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**Reparation as a Veritable Tool for Redressing
Women's Reproductive Rights Violations in
Armed Conflicts in Nigeria**

Folakemi O. Ajagunna

Abstract

In recent times, there has been a remarkable increase in armed conflicts particularly those that are non-international in character. Of the armed conflicts that have taken place since World War II, ninety percent have taken place in developing countries with sub-Saharan African countries experiencing more conflicts than any other region in the world. On most occasions, women and children have been the most affected with various human rights violations and sexual violence crimes. Of these crimes, rape and indecent assault have been the most reported. Judicial systems have often been inadequate in addressing most of these crimes. This article therefore proposes reparations for victims of rape using a transitional justice framework. This article adopts a desk review approach of extant literature on the subject matter. It also relies on field survey reports on the state of armed conflicts globally and in Nigeria. The article identifies the nature of violations of women's reproductive rights and how these impact on their health and well-being. It explores the options of reparations as a means of redressing these violations. In doing so, the article undertakes a comparative approach by examining experiences from Sierra Leone where there were massive violations during conflict from 1991 to 2002. This article exposes the possible challenges associated with adopting reparations mechanism in Nigeria and concludes that, for promoting access to justice in Nigeria, adequate funding and political will have to be in place to ensure sustainability.

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Introduction

Sexual and Reproductive Health Rights (SRHR) have been part of the international health policy agenda since the International Conference on Population and Development in 1994. They are central to the realisation of fundamental human rights, including the rights to life, health, freedom from torture and ill-treatment, privacy, education, and non-discrimination. It is to be observed that Sexual and Reproductive Health Rights are grounded in, and draw their meaning from, fundamental human rights.¹ Human Rights bodies consistently have emphasised that states' obligations to guarantee SRHR should be directed not only at ensuring that women and girls have access to comprehensive reproductive health information and services but also should take affirmative measures to improve reproductive health outcomes and ensure that women and girls have the opportunity to make fully-informed decisions about their sexuality and reproduction, free from violence, discrimination, and coercion².

Although international laws on human rights provide well-established conceptual frameworks for sexual and reproductive health rights, the gulf between full realisation of reproductive rights protection in sub-Saharan Africa and particularly in Nigeria is wide, particularly for women, and girls. This can be attributed to the dire consequences of conflict and crisis on women and girls sexual and reproductive health rights³.

According to the United Nations (UN), over 200,000 women suffered sexual violence in the Democratic Republic of Congo during its armed conflict. In addition, between 250,000 and 500,000 women were raped during the 1994 genocide in Rwanda, and between 20,000 and 50,000 during the armed conflict in Bosnia in the early 1990s⁴. In Sierra Leone's armed conflict, sexual violence was committed on a much larger scale than amputations; thousands of women and girls of all ages, ethnic groups, and socio-economic classes were subjected to widespread sexual violence, including individual and gang rape, torture and sexual slavery⁵. Similarly, in the conflict in Darfur, the western province of Sudan, armed forces and militia members raped thousands of women during attacks and inside IDP camps. Tens of thousands of women were

¹ Cook, R. J. et al, *Reproductive health and human rights: Integrating medicine, ethics, and law*. New York: Clarendon Press, 2003, pg.8.

² Ibid.

³ Cricton, J. et al. "Sexual and reproductive health rights in Africa", 367(2006) *The Lancet* p. 2043.

⁴ UN Resources for Speakers on Global Issues, "Ending Violence Against Women and Girls", Retrieved from www.un.org/en/globalissues/briefingpapers/endviol/ on 10 June 2017.

⁵ Suma, M. and Currae, C. *Report and Proposals for the implementation of reparation in Sierra Leone*, New York, International Center for Transitional Justice, 2009 pg. 12.

frequently abducted into sexual slavery for days or months and suffered under the forced displacement and violence⁶.

Reproductive health violations have occurred during armed conflicts at all times on all continents. What is worrisome is that, such violations are not perpetrated in isolation but accompanied by other violations, such as unlawful killings, child recruitment, destruction of property or looting⁷. Women in Nigeria have paid a heavy price in the conflicts that have occurred in the country especially in the past two decades. They have endured unprecedented levels of reproductive rights violations shown by increased rates of sexual violence, involuntary pregnancies, sex slavery, early child marriage and other health complications⁸. Ongoing conflicts in Nigeria include those linked to Boko Haram extremists in the north-east and, more recently, conflicts between farmers and Fulani herdsmen over grazing in some parts of Nigeria. The conflicts in the north-east have resulted in massive loss of lives and property. These incessant conflicts have had a devastating impact on women and girls.

