 2, 1998).

explosive: For the first time, rape was considered not just a crime against humanity but also the crime of genocide.⁹³

The International Criminal Tribunal for the Former Yugoslavia (“ICTY”) helped to expand the legal consequences for perpetrators of CRSV. The ICTY’s charter explicitly designated rape as a crime against humanity,⁹⁴ creating “a historic opportunity . . . to press for a feminist reconceptualization of the role of legal understanding of rape in war.”⁹⁵ Furthermore, the ICTY held high-profile trials affirming CRSV as a violation of international law. In the Čelebići judgment, for example, the ICTY wrote that a survivor had been raped “because she is a woman . . . [and that] this represents a form of discrimination” satisfying one of the elements of torture.⁹⁶ By focusing on the role of gender in CRSV, the ICTY implicitly endorsed a gender-sensitive approach to considering crimes of CRSV. Furthermore, the judgment constitutes the first decision by an international criminal tribunal recognizing rape as a form of torture.⁹⁷ Alongside the Čelebići judgment, the Foča trial was also consequential in that it provided a chance for sixteen women to confront three defendants on charges of rape, torture, and sexual enslavement.⁹⁸ As compared to the Tokyo trials, where survivors of CRSV were not invited to present evidence,⁹⁹ Foča constituted a full reversal in terms of the inclusion of survivors in international criminal proceedings. Additionally, Foča marked the first time that a defendant was brought before an international criminal tribunal exclusively on charges of CRSV, a trial that produced the first acknowledgement in international jurisprudence that sexual enslavement constitutes a crime against humanity.¹⁰⁰

⁹³ Henry, *supra* note 21, at 92.

⁹⁴ *Id.* at 66.

⁹⁵ *Id.*

⁹⁶ *Id.* at 80 (quoting Prosecutor v. Delalić, IT-96-21-A, Judgment, ¶ 941 (Int’l Crim. Trib. For the Former Yugoslavia Feb. 20, 2001)).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Kyriakides & Demetriades, *supra* note 82, at 496.

¹⁰⁰ TACKLING VIOLENCE AGAINST WOMEN, *Kunarac, Kovač and Vuković Case*, LONDON SCHOOL OF ECONOMICS, <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/kunarac-kovac-and-vukovic-case/> (last visited Dec. 1, 2025).

Outside the arena of international criminal law, a growing “Women’s Rights are Human Rights” campaign made ground in advocating a gendered approach to human rights.¹⁰¹ This international gender justice movement succeeded at bringing gendered violence to the table at the 1993 World Conference on Human Rights in Vienna.¹⁰² In its Declaration and Programme of Action, the Vienna Conference expressly condemned “[v]iolations of the human rights of women in situations of armed conflict” as “violations of the fundamental principles of international human rights and humanitarian law.”¹⁰³ A U.N. General Assembly resolution issued that year, the Declaration on the Elimination of Violence Against Women (“DEVAW”), complemented the Vienna Convention’s sanctions on CRSV by calling on member states to provide redress for “wrongs caused to women who are subjected to violence,” whether in war- or peacetime.¹⁰⁴ A few years later, with the support of states and civil society, women’s human rights advocates helped to shape the Rome Statute (1998) into an “innovative” instrument of protection for CRSV survivors.¹⁰⁵ By including an “expansive”¹⁰⁶ definition of sexual crimes in the provisions for both crimes against humanity¹⁰⁷ and war crimes,¹⁰⁸ the Rome Statute reaffirmed CRSV as a violation of international law. Furthermore, by including provisions entitling survivors of crimes against humanity and war crimes to reparation,¹⁰⁹ the Rome Statute helped to crystallize the norm that survivors of CRSV are entitled to the right to reparation.

The Rome Statute, of course, applies only to defendants convicted before the International Criminal Court. Since 2000, a body of soft law has evolved to reaffirm state obligations regarding reparations. In 2005, the UN General Assembly’s Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious

¹⁰¹ Engle, *supra* note 40, at 30–38.

¹⁰² *Id.* at 31.

¹⁰³ World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 38, U.N. Doc. A/CONF.157/23 (June 25, 1993).

¹⁰⁴ G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women, art 4 (Dec. 20, 1993).

¹⁰⁵ Rashida Manjoo, *Introduction: Reflections on the Concept and Implementation of Transformative Reparations*, 21 Int’l J. Human Rts. 1193, 1194 (2017).

¹⁰⁶ *Id.* at 1194.

¹⁰⁷ See Rome Statute, *supra* note 68, art. 7.

¹⁰⁸ See *id.* art 8.

¹⁰⁹ See *id.* arts. 75, 79.

Violations of International Humanitarian Law called on states to “make[] available adequate, effective, prompt and appropriate remedies, including reparation” as required by international human rights and international humanitarian law.¹¹⁰ Notably, the Basic Principles employed gender-neutral language. The Committee on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) compensated for the Basic Principles’ lack of gender sensitivity by adopting General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations.¹¹¹ This document urges states to provide remedies for “the different types of violations experienced by women” and calls specifically for “adequate and comprehensive reparations[.]”¹¹² The U.N. Security Council followed up the Basic Principles and General Recommendation 30 with Resolution 2467, calling on states to “ensure that survivors of sexual and gender-based violence in conflict . . . receive the care required by their specific needs,” including “national relief and reparations programmes, . . . health care, psychosocial care, safe shelter, livelihood support and legal aid.”¹¹³ The reparative measures mentioned in the resolution were the most comprehensive that the UN had yet recommended for CRSV survivors.

The reparation right of CRSV survivors emerged over decades, as the international community recognized CRSV as a violation of international law and then as a violation giving rise to the reparation right. Along the way, reparations for CRSV survivors became inextricably linked with gendered considerations, shaping current norms for any mechanism intent on redressing the harms of CRSV.