Women face double marginalisation during and after violent conflicts. Yet post-conflict justice initiatives are not comprehensive, complementary and pay less attention to the rights of victims. Given that women represent a very large proportion of the victims of these conflicts and that women arguably experience conflicts in a distinct manner, it becomes appropriate to examine whether other mechanisms can be designed to redress reproductive health violations more fairly and more efficiently⁹.

Reparation is a long-standing principle of international law in which responsibility for a wrongful act leads to a duty to make reparation for damages caused by the act. This principle is codified in Article 1 of International Law Commission draft articles on responsibility of states for wrongful acts. According to the Permanent International Court of Justice, the aim of reparation is to remove all consequences of an illegal act and re-establish the situation that would have existed if the crime had not been committed¹¹. Reparation includes measures that aim to repair or redress the impact of

⁶ Reliefweb. Understanding Dafur Conflict: Retrieved from reliefweb.int/report on 22 June 2017.

⁷ Gaggioli, G. "Sexual violence in armed conflicts: A violation of International Humanitarian Law and Human Rights Law", 96 (2014) *International Review of the Red Cross*, pg. 503.

⁸ Che, P. "Impact of armed conflict on maternal and reproductive health in sub-Saharan Africa" Retrieved from <http://urn.nb.no/urnno53854> on June 22 2017.

⁹ Olugbenga, O. and Emmanuel, A. "Boko Haram Insurgency and its implication on the rights of the female gender in Nigeria", (2017) *Agora International Journal of Juridical Sciences* pg. 33-35.

¹⁰ Moreno, C. and Stockl, H. "Protection of Sexual and reproductive health rights: Addressing violence against women", 106 (2009) *International Journal of Gynecology and Obstetrics* pg. 144–147.

¹¹ DRC v. Belgium (2002) 4L.L.M., 536.

harm to provide remedy for the systematic violation of human rights commonly associated with armed conflicts¹².

This article, therefore, seeks to examine the application of reparations for women's reproductive and sexual rights violations in armed conflicts. In doing so, the article examines the legal framework for the protection of women's reproductive rights in armed conflicts, the concept of reparation as enshrined in transitional justice mechanism and how this has been used to compensate human rights violations. It also exposes the inadequacies of the existing framework put in place for redressing reproductive rights violations of women and girls in armed conflict setting. The article concludes by exploring the option of reparation for reproductive rights violations and the feasibility of adopting it for redressing reproductive rights violations in armed conflicts in Nigeria.

The Concept of Sexual and Reproductive Health Rights

Sexual and reproductive health rights are defined as rights that embrace central human rights which are already recognised in national laws, international human rights documents and other consensus documents¹³. These rights rest on the recognition of the basic rights of all individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This includes the right to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents¹⁴.

Sexual and reproductive health rights are an essential component of the universal rights to be enjoyed to the highest-attainable standard of physical and mental health, enshrined in the Universal Declaration of Human Rights and in other international human rights conventions, declarations, and consensus agreements. Sexual and reproductive health rights, including access to sexual and reproductive health care and information, as well as autonomy in sexual and reproductive decision-making are human rights. They are universal in nature and cannot be denied women. Such rights are

¹² International Center for Restorative Justice "Reparations in Theory and Practice" Retrieved from ictj.org on 11 June 2017.

¹³ These national laws include the Nigerian 1999 Constitution (as amended), Violence Against Persons Prohibition Act 2015, Nigerian Reproductive Health Policies as well as international conventions such as the Universal Declaration on Human Rights 1948, International Covenant on Civil and Political Rights 1966, Convention on Elimination of All Forms of Discrimination Against Women 1979.

¹⁴ ICPD Platform of Action.

grounded in other essential human rights, including the right to health, right to be free from discrimination, right to privacy, right not to be subjected to torture or ill-treatment, right to determine the number and spacing of one's children, and the right to be free from sexual violence. Sexual and reproductive rights assume that all people have the right to a healthy, safe, consensual and enjoyable sex life; to control their bodies and have sufficient accurate information to use in making decisions and seeking healthy behaviours; and to have affordable, accessible services that keep them healthy, not only when pregnant but before and after and even if they choose never to get pregnant¹⁵.