C. Normative Best Practices for CRSV Reparations

Because post-conflict states vary widely in terms of their needs, capacities, and goals, there is no universal formula that states can use to produce an efficacious reparations program.¹¹⁴ Nonetheless, individual scholars and practitioners have identified principles that they believe best address the needs of

¹¹⁰ Basic Principles, *supra* note 12, ¶ 12(d).

¹¹¹ See U.N. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, U.N. Doc. CEDAW/C/GC/30 (Nov. 1, 2013).

¹¹² *Id.* ¶ 81.

¹¹³ S.C. Res. 2467, ¶¶ 16, 28 (Apr. 23, 2019) [hereinafter Resolution 2467].

¹¹⁴ Professor Moffett notes that “[i]t is of course impossible to generalize about reparations and transitional justice with certainty, as each country has to be taken on its own political and socioeconomic circumstances.” Moffett, *supra* note 49, at 288.

survivors. These recommendations are largely normative since the paucity of empirical study on reparations leaves open fundamental questions on how an ideal reparation program should work.¹¹⁵ A roundup of these normative recommendations will follow, with emphasis on areas of agreement between practitioners.

One starting point for best practices is the UN, which published a Guidance Note outlining recommendations for CRSV-related reparations in 2014.¹¹⁶ The UN's principles concern the “operational” aspects of reparations rather than their aspirations:¹¹⁷

1. Adequate reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations
2. Judicial and/or administrative reparations should be available to victims of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies
3. Individual and collective reparations should complement and reinforce each other
4. Reparations should strive to be transformative, including in design, implementation and impact
5. Development cooperation should support States' obligation to ensure access to reparations
6. Meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured
7. Urgent interim reparations to address immediate needs and avoid irreparable harm should be made available
8. Adequate procedural rules for proceedings involving sexual violence and reparations should be in place

The UN principles are cited here in full because they are representative of and consistent with recommendations by other transitional justice practitioners, including Luke Moffett,¹¹⁸ the Transitional Justice Institute (“TJI”),¹¹⁹ and the International Center for Transitional Justice (“ICTJ”).¹²⁰

¹¹⁵ See Dixon et al., *supra* note 39, at 2.

¹¹⁶ U.N. Secretary-General, *Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence*, U.N. Doc. ST/SG(02)/R425 (June 2014) [hereinafter U.N. Guidance Note].

¹¹⁷ *Id.* at 1.

¹¹⁸ See Moffett, *supra* note 49, at 300.

¹¹⁹ See Aoláin, O'Rourke & Swaine, *supra* note 17, at 142–46.

¹²⁰ ICTJ, *Reparations*, <https://www.ictj.org/reparations> (last visited Dec. 1, 2025).

One point of convergence between the UN's, TJI's, and ICTJ's principles is calls for a survivor-centered approach, known by some practitioners as co-creation.¹²¹ The UN Guidance Note frames co-creation as soliciting active participation and input from survivors in the construction and execution of reparation mechanisms.¹²² Aoláin et al. adopt a rights-based argument to advocate for co-creation as a means of respecting the autonomy of CRSV survivors in light of previous violations of their dignity.¹²³ The ICTJ favors a co-creative approach because it allows survivors to “articulate their needs and identify the most meaningful forms of reparation for them.”¹²⁴ The UN emphasizes co-creation with survivors because their participation can help “ensure that reparations have the intended impact, are perceived as such, and that there is ownership of the process.”¹²⁵ Furthermore, the UN says, co-creation can promote the accessibility of reparations to survivors, especially marginalized groups.¹²⁶ The UN's call for co-creation does not appear as a one-off recommendation in its Guidance Note. Resolution 2467 highlighted “the need for a survivor-centered approach in preventing and responding to sexual violence in conflict and post-conflict situations” with a view to ensuring that relevant measures are “non-discriminatory and specific, and respect the rights and prioritize the needs of survivors.”¹²⁷

Another point of convergence between the UN (though not mentioned in the Guidance Note) and the TJI is the importance of approaching CRSV reparations in a gender-sensitive manner, specifically in a way that considers the “gendered nature and consequences . . . of CRSV” for survivors, such as specific health-related needs and socioeconomic exclusion.¹²⁸ The emphasis on a gender-sensitive approach does not result merely from fact that feminists and women's human rights activists were the primary force in

¹²¹ See, e.g., GLOBAL SURVIVORS FUND, *Why We Exist: The Issue*, <https://www.globalsurvivorsfund.org/why-we-exist/the-issue/> (last visited Dec. 1, 2025) (describing co-creation as “the meaningful involvement of survivors in the reparative process, from inception to implementation”).

¹²² See U.N. Guidance Note, *supra* note 120, at 10–11.

¹²³ See Aoláin, O'Rourke & Swaine, *supra* note 17, at 143.

¹²⁴ See ICTJ, *supra* note 120.

¹²⁵ See U.N. Guidance Note, *supra* note 120, at 10.

¹²⁶ See *id.*

¹²⁷ See Resolution 2467, *supra* note 112, at pmb1., ¶ 16.

¹²⁸ Sheri A. Labenski, COUNTERING CONFLICT-RELATED SEXUAL AND GENDER-BASED VIOLENCE THROUGH REPARATIONS 4, (Lond. Sch. Econ., Policy Briefing, 2020), https://eprints.lse.ac.uk/110310/1/Labenski_countersing_conflict_related_sexual_published.pdf.

raising global awareness of CRSV;¹²⁹ it reflects the stark reality that CRSV continues to wield disproportionate harm on women and girls.¹³⁰ The UN addressed gender sensitivity in UNSC Resolution 1325 (2000), recognizing the need for “all actors” to “adopt a gender perspective” accounting for “[t]he special needs of women and girls during . . . post-conflict reconstruction[.]”¹³¹ The resolution called on states to “ensure increased representation of women at all decision-making levels . . . for the prevention, management, and resolution of conflict[.]”¹³² The resolution does not expressly mention reparations, but they could reasonably be read into the text as a measure relating to “the resolution of conflict.”