Reproductive Rights and Reproductive Health in Armed Conflict Settings

The worldwide burden of reproductive and sexual ill-health falls disproportionately on women who are least able to bear its consequences most especially in armed conflict settings. The distinctive needs of women facing multiple and compounding forms of discrimination, structural poverty, and violence are too often ignored¹⁶. In its General Recommendation 24 on Women and Health, the Committee on the Elimination of Discrimination against Women (CEDAW) requires that special attention be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups.

It is well-documented that gender-based violence has profound health and socio-economic consequences. The prevalence of gynaecological complaints, psychiatric symptoms and general illness is significantly higher among female victims of violence than in the general population¹⁷. In 1998, United Nations included in the Declaration of Elimination of Violence against Women that all member-states shall provide medical care and judicial counselling to all victims of violence¹⁸. However, only few states have established rape centres or other easily-accessible professional care for victims of violence in the national health system, and the provision of free legal aid or judicial guidance is only obligatory in a number of states¹⁹. It is, therefore, not surprising that the

¹⁵ Centre for Reproductive Rights "Ensuring sexual and reproductive health and rights of women and girls affected by conflict" Briefing Paper Retrieved from ga.bpcconflictincriis2017.07.25.pdf on June 22 2017.

¹⁶ Erdman, J. and Cook, R. "Women's Right to Reproductive and Sexual Health in global context" (2006) *Women's Health* pg. 991-996.

¹⁷ Bernard, V. and Durham, H. "Sexual Violence in armed conflict" (2014) *International Review of the Red Cross* p. 427.

¹⁸ Declaration A/RE/48/104 of the United Nations General Assembly on the Elimination of Violence Against Women. Retrieved from www.un.org/document on 9 June, 2017.

¹⁹ Lagos, Enugu, Borno, Niger, Yobe, Akwalbom, Kano, Kaduna States and FCT Abuja have established Victim Support centers either as State owned or public private partnership initiatives.

standards for medical, psycho-social and judicial aid and counselling also are sparse for female refugees and internally-displaced children and women who have been victimised by armed conflicts²⁰.

Consequences of reproductive rights violations in armed conflicts are often devastating. In a survey carried out by Rubaya and Flicourt²¹ in the aftermath of conflict that occurred in the Democratic Republic of Congo, acts ranging from forced marriages and pregnancies to sexual slavery forced upon young women were reported. Child soldiers and little girls charged with performing household tasks for their enemies were also reported. In addition, enforced prostitution or sexual slavery imposed on women abducted and held prisoner as spoils of war, the removal of genital organs or their destruction were common occurrences. Victims were exposed to sexually-transmitted infections (STIs) and to HIV and fistula resulting from the sexual violence and continuation of the physical suffering. There was little or no legal assistance for victims and, as a result, no compensation for the harm suffered. The lack of information on the fight against the impunity of sexual violence and the lack of psychological care or assistance aggravated the consequences linked to the moral shock, violence, abandonment by spouse and other family members, stigmatisation and low self-esteem²².

Women's reproductive rights violations in armed conflicts include the following acts: rape, forced pregnancy, forced sterilisation, forced abortion, forced prostitution, sexual trafficking, sexual enslavement and forced nudity²³. Out of these violations, rape happens to be the most-reported reproductive rights violation. Rape is defined by the International Criminal Tribunals for Rwanda (ICTR) in the case of Akayesu²⁴ before the ICTR, in which the Trial Chamber (and then the Appeals Chamber) adopted a very broad and generic definition of rape. The ICTR simply held that rape is "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive". An increase in vaginal fistula, where tears in the tissue of the vagina, bladder and rectum leave women unable to control their bodily functions, correlates with

²⁰ Ibid.

²¹ Rubuye-Mer S and Flicourt N. "Women victims of sexual violence in armed conflict" 24(2015) *Sexologiesp*. 56.

²² Ibid, p.e57.

²³ Gaggioli G., "Sexual violence in armed conflicts: A violation of International Humanitarian Law and Human Rights Law" 96 (2014) *International Review of the Red Cross* pg. 507. Lukanow, A. et al. "Violence against Women in situations of armed conflict" being proceeding of WHO/ISS workshop held in Naples, Italy from 12 -13 October 2001.