Scholars of reparations have suggested that reparations should go beyond meeting survivors’ immediate needs and take on a “transformative” aspect. The Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation, drafted in 2007 by thirty civil society organizations troubled by the gender-neutral terms of the UN Basic Principles,¹³³ articulates what transformativeness means for CRSV survivors: “Reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must address structural inequalities that negatively shape women’s and girl’s lives.”¹³⁴ Proponents of transformative reparations recognize that reparations focused solely on survivors’ immediate needs, or alternatively on restitution, risk returning survivors to exactly the social, economic, and cultural conditions that were unfavorable to women in the first place.¹³⁵ This conception of reparations is forward looking,¹³⁶ aligned less with compensation¹³⁷ or restitution and aligned more with the principle of non-repetition—the elimination of structures that helped give rise to CRSV.¹³⁸ One example of transformative reparations appears in the 2009 *Cotton Field* judgment, where the Inter-

¹²⁹ See *supra* Part II.B.

¹³⁰ See 2025 Secretary-General Report, *supra* note 28, ¶ 2.

¹³¹ S.C. Res. 1325, ¶ 8 (Oct. 31, 2000).

¹³² *Id.* ¶ 1.

¹³³ See Aoláin, O’Rourke & Swaine, *supra* note 17, at 123.

¹³⁴ INTERNATIONAL MEETING ON WOMEN’S AND GIRLS’ RIGHT TO A REMEDY AND REPARATION, NAIROBI DECLARATION ON WOMEN’S AND GIRLS’ RIGHT TO A REMEDY AND REPARATION ¶ H (2007), available at <https://www.legal-tools.org/doc/b22586/pdf>.

¹³⁵ See Manjoo, *supra* note 105, at 1195.

¹³⁶ See Moffett, *supra* note 49, at 290.

¹³⁷ See Manjoo, *supra* note 105, at 1196.

¹³⁸ See Labenski, *supra* note 132, at 4.

American Court of Human Rights ordered Mexico to prosecute and punish the murderers of disappeared girls and to standardize protocols for investigating sexual violence throughout the country.¹³⁹ These two remedies were aimed at reducing sexual violence in Mexico, at non-repetition, and so considered transformative.¹⁴⁰ Transformativeness in theory and practice has yet to be defined,¹⁴¹ but it is included here because of its modern take on reparations.

There is truly a diversity of recommendations for CRSV reparations besides co-creation, gender sensitivity, and transformativeness. (Indeed, only two of the principles in the UN Guidance Note have been discussed.) These three best practices are highlighted here because of their ubiquity in reparations literature. This paper acknowledges additional recommendations by Moffett,¹⁴² the ICTJ,¹⁴³ and the TJI¹⁴⁴ but will not elaborate on them.

III. The State of Reparations Today

Despite growing *opinio juris* recognizing the right to reparation, there remains an implementation gap of “scandalous proportions” as states fail to provide reparations to people harmed by conflict.¹⁴⁵ A 2010 study found that of ninety-one countries transitioning from an authoritarian regime to democracy, only fifteen implemented reparations of some kind.¹⁴⁶ In a different study from 2014, researchers found that only twelve of forty-seven societies rebuilding after mass atrocities had completely or somewhat resolved claims for reparative settlements.¹⁴⁷ Yet another study in 2015 described the implementation of

¹³⁹ See Ruth Rubio-Marín & Clara Sandoval, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment*, 33 HUM. RTS. Q. 1062, 1089 (2011).

¹⁴⁰ See *id.*

¹⁴¹ Transformativeness is also not without critics. See generally Brianne McGonigle Leyh & Julie Fraser, *Transformative Reparations: Changing the Game or More of the Same?*, 8 CAMBRIDGE INT’L L.J. 39 (2019).

¹⁴² See Moffett, *supra* note 49, at 300.

¹⁴³ See ICTJ, *supra* note 120.

¹⁴⁴ See Aoláin, O’Rourke & Swaine, *supra* note 17, at 123.

¹⁴⁵ Pablo de Greiff (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), *Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, ¶ 6, U.N. Doc. A/69/518 (Oct. 14, 2014).

¹⁴⁶ Moffett, *supra* note 49, at 283 (quoting TRICIA OLSEN, LEIGH PAYNE & ANDREW REITER, *TRANSITIONAL JUSTICE IN BALANCE: COMPARING PROCESSES, WEIGHING EFFICACY*, 69 (2010)).

¹⁴⁷ *Id.* at 283 (quoting Robert Ratner, Andrew Woolford & Andrew Patterson, *Obstacles and Momentum on the Path to Post-Genocide and Mass Atrocity Reparations: A Comparative Analysis, 1945–2010* 55 Int’l J. Compar. Socio. 229, 243–44 (2014)).

reparations for CRSV as “extremely patchy” since “[n]ot a single comprehensive administrative program encompassing substantive and adequate reparations for CRSV has been initiated in any post-conflict setting.”¹⁴⁸

Survivors of conflict in general, and not just survivors of CRSV, are typically left to their own devices while rebuilding their lives after war. This fact is unsettling because it suggests the mass scale of human suffering that remains unredressed. Furthermore, it underscores states’ inability (at best) or refusal (at worst) to uphold their obligation to fulfil the internationally recognized right to reparation.

A. Bosnia and Herzegovina: A Case Study

This paper will now turn to BiH as a case study. BiH bears an obligation to provide an effective remedy to survivors of the 1992–1995 Bosnian War pursuant to the BiH constitution and regional and international instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, UN Convention Against Torture, and the UN Convention on the Elimination of All Forms of Discrimination against Women.¹⁴⁹ During the nearly four-year conflict, an estimated 20,000 women and children—primarily Bosniak Muslim women and girls—were subjected to CRSV.¹⁵⁰ International news media and advocacy by Bosnian survivor groups rendered CRSV a highly visible and even emblematic aspect of the war.¹⁵¹ As BiH entered its post-conflict era, international and domestic pressure on Bosnian authorities resulted in the creation of judicial and administrative reparation mechanisms for CRSV survivors.¹⁵²

While commendable, these mechanisms continue to fall short of the co-creative, gender-sensitive, and transformative ideals of a CRSV reparations program. Despite BiH’s reparative obligations, reparations still have not reached a significant proportion of CRSV survivors in BiH. Indeed, “tens of

¹⁴⁸ See Aoláin, O’Rourke & Swaine, *supra* note 17, at 126.