²⁴ ICTR Prosecutor v Jean-Paul Akayesu, Case No: ICTR-96-4.

exceedingly-violent rapes of women and girls in conflict-affected areas²⁵. Forced pregnancy is the unlawful confinement of one or more women forcibly to make pregnant with the intent of affecting the ethnic composition of a population or carrying out other grave violations of international law. The legal harm and violation of forced pregnancy is that women are kept pregnant by means of confinement at a certain location between a crucial period when the woman is thought to be pregnant and the termination of the pregnancy²⁶. Forced sterilisation refers to the medical control of a woman's fertility without the consent of the woman. It essentially involves physical violation of the woman through battery. It is often contrasted with coerced sterilisation in which financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure²⁷.

Violations during the periods of conflict predominantly concern breach of the right to autonomy and self-determination in sexual and reproductive decision-making. The rights to redress for reproductive rights violations have been clearly articulated in international law. The World Conference on Human Rights affirmed that violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind require a particularly-effective response²⁸.

Legal Framework for Protecting Women's Reproductive Rights

The relevant legal framework affording protection to women in situations of armed conflicts include international humanitarian law, human rights law and refugee law.

²⁵ Vijayarasa, R. "Putting reproductive rights on the transitional justice agenda: the need to redress violations and incorporate reproductive health reforms in post-conflict development" 15(2009) *New England Journal of International and Comparative Law* pg. 4.

²⁶ Markovic, M. "Vessels of Reproduction: Forced pregnancy and the ICC" 16 (2007) *Michigan State Journal of International Law* pg. 441. Forced pregnancy is also defined in Article 7(2) of the Rome Statute of the ICC as when a woman is made forcibly pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. The crime involves forcible impregnation which involves falling pregnant as a result of a rape or an illegal medical procedure and unlawful confinement which involved forcibly compelling a woman to carry a pregnancy to term. See also Lobato, M. *Forced pregnancy during the Kher Rouge Regime: Acknowledging forced pregnancy as a distinct crime in the ECCC proceedings*, Cambodia, Cambodian Human Rights Action Coalition, (2016), pg. 7.

²⁷ Open Society Foundation "Against her will: forced and coerced sterilisation of women worldwide" Retrieved from www.opensocietyfoundation.org on 9 June 2017.

²⁸ World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993) retrieved from [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En) on 11 June 2017.

International humanitarian law seeks to ensure the personal safety of women in situations of armed conflicts in two principal ways. First, it seeks to put in place regulation of methods and means of warfare in order to protect civilians including women from the effects of hostilities. Second, by prohibiting specific acts or threats of violence against civilians or persons who are not or are no longer taking an active part in hostilities, such as murder, torture and rape, by parties to armed conflict²⁹.

Parties to armed conflict must conduct hostilities in such a way as to spare the civilian population as far as possible from the effects of hostilities. This is reflected in the principle of distinction, which requires parties to an armed conflict to distinguish at all times between civilians and combatants and not direct attacks against civilians or civilian objects.

Parties to an armed conflict are required to ensure humane treatment of all persons within their power. The provisions requiring humane treatment make special reference to women. Women must be especially protected against rape, enforced prostitution and any other form of indecent assault. Persons not taking part in hostilities must be treated humanely with no adverse distinction on the grounds of, *inter alia*, sex. Article 27 of Geneva Convention IV Relative to the Protection of Civilian Persons provides that women shall be especially protected against rape, enforced prostitution or any form of indecent assault. Likewise, Article 76(1) of the Additional Protocol I of 1977 contains provision similar to those of Article 27 but only adds that women shall be the object of special respect. Article 4(2)(e) of Additional Protocol II of 1977 prohibits outrages against personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.

Human rights and refugee law also protect women's personal safety. Human rights law enshrines the right to life, the prohibition on torture, cruel, inhuman and degrading treatment or punishment. No derogation from these rights is permissible, even in times of public emergency³⁰. States are under a duty not to infringe these rights themselves and to protect them from infringement by others. A number of international covenants and declarations make pronouncements protecting the reproductive rights of women generally. For instance, the International Covenant on Economic, Social and Cultural Rights provides that state parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of mental and physical

²⁹ ICRC "Customary IHL, Rule 1 The principle of distinction between civilians and combatants" Retrieved from <https://ihl.databases.icrc.org> on 22 June 2017.

³⁰ Tomuschat, C. "Human Rights and International Humanitarian Law" 21(2010) *European Journal of International Law* pg. 15-23.

health and the benefits of scientific progress and its applications. The right of men and women of marriageable age to marry and to found a family shall be recognised. No marriage shall be entered into without the free and full consent of the intending spouses³¹.

The International Covenant on Civil and Political Rights states that everyone has the right to liberty and security of person. Arising from this is the fact that no one shall be subjected to unlawful interference with his privacy, and no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment³².

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the only human rights treaty that specifically affirms the reproductive rights of women³³. It urges state parties to take all appropriate measures to eliminate discrimination against women and girls, and challenges harmful traditional norms and modifies social and cultural patterns that arise from, and propagate, the notion that women are inferior to men; it ensures that men and women are equally able to determine the number, spacing and timing of their children including whether to have any at all and have sufficient and accurate information, education and supplies to enable control of fertility; it discourages early marriage and encourages elimination of discrimination against women in marriage and family issues. It also prevents and responds to violence against women³⁴.

The summary of rights that can be drawn from these conventions and declarations is as follows:

(i) The right to marry and found a family of one's choice

The family is regarded as the natural and fundamental group unit of society. Thus the right of men and women who are of marriageable age to marry and found families is recognised. In addition, this right advocates that special protection should be accorded to mothers during a reasonable period before and after childbirth.

³¹ Articles 12.1, 15.1, 23.2 and 23.3 of the International Covenant on Economic Social and Cultural Rights 1966

³² Articles 9.1, 17.1, 17.7 International Covenant on Civil and Political Rights 1966.

³³ Adami V. "Women's Reproductive Rights: A literary perspective" 6 (2012) *Polemos*pg. 106.

³⁴ Other international human rights documents that support and advance sexual and reproductive health rights of women include Convention to Eliminate All Forms of Racial Discrimination; Convention Against Torture; Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; Declaration on the Rights of Indigenous People; Declaration on the Elimination of Violence Against Women; Rome Statute of the International Criminal Court; United Nations General Assembly Special Session Declaration on HIV/AIDS; UN General Assembly Statement on Sexual Orientation and Gender Identity; and The Beijing Platform for Action of the 1995 Fourth World Conference on Women.

(ii) *The right to reproductive health and health care*

The Economic Covenant recognises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and that of the steps to achieve this right³⁵. The right to reproductive health and care is further reinforced by the provisions of Article 24(1) of the Convention on the Rights of the Child which requires state-parties to develop preventive health care guidance for parents as well as family planning education and services. Article 12(1) of the Convention Against Elimination of All Forms of Discrimination against Women requires that state parties eliminate discrimination against women in the fields of health care to ensure, on a basis of equality of men and women, access to health-care service including those related to family planning.

(iii) *Rights regarding information and education*

Rights to seek, receive and impart information are protected by all the basic human rights conventions and are essential to the realisation of reproductive health.

(iv) *The right to the benefits of scientific progress*

Scientific research into, for instance, fertility control, fertility protection and safe motherhood, is not simply a privilege of physicians and scientists, but a responsibility. The national legal framework relevant to reproductive health rights applicable in Nigeria contains provisions that oblige states to undertake specific actions required to ensure the progressive realisation of the components of reproductive health and rights. The 1999 Constitution of the Federal Republic of Nigeria (as amended), being the supreme law of the land, includes provisions that are relevant for the protection of women's reproductive health and rights. In addition, the social objective of the Constitution is founded on the ideals of freedom, equality and justice. The sanctity of the human person is recognised by the Constitution and it pledges to maintain and enhance human dignity. The Nigerian state pledges to direct her policy towards ensuring that the health, safety and welfare of all persons in employment are safe-guarded and not endangered or abused as well as the provision of adequate medical and health-care facilities for all, including women.

i. Right to dignity of human person.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the right to dignity of the human person, and that no person shall

35 Article 12(1) and (2) of the International Covenant for Social and Economic Rights.

be subjected to torture, inhuman or degrading treatment, held in slavery or servitude or be required to perform forced or compulsory labour³⁶.

ii. Right to personal liberty.

Section 35(1) of the Constitution provides for a right to personal liberty and it states that no one shall be deprived of liberty except in certain circumstances. The Constitution lists out the circumstances under which liberty can be deprived and the violations of reproductive rights such as forced sexual enslavement do not come within the purview of permitted circumstances.

iii. Right to privacy and family life.