¹⁴⁹ BiH Report, *supra* note 153, at 45.

¹⁵⁰ ADRIJANA HANUŠIĆ BEĆIROVIĆ ET AL., BOSNIA AND HERZEGOVINA STUDY ON OPPORTUNITIES FOR REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE 5 (2022) [hereinafter BiH Report].

¹⁵¹ JESSIE BARTON-HRONESOVÁ, THE STRUGGLE FOR REDRESS: VICTIM CAPITAL IN BOSNIA AND HERZEGOVINA 242–43 (2020).

¹⁵² *Id.* at 246–47, 262.

thousands of women in Bosnia are still piecing together their shattered lives” without access to the support to which they are entitled.¹⁵³

The process of seeking remedies, whether judicial or administrative, is fraught with bureaucratic, logistical, and jurisdictional complexities stemming from the fact that BiH has “one of the most complex power-sharing systems in the world.”¹⁵⁴ The Dayton Agreement, which ended the war in 1995, divided BiH into two entities, the Federation of Bosnia and Herzegovina (“FBiH”) and Republika Srpska (“RS”), and the Brčko District (“BD”).¹⁵⁵ Each of these units maintains substantial sovereignty and independence from the state of BiH so that, functionally, they operate as states within the State of BiH,¹⁵⁶ which itself retains certain federal powers.¹⁵⁷ Hence, survivors’ rights, remedies, and the procedures available for their enforcement vary depending on where in BiH survivors live.¹⁵⁸ This paper will delve deeper into the complexities of reparations in BiH. After providing an overview of the judicial and administrative reparations mechanisms in BiH, this paper will analyze the alignment of these mechanisms with relevant best practices from the UN Guidance Note and the principles of co-creation, gender sensitivity, and transformativeness.¹⁵⁹

1. Judicial and Quasi-Judicial Reparations

Over the last thirty years, survivors of the war have been limited largely to domestic avenues for judicial reparations. The Dayton Agreement lacked a comprehensive transitional justice strategy¹⁶⁰ but

¹⁵³ AMNESTY INTERNATIONAL, *Bosnia and Herzegovina: Last Chance for Justice for over 20,000 Wartime Sexual Violence Survivors* (Sep. 12, 2017), <https://www.amnesty.org/en/latest/press-release/2017/09/bosnia-and-herzegovina-last-chance-for-justice-for-over-20000-wartime-sexual-violence-survivors/> (quoting Gauri van Bulik, Amnesty International’s Deputy Europe Director). One survivor, who was gang-raped while pregnant and suffered a miscarriage and permanent spinal damage, has not received “any meaningful financial support from the state” nearly twenty-five years later. *Id.*

¹⁵⁴ BiH Report, *supra* note 153, at 15.

¹⁵⁵ OLIVERA SIMIĆ, SILENCED VICTIMS OF WARTIME SEXUAL VIOLENCE 81 (2018) [hereinafter SILENCED VICTIMS].

¹⁵⁶ Nikolaos Tzifakis, *The Bosnian Peace Process: The Power-Sharing Approach Revisited*, 28 *Perspectives* 85, 87 (2007).

¹⁵⁷ SILENCED VICTIMS, *supra* note 159, at 81.

¹⁵⁸ BiH Report, *supra* note 153, at 15.

¹⁵⁹ The U.N. Guidance note and the notion of transformativeness did not exist when Bosnian authorities instituted the judicial and administrative reparations programs. The intent of the analysis in this section is not to hold BiH retroactively responsible for following these principles, but instead to use current best practices as a yardstick to assess how BiH’s reparations programs measure up to current standards.

¹⁶⁰ *Id.* at 47.

provided for reparations through the establishment of a Human Rights Chamber.¹⁶¹ Operating as a quasi-judicial body from 1996 until the end of its mandate in 2003, the Chamber adjudicated claims from war victims¹⁶² and awarded damages.¹⁶³ The Chamber became a robustly exercised option for BiH citizens in part because what was left of the country's decimated judicial system was not seen as credible, effective, or convenient.¹⁶⁴ The Chamber, on the other hand, charged no application fees, enjoyed backing by the international community,¹⁶⁵ and gained a reputation of high credibility.¹⁶⁶ In its final monthly summary from December 2003, the Chamber indicated that it had registered 15,191 claims, of which 6,242 had been resolved and 8,949 remained pending.¹⁶⁷ It is unclear whether the Chamber handled any CRSV cases (let alone awarded reparations in such cases), but the Chamber is worth mentioning since it set a high standard in terms of accessibility to Bosnian war survivors—a standard that has not been met since.

In the aftermath of the war, the ICTY became a high-profile avenue for criminal prosecutions of CRSV perpetrators.¹⁶⁸ Because the ICTY statute does not allow for the creation of a reparative mechanism of any kind, domestic courts remain the main avenue for survivors to seek judicial reparations.¹⁶⁹ Civil claims are all but impossible for most survivors because of restrictive statutes of limitations,¹⁷⁰ the expensive necessity of counsel,¹⁷¹ and the devastating financial effects of BiH's "loser

¹⁶¹ The General Framework Agreement for Peace in Bosnia and Herzegovina, chp. 2 art. II Dec. 14, 1995, 35 I.L.M. 75 [hereinafter Dayton Agreement].

¹⁶² See HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA, <https://hrc.ustavnisud.ba/ENGLISH/DEFAULT.HTM> (last visited Dec. 1, 2025, but the site is no longer live). However, the Dayton Agreement specified that the Chamber had jurisdiction over applicants alleging violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms. See Dayton Agreement, *supra* note 164, ch. 2 art. II.

¹⁶³ Steven Dewulf, *Human Rights Chamber of Bosnia and Herzegovina (HRCBH)*, OXFORD PUBLIC INTERNATIONAL LAW (last updated Feb. 2020), <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2525.013.2525/law-mpeipro-e2525?p=emailAUitZNLO1dqP2&d=/10.1093/law-mpeipro/e2525.013.2525/law-mpeipro-e2525>.

¹⁶⁴ *Id.*

¹⁶⁵ In part because eight of the Chamber's fourteen members were appointed by the Committee of Ministers of the Council of Europe, some have criticized the Chamber as a "neo-colonial undertaking of the West." See *id.* Nonetheless, the Chamber is hailed as a valuable contribution to BiH's post-conflict transition. See *id.*

¹⁶⁶ *Id.*

¹⁶⁷ As of Dec. 1, 2025, the page containing these statistics has since become unreachable. It was formerly found at http://hrc.ustavnisud.ba/ENGLISH/stat_summaries_eng/summary.asp.

¹⁶⁸ See Henry, *supra* note 21, at 80–81.

¹⁶⁹ BiH Report, *supra* note 153, at 45.

¹⁷⁰ *Id.* at 60.

¹⁷¹ JANINE NATALYA CLARK, RAPE, SEXUAL VIOLENCE AND TRANSITIONAL JUSTICE CHALLENGES: LESSONS FROM BOSNIA-HERZEGOVINA 170 (2018).

pays” system requiring survivors to cover defendants’ legal fees if courts find against the survivors.¹⁷²

Furthermore, survivors pursuing civil action lose their status as protected witnesses, a serious problem in a society where survivors prefer to maintain confidentiality about having experienced CRSV.¹⁷³

Reparations through criminal claims are also difficult to acquire. First, most survivors are unable to meet evidentiary burdens for the simple reason that they are unable to identify or locate perpetrators.¹⁷⁴ Second, even if the courts award damages, survivors are often unable to collect the award because perpetrators are insolvent or conceal their assets to avoid collection.¹⁷⁵ Last, the criminal justice system itself difficult to navigate because it is fragmented between the State of BiH and the three administrative units within it.¹⁷⁶ Criminal prosecutions in BiH take place in fifteen courts applying one of two criminal codes. The 2003 Criminal Code of BiH applies only in cases of crimes against humanity tried before the State of BiH, whereas the 1976 Criminal Code of the former Socialist Federal Republic of Yugoslavia (“SFRY”) or similar codes apply in FBiH, RS, BD, and cases of genocide tried before the State of BiH.¹⁷⁷ For survivors of CRSV, the applicable code matters because the BiH Criminal Code and the SFRY Criminal Code treat CRSV in different ways, and only grave cases of war crimes are tried by the State of BiH.¹⁷⁸ The SFRY Criminal Code’s provisions for CRSV recognize only “forcible prostitution or rape” as “[w]ar crime[s] against the civilian population,”¹⁷⁹ whereas the BiH Criminal Code’s provisions for CRSV fall more in line with international norms by recognizing a wider range of acts as CRSV and by recognizing CRSV as both a war crime and a crime against humanity.¹⁸⁰ The inconsistency in the codes produces impunity for acts not recognized as CRSV by the SFRY Code but recognized by the BiH Code,

¹⁷² BiH Report, *supra* note 153, at 60.

¹⁷³ Clark, *supra* note 174, at 170.

¹⁷⁴ BiH Report, *supra* note 153, at 62.

¹⁷⁵ *Id.* at 64.

¹⁷⁶ SILENCED VICTIMS, *supra* note 159, at 81.

¹⁷⁷ BiH Report, *supra* note 153, at 48.

¹⁷⁸ SILENCED VICTIMS, *supra* note 159, at 82.

¹⁷⁹ Criminal Code of the Socialist Federal Republic of Yugoslavia, art. 142, 1 July 1977, *available at* <https://www.refworld.org/legal/legislation/natlegbod/1977/en/13685> [hereinafter SFRY Code].

¹⁸⁰ *See* Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina 8/10, arts. 172–73, *available at* <https://www.refworld.org/legal/legislation/natlegbod/2003/en/76962> [hereinafter BiH Code].

since most perpetrators of CRSV are tried by the less-stringent SFRY Code.¹⁸¹ Additionally, the dueling criminal codes result in irregular sentencing since the codes specify different sentences for the same offenses.¹⁸²

Court-awarded reparations are so difficult to achieve that survivors have twice successfully challenged Bosnian authorities for their failure to fulfil their reparative obligations toward CRSV survivors. In 2019, CAT called on BiH to provide a survivor with compensation, an official apology, and free medical and psychological care after neither the perpetrator nor the State paid her judicial award of 30,000 BAM (15,000 EUR).¹⁸³ In 2020, CEDAW doubled down on BiH¹⁸⁴ by urging the authorities to follow through on a full investigation of another survivor’s claim and to provide her with monetary and “moral damages”¹⁸⁵ after her two-decade struggle for justice had proved futile.¹⁸⁶

Judicial reparations in BiH do not clearly satisfy any of the best practices outlined in section II.C, *supra*. In the UN Guidance Note, Principle 2 recommends that judicial reparations be “available” to CRSV survivors “as part of their right to obtain prompt . . . remedies[.]”¹⁸⁷ Judicial awards are not awarded promptly in BiH. The plaintiff in the CAT litigation—whose case is not exceptional—was raped in 1992, awarded damages in 2015, learned that she could not collect her award in 2017, petitioned CAT to enforce the judgment in that year, and received a favorable judgment from CAT in 2019.¹⁸⁸ Not only are judicial reparations issued decades after the fact, but they are dispensed to far too few survivors.¹⁸⁹

¹⁸¹ See SILENCED VICTIMS, *supra* note 159, at 85.