The Constitution provides that the privacy of citizens, their home, correspondence, telephone and telegraphic communication is guaranteed and protected. The right to privacy involves obligation to respect physical privacy, right to get married voluntarily and to person of one's choice³⁷.

iv. Right to freedom of movement.

The Constitution stipulates that every citizen of Nigeria is entitled to move freely throughout Nigeria, and to reside in any part of the country³⁸.

Likewise, various states in the country have laws that prohibit forms of discrimination and violence against women and the girl-child. For instance, Anambra, Ebonyi and Oyo states have domesticated the provisions of the Violence Against Persons Prohibition Act. Other states are yet to domesticate the Act while some such as Rivers State are at different stages of adoption of the Act. There are also key policy frameworks that seek to achieve quality reproductive and sexual health for Nigerians, including women. These are the National Reproductive Health Policy and Strategy of 2001, National Policy on Women 2004, and National Policy on the Elimination of Female Genital Mutilation 2002 among others.

Section 54 of the Labour Act³⁹ seeks to balance the interests of pregnant women and motherhood against the interests of employers. It explicitly affirms the right of Nigerian women to maternity leave from work from about six weeks from expected delivery date. The Criminal Code⁴⁰ has specific criminal law provisions relating to reproductive health rights. Chapter 21 of the Code provides for offences against

³⁶ S34 (1) 1999 Constitution of Federal Republic of Nigeria (as amended).

³⁷ S 37 1999 Constitution of Federal Republic of Nigeria (as amended).

³⁸ S 41 1999 Constitution of Federal Republic of Nigeria (as amended).

³⁹ Cap L1 Laws of Federation of Nigeria 2004.

⁴⁰ Cap C39, Laws of Federation of Nigeria 2004.

morality. Section 214 states that any person who has carnal knowledge of any persons against the order of nature is guilty of a felony and liable to imprisonment. The provisions in this section aim at protecting young persons from sexual abuse and/or exploitation⁴¹.

The Violence Against Persons Prohibition Act (VAPPA) 2015 was enacted to prohibit all forms of violence against persons in private and public life. It provides maximum protection and effective remedies for victims and punishment for offenders. The Act in Part I lists offences such as rape, incest, indecent exposure, emotional verbal and psychological abuse, offensive conduct, deprivation of liberty and forced isolation and separation from family and friends⁴². One of the innovations of the Act is the inclusion of a sexual offenders' register which is to be maintained and accessible to the public⁴³. This register would be helpful in preventing further crime and protecting potential victims⁴⁴. Part XIV of the Act makes provision for the establishment of a special trust fund for victims. The fund is to provide all forms of needed assistance to victims of violence in terms of legal fees, shelter and rehabilitation. The Act also recognises the need to compensate victims as it provides that the court may award appropriate compensation to the victims as it may deem fit in the circumstance⁴⁵.

⁴¹ Section 357 Criminal Code.

⁴² Sections 1-5 VAPPA 2015.

⁴³ S1 (4).

⁴⁴ Onyemelukewe, C. "Legislating on violence against Women: A critical analysis of Nigeria's recent Violence against Persons Prohibition Act 2015" 5 (2016) *De Paul Journal of Women, Gender and the Law* p. 13.

⁴⁵ S1 (3), (5).

Mechanisms for Redressing Reproductive Rights Violations in Armed Conflicts

Over the years, many steps have been taken to maximise the legal protection afforded to women in situations of armed conflicts. For example, making international humanitarian law better known to all parties involved in armed conflicts; monitoring and ensuring respect for the law; and placing emphasis on the general and specific protection that international law affords to women is a good step in the right direction. Through communication activities and dialogue with parties involved in armed conflicts, it has become possible to raise the profile of problems which are specific to women, with a view to enlisting official support and action to prevent or put an end to violations⁴⁶. Such activities include improved fact-finding and reporting techniques to strengthen monitoring violations against women, especially reproductive rights violations⁴⁷.

Existing remedies for violations include establishing a safe place to report violations, free from the presence of persons who could possibly exert pressure/undue influence on the victim; demonstrating cultural sensitivity and awareness; allowing sufficient time for a sensitive and meaningful dialogue; ensuring the security of the collected information and respect for the rules of data protection; ensuring confidentiality, to respect the individual's privacy and allay concerns about personal matters being transmitted to third parties without his/her consent; identifying appropriate military and political interlocutors in order to report violations and to call for implementation of and respect for International Human Rights Law⁴⁸.

The features of contemporary violence carry enormous implications for post-war justice. First, the blurred line between perpetrators and victims means that criminal prosecutions (trials), with their emphasis on apportioning responsibility and meting out punishment, may be in part inadequate as they fail to consider the complexities of violence. Therefore, some analysts have called for a shift from a conception with clearly-delineated categories of "victims" and "perpetrators" to a more socially-inclusive category of survivors, defined as "all those who continue to be blessed with life in the aftermath of the civil war"⁴⁹. Indeed, in many post-conflict societies, victims, perpetrators, and survivors in general continue to live in the same communities. This

⁴⁶ Linsey-Curtet, C. Holt-Roness, F. and Anderson L. *Addressing the needs of women affected by armed conflict*, Geneva, Switzerland, ICRC, 2004, pg. 9.

⁴⁷ *ibid*

⁴⁸ *ibid*

⁴⁹ Vijayarasa, R. "Putting reproductive rights on the transitional justice agenda: the need to redress violations and incorporate reproductive health reforms in post-conflict development" 15(2009) *New England Journal of International and Comparative Law* p. 1.

continued coexistence, though possibly inevitable, may be marked by residual fears, animosities, and tension. In other words, post-conflict communal life is often driven by the legacies of the violence. Second, very weak or barely-functioning formal justice mechanisms are unable to process thousands of people who may have participated in war-related crimes⁵⁰. Furthermore, a purely-retributive approach via the court system may not accord with the priorities of economic recovery. Imprisoning thousands of productive people (in particular young males who often constitute a high proportion of suspects) may adversely affect the immediate needs of economic recovery⁵¹.

As stated by Vijayarasa⁵², despite growing emphasis on gender-mainstreaming in post-conflict transitions and the increasing recognition of the importance of engendering transitional justice mechanisms, many of the key experiences of women during conflicts, such as reproductive rights violations, receive too little attention. Insufficient emphasis has been placed on such violations such as forced pregnancy, sterilisation and coerced or forced use of contraception and genital mutilation, both as separate categories for liability as well as a basis for receiving reparations. In addition, the immediate reproductive health needs of women during conflicts, particularly due to displacement, have tended to restrict reproductive rights debates to the urgent need for the provision of health services in conflict-affected settings. Evans thus opines that the rights of victims of serious human rights and humanitarian law violations have traditionally been neglected and that there is a pressing need to promote and apply the emerging norms in order for their rights to be realised and to ensure that a "tripartite" balance of justice is achieved⁵³.

There has, likewise, been increased awareness that post-conflict justice initiatives need to be comprehensive, complementary and pay due attention to the rights of victims. There is an increased awareness that states have the responsibility to provide justice for victims of armed conflict and that sustainable justice requires judicial accountability.

⁵⁰ Alie, J. "Reconciliation and tradition based justice practices in KpaaMende in Sierra Leone" in Huyse, L. and Salter, M. (eds.) *Traditional Justice and Reconciliation after violent conflict: Learning from African experiences*, Sweden, International Idea, 2008, pg. 133.

⁵¹ Peace building initiative "Traditional and informal justice systems: Traditional and informal justice and peace building processes". Retrieved from www.peacebuildinginitiative.org on 12 June 2017.

⁵² Vijayarasa, R. "Putting reproductive rights on the transitional justice agenda: the need to redress violations and incorporate reproductive health reforms in post-conflict development" 15(2009) *New England Journal of International and Comparative Law* p. 1.

⁵³ Evans, C. *The right to reparation in international law for victims of armed conflict*. United Kingdom: Cambridge University Press, 2012, pg. 2.

truth and reparation⁵⁴. There is a growing conviction that doing justice in transitional scenarios requires not only doing something against the perpetrators, but also doing something specifically for victims to lessen their traumatic experiences. This trend is confirmed by the recommendations of several Truth Commissions, and by the jurisprudence of both national and international human rights bodies, including the European Court of Human Rights and the Inter-American Court of Human Rights. Nations such as Argentina, Chile, Brazil, South Africa, Guatemala, Peru, and Morocco are examples of countries that have thought of reparations initiatives as an important component of their package of transitional justice measures⁵⁵.