¹⁸² *Id.*

¹⁸³ *Bosnia: Landmark Decision for a Survivor of Sexual Violence*, TRIAL INTERNATIONAL (Aug. 30, 2019), <https://trialinternational.org/latest-post/bosnia-landmark-decision-for-a-survivor-of-sexual-violence/>.

¹⁸⁴ *Bosnia’s Failure in Supporting Survivors of Wartime Sexual Violence Condemned by the UN*, TRIAL INTERNATIONAL (Sep. 2, 2020), <https://trialinternational.org/latest-post/bosnias-failure-in-supporting-survivors-of-wartime-sexual-violence-condemned-by-the-un/>.

¹⁸⁵ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), *Views Adopted by the Committee under Article 7(3) of the Optional Protocol, Concerning Communication No. 116/2017*, ¶ 3.6 U.N. Doc. CEDAW/C/76/D/116/2017 (Aug. 26, 2020) [hereinafter CEDAW Decision].

¹⁸⁶ See *id.* ¶¶ 2.1–2.8.

¹⁸⁷ See U.N. Guidance Note, *supra* note 120, at 1 (Principle 2).

¹⁸⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *Decision Adopted by the Committee under Article 22 of the Convention, Concerning Communication No. 854/2017*, ¶¶ 2.1, 2.5–2.6 U.N. Doc. CAT/C/67/D/854/2017 (Aug. 22, 2019).

¹⁸⁹ See Amnesty International, *supra* note 157 (noting that, as of 2017, fewer than one percent of the estimated survivors of war crimes and CRSV had come to court since BiH began trying war crimes).

The plaintiff in the CEDAW case first reported her rape in 1995 and was still awaiting her day in court, and her award, as of 2020.¹⁹⁰ Reparations cannot be considered prompt if they are never awarded.

Judicial reparations also do not appear to meet the normative ideals of co-creation (principle 6 in the UN Guidance Note),¹⁹¹ gender sensitivity, or transformativeness (principle 4 in the UN Guidance Note).¹⁹² There is not sufficient scholarship in English, at least, on the legislative history of the relevant sections within the SFRY Criminal Code, the BiH Criminal Code, or the rules of procedure to determine whether these pieces of legislation (and the awards that they permit) were written in consultation with survivors, in consideration of gender-specific needs, or for transformative purposes. The SFRY Criminal Code took effect in 1976, before the war and before the development of any notions of gender sensitivity or transformativeness. The plain text of the code today does not address either of these concepts.¹⁹³ The BiH Criminal Code, adopted in 2003, similarly lacks provisions addressing gender sensitivity and transformativeness.¹⁹⁴ Such omissions in both codes are perhaps appropriate since penal codes by definition are punitive in nature, focused on defendants, and usually not crafted to function as radical instruments of reform. Nonetheless, BiH's judicial mechanisms, by their evidentiary burdens and inaccessibility to survivors, fall short of their reparative potential.

2. Administrative Reparations

Because they circumvent some of the inefficiencies of judicial reparations, administrative reparations are considered to be a more practical means of delivering prompt and adequate mass reparations.¹⁹⁵ Administrative reparations programs take many forms¹⁹⁶ but generally consist of schemes that process applications from survivors and issue payments directly to qualifying individuals.¹⁹⁷ The

¹⁹⁰ See CEDAW Decision, *supra* note 188, ¶ 2.2.

¹⁹¹ See U.N. Guidance Note, *supra* note 120, at 1.

¹⁹² See *id.*

¹⁹³ See generally SFRY Code, *supra* note 182.

¹⁹⁴ See generally BiH Code, *supra* note 183.

¹⁹⁵ See OPEN SOCIETY JUSTICE INITIATIVE, UN ENTITIES' POWERS TO ESTABLISH ADMINISTRATIVE REPARATION PROGRAMS: A BRIEFING PAPER FOR DISCUSSIONS ON THE ARMED CONFLICT IN YEMEN 5 (Mar. 2022), <https://www.justiceinitiative.org/uploads/0fc2b12e-5ff0-4ed7-9f01-263a59c92366/briefing-paper-un-entities'-powers-to-establish-administrative-reparations-programs-en-032022.pdf>.

¹⁹⁶ *Id.* at 4.

¹⁹⁷ See Moffett, *supra* note 49, at 293.

governments of FBiH, RS, and BD¹⁹⁸ allow CRSV survivors to participate in administrative reparations programs providing packages of stipends and services to victims.¹⁹⁹ However, issues in the implementation and conceptual framing of these programs frustrate their reparative purpose.

No state-level reparations program exists despite previous legislative attempts to synchronize processes between the three administrative units in BiH.²⁰⁰ Consequently, survivors seeking civilian victim status, and in turn the benefits to which they are entitled, must follow different procedures and meet different evidentiary burdens depending on where in BiH they live. The result is a patchwork of victims' programs with varying but nonetheless high barriers to entry. FBiH, for example, loosened the eligibility requirements for victim status with a 2006 amendment.²⁰¹ Previously, the law required survivors to demonstrate "bodily damage of at least 60 percent[,]"²⁰² which operatively excluded CRSV survivors who suffered primarily psychological harm.²⁰³ The law now includes an exception for CRSV survivors, who must now prove sixty percent harm to the "organism" instead of physical harm only.²⁰⁴ Harm to the organism theoretically accounts for psychological harm in addition to physical harm, lowering the standard of harm that survivors must prove to qualify for victim benefits.²⁰⁵ The law was also relaxed to allow survivors to undergo an interview with a victims' association in lieu of a medical assessment as part of the application process.²⁰⁶ Despite these changes, victim status is still difficult to acquire because the standard of harm remains prohibitively high.²⁰⁷ Furthermore, the only two NGOs permitted to assess survivors for victim status in FBiH differ in their procedures, sometimes imposing erroneous additional requirements and thereby causing survivors confusion and stress.²⁰⁸ Because of the

¹⁹⁸ Brčko District will not be analyzed in this paper for simplicity and lack of scholarship on the unit.

¹⁹⁹ While the term *survivor* is often preferred to refer to individuals who have experienced CRSV, *victim* will be used here to refer to the official status and benefits available to Bosnian CRSV survivors.

²⁰⁰ BiH Report, *supra* note 153, at 50.

²⁰¹ Clark, *supra* note 174, at 177.

²⁰² SILENCED VICTIMS, *supra* note 159, at 87.

²⁰³ Clark, *supra* note 174, at 177.

²⁰⁴ See Barton-Hronesová, *supra* note 154, at 151.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ See Barton-Hronesová, *supra* note 154, at 151.

²⁰⁸ See Clark, *supra* note 174, at 178-79.

challenges involved with applying for victim status, only 890 survivors in FBiH (of an estimated 20,000 across BiH) had claimed the status by 2014, with no significant increase by 2019.²⁰⁹

In RS, the analogous law governing victim status is extremely burdensome for survivors. It provides no exception for CRSV survivors in its eligibility requirements, requiring an assessment by a medical commission certifying the applicant's sixty percent physical disability.²¹⁰ Additionally, the law requires survivors to submit documents that are potentially impossible to procure, such as medical documentation issued between 1990 and 2006 and evidence corroborating survivors' claims of CRSV.²¹¹ What complicates matters is that the law requires survivors to have applied for victim status within five years of sustaining their "disability," with the application window expiring at the end of 2007.²¹² Statistics on victim status in RS are not available, but the entity's rigorous eligibility requirements, coupled with the 2007 deadline, reasonably suggest that the victim registration rate is lower in RS than in FBiH.²¹³

Aside from the practical inaccessibility of the programs within each entity, a moral problem resides in the fact that the few survivors who manage to acquire victim status are entitled to different benefits depending on their place of residence. As of 2020, qualifying survivors in FBiH are entitled to a monthly stipend of 586 BAM (equivalent to 293 EUR, the amount granted to civilian victims of war with full disability), support for their children, medical and psychological care, vocational training, legal needs, and housing.²¹⁴ In RS, qualifying survivors are entitled to a monthly stipend ranging from 137 to 183 BAM (approximately 70 to 93 EUR),²¹⁵ free health care (including medical spa therapy, which survivors have identified as a key element of rehabilitation²¹⁶), and additional financial support for family members

²⁰⁹ *Id.* at 178. This number is paltry in proportion to the estimated 20,000 people who were sexually violated during the war.

²¹⁰ Clark, *supra* note 174, at 182.

²¹¹ *Id.*

²¹² *Id.*

²¹³ In a study of thirteen Serb interviewees in RS, only one had obtained victim status. See Clark, *supra* note 174, at 183. This sample is not sufficiently large for any statistical inferences to be drawn, but it is striking that the victim registration rate is so low even in this small group, and especially considering that "RS law generally caters only for Serb victims . . . allowing for wide clientelism." Barton-Hronesová, *supra* note 151, at 276.

²¹⁴ Barton-Hronesová, *supra* note 154, at 151.

²¹⁵ BiH Report, *supra* note 153, at 54.

²¹⁶ *Id.* at 34-35, 55.

who cannot work.²¹⁷ Furthermore, within the entities themselves, survivors are often unable to avail themselves of the services nominally included in their victims' packages because these often implicate unevenly implemented cantonal laws.²¹⁸ Hence, as Professor Janine A. Clark points out, the rights of registered BiH victims as stipulated on paper differ from the rights actually fulfilled in practice.²¹⁹

Some commentators go so far as to argue that the victims' benefits tendered to survivors, while valuable per se, are more accurately described as social support rather than as true administrative reparations,²²⁰ suggesting that the various victims' packages in BiH are not reparations at all.

The notion of the packages as social support derives from a few facts. First, the entity-based provision of victims' benefits leads to *de facto* geographical discrimination²²¹ of survivors, undermining the notion that survivors across BiH collectively enjoy the same internationally recognized right to reparation.²²² The reparation right, normatively speaking, is tied to state obligations—here, the State of BiH—not to survivors' place of residence in one entity of BiH or the other.²²³ Second, Bosnian authorities themselves frame the victims' packages as “social support,” not as “funds that the state [must] secure for the citizens it failed to protect.”²²⁴ This inference is further strengthened when considered in conjunction with the fact that the payouts are labeled as “personal allowance” or “disability allowance,” terms that on their face are utterly disconnected from notions of state responsibility, and with the fact that the enabling legislation also makes no mention of state responsibility.²²⁵ Hence, the terminology and legislation implicated in the programs fail to indicate that the funds paid out to survivors are in any way related to notions of restitution, compensation, or satisfaction in connection with BiH's failed state obligation—the very

²¹⁷ Clark, *supra* note 174, at 182.

²¹⁸ *Id.* at 181.

²¹⁹ *Id.*

²²⁰ Clark, *supra* note 174, at 176.

²²¹ BiH Report, *supra* note 153, at 6.

²²² Some survivors also suspect ethnic prejudice among the authorities and the NGOs who are supposedly championing the cause of Bosnian survivors. A Bosnian Croat woman in FBiH, raped by Bosnian Croat and then Bosnian Muslim forces, suspects that the local NGO refused her application for victim status because she had not been raped by Serb forces. Clark, *supra* note 174, at 180. Meanwhile, one of the main feminist leaders in RS articulated that her priority was “Serb women only.” Barton-Hronesová, *supra* note 151, at 263.

²²³ BiH Report, *supra* note 153, at 53.

²²⁴ SILENCED VICTIMS, *supra* note 159, at 104.

²²⁵ BiH Report, *supra* note 153, at 53.

definition of reparations. Last, the bodies issuing the benefits are not logically related to the survivors receiving the funds, which implies that the payments are not intended as redress specifically for wartime atrocities but as general assistance for survivors' current needs.²²⁶ For example, RS provides stipends to survivors harmed by actors attributable to FBiH.²²⁷ In a properly functioning reparative system, FBiH would accept responsibility for the harms it had caused and provide reparations directly to the individuals it had harmed.

Even if the administrative programs can be considered proper reparations, they, like the judicial reparations, fall short of the best practices for CRSV reparations. The UN Guidance Note appears to have minimal application in BiH. Principle 1 recommends “a combination of different forms of reparations,”²²⁸ which in BiH are nominally available to survivors in the form of both stipends and packages of social services. However, as discussed above, the services do not reach survivors in practice because the cantons responsible for providing them have not executed the relevant programs.²²⁹

Principle 2 in the UN Guidance Note recommends that administrative reparations be provided to CRSV survivors as part of their “right to obtain prompt, adequate, and effective remedies.”²³⁰ In BiH, it seems that victims' packages are issued more as social benefits than as a fulfillment of survivors' right to an effective remedy. Additionally, the benefits that do reach survivors are inadequate and less than effective. A study of survivors published in 2022 indicated that they found their benefits insufficient for a variety of reasons: Their monthly allowances were too meagre to meet current costs of living, they lacked desired vocational training and educational opportunities, and centers for psychological care were understaffed.²³¹

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ See U.N. Guidance Note, *supra* note 120, at 1.

²²⁹ See Clark, *supra* note 174, at 182.

²³⁰ See U.N. Guidance Note, *supra* note 120, at 1.

²³¹ BiH Report, *supra* note 153, at 33–34.

Principle 6 in the UN Guidance Note, which addresses co-creation,²³² shows more promise. In FBiH, mass public mobilization served as a catalyst for the 2006 amendment that relaxed eligibility requirements for victim status.²³³ RS also showed some willingness to consider survivors' input by passing an amendment in 2018 after extensive direct lobbying by an influential activist.²³⁴ While the amendments in both entities are positive developments, they might simply constitute isolated incidents in which activists successfully pressured the authorities to consider their demands rather than a reflection of the entities' continued willingness to include survivors in their legislative processes. Because scholarship on the legislative history of Bosnian laws is scarce, it is difficult to conclude just how co-creative the victims' benefits laws are. Nonetheless, the entities and the State of BiH have failed to address fundamental issues in the reparations programs for years, raising questions about the authorities' attention to survivors' needs.

Relatedly, the administrative reparations programs do not appear to be gender sensitive. The FBiH²³⁵ and the RS²³⁶ laws neglect to include any provisions about gender at all. The laws are also not implemented in a way that suggests sensitivity to gendered needs. It is troubling that stipends for the civilian victims category (which includes CRSV survivors, most of whom are women) are lower than those for war veterans or individuals with war-related disabilities (most of whom are presumably men, though statistics are needed to confirm this).²³⁷ The disparity across these categories suggests a preference for the military²³⁸ and a disregard for survivors who might have just as many needs as veterans but no military connection.

²³² See U.N. Guidance Note, *supra* note 120, at 1.

²³³ Barton-Hronesová, *supra* note 151, at 261–62.

²³⁴ Barton-Hronesová, *supra* note 151, at 263.

²³⁵ See generally Law on Principles of Social Protection, Protection of Victims of War, and Protection of Families with Children, Official Gazette of the Federation of Bosnia and Herzegovina No. 36/99, available at <https://www.refworld.org/legal/legislation/natlegbod/1999/en/77110> [hereinafter FBiH Law on Social Protection].

²³⁶ See generally Law on the Protection of Civilian Victims of War, Official Gazette of Republika Srpska No. 02/4.3-409 /10, available in Serbian at https://www.udas.rs.ba/wp-content/uploads/2023/09/zakon_o_zastiti_civilnih_zrtava_rata.pdf [hereinafter RS Law on the Protection of Civilian Victims of War].

²³⁷ BiH Report, *supra* note 153, at 35.

²³⁸ In RS, benefits for military victims of war actually increased despite the implementation of austerity measures. See Barton-Hronesová, *supra* note 151, at 242.

Last, Principle 4 of the UN Guidance Note, recommending that reparations be “transformative[] in design, implementation and impact[,]”²³⁹ appears all but neglected. The text of the enabling laws in FBiH and RS do not acknowledge the inequitable circumstances that survivors faced before the war or any intent for the state to help redress those inequities,²⁴⁰ and the legislative history is silent on this matter. Furthermore, the administrative benefits’ function as social support precludes their role as transformative in any meaningful sense. The benefits are issued to help survivors with their present needs (but fail to achieve even that²⁴¹). There is simply no room in the existing benefits scheme to look backward, at redressing structural inequities, and to the future, toward ensuring that those inequities are eliminated.

Conclusion

This paper has established that CRSV continues to occur worldwide, that CRSV survivors bear an internationally recognized and protected right to reparation, and that the majority of states fail to uphold their reparative obligations in post-conflict situations. In BiH, neither the judicial nor the administrative reparations in place satisfy CRSV survivors’ needs, their right to reparation, or BiH’s obligation to provide reparations. Analyses of other states will provide a more complete picture of the reparation right today, but it is clear that this right is insufficiently fulfilled in post-conflict contexts.

Reparations are critical beyond their benefits to survivors’ everyday lives. Reparations provide survivors with symbolic acknowledgement of their harm, assure survivors of states’ commitments to rectifying injustice, and, in a truly transformative application, push post-conflict societies toward a more equitable future. For survivors around the world—from the 20,000 Bosnian survivors to Hana in Tigray—the full magnitude of reparations remains to be unleashed.

²³⁹ U.N. Guidance Note, *supra* note 120, at 1.

²⁴⁰ *See generally* FBiH Law on Social Protection, *supra* note 237; RS Law on the Protection of Civilian Victims of War, *supra* note 238.

²⁴¹ BiH Report, *supra* note 153, at 32.