The United Nations has also supported this evolution toward enhancing the importance of the reparative avenue and giving victims adequate recognition and redress. For instance, in 2005 the General Assembly approved 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. In line with this, the High Commissioner for Human Rights produced a tool on reparations programmes as part of its series of rule of law tools for post-conflict states. Rubio-Marian⁵⁶ also examined whether reparations programs can be designed to redress women more fairly and efficiently and seek to subvert gender hierarchies that often antecede conflict situations. She opined that reparations programmes seeking to provide for victims of gross and systematic human rights violations are becoming an increasingly-frequent feature of transitional and post-conflict processes.

Reparations in the Concept of Transitional Justice

Transitional justice refers to the ways countries emerging from conflicts and repression address systematic human rights violations that occur during the conflict which cannot be addressed by the normal justice system. The concept of transitional justice is rooted in accountability and redress for victims. It gives recognition to the victims as citizens and human beings. In the early 1090s, academics from America devised the term *transitional justice* to describe the ways countries resolved problems encountered by new regimes for violations perpetrated by their predecessors⁵⁷. The term initially

⁵⁴ Ibid.

⁵⁵ Rubio-Marian R, (ed.). 2009. *The Gender of Reparations: Unsettling sexual hierarchies while redressing human rights violations*. New York, Cambridge Press, p. 17.

⁵⁶ Ibid.

⁵⁷ Evans, C. *The right to reparation in international law for victims of armed conflict*. United Kingdom: Cambridge University Press, 2012, pg. 4.

described different approaches used in different places but later on new approaches developed based on the recognition of human rights principles, and that these violations should not go unpunished. Transitional justice recognises that multifold problems that arise from abuse cannot be resolved through only one means. For instance, where there are hundreds of victims and offenders the possibility of addressing all grievances through the court adjudicatory process is remote, especially where the courts are weak. This gave rise to mechanisms such as prosecutions, fact finding, inquiries, reparations programs and reforms⁵⁸. Transitional justice is founded on the following aims.

1. Recognition of the dignity of individuals.
2. Redress and acknowledgement of violation.
3. Prevention of reoccurrence.

Its other aims may include establishment of accountable institutions, ensuring easy access to justice for the vulnerable, increased participation of women and marginalised groups in the pursuit of a just society, respect for the rule of law and advancing the cause of reconciliation. Transitional justice has a multi-faceted approach. Reparation for human rights violations is one of these approaches. Reparations are said to be the most victim-centred of existing transitional justice mechanisms. It encompasses the principles of restitution, compensation, rehabilitation, satisfaction and guarantee of non-recurrence. Reparations programmes are state-sponsored initiatives that help to repair the material and moral damages of past abuse through a mix of material and symbolic benefits to victims including financial compensation and official apologies⁵⁹. In *Velasquez v. Honduras*⁶⁰, the Inter-American Court of Human Rights propounded the obligations of states in relation to human rights. These include taking reasonable steps to prevent human rights violations, conducting serious investigations of violations when they occur, imposing suitable sanctions on those responsible for violations and ensuring reparations for victims of violations.

Conventional Uses of Reparation

Reparations programmes can forestall some of the difficulties and costs associated with litigation, including high expenses, the need to gather evidence which in most cases may

International Centre for transitional Justice. 'What is transitional justice?' (2017) Retrieved from www.ictj.org on 28 February 2017.

Scully, P. "Vulnerable women: A critical reflection on human rights discourse and sexual violence", 23(2009) *Emory International Law Review* pg. 113-114. Inter Am CtH.R. (Ser C) No 4 (1988).

be difficult to obtain, the trauma associated with cross examination, and the lack of confidence on the part of victims in the operations of judicial systems. This may, in turn, have a particularly negative effect on women. Other factors such as language barrier, overburdening family relations, large underreporting of violations of reproductive rights in normal times, often portray the challenges women face in accessing the normal court process. The goals of reparations programme are to provide a measure of justice to victims; but reparations are also intimately tied to building a just and peaceful foundation for a transitioning society⁶¹.

Nations emerging from histories of mass atrocity or violent authoritarian rule are faced with a number of ethical and practical challenges which they must deal with in order to achieve some degree of social and political stability to re-establish a functioning government, legal order, and economy. Furthermore, they must confront what is often a sizable number of victims and perpetrators and, thus, must decide to what extent accountability can be sought without undermining peace. A model of reparations is, therefore, used which consists of those strategies and policies that seek to restore victims' sense of dignity and moral worth, remove the burden of disparagement often tied to victimhood, and returns their political status as citizens⁶².

As Van Zyl states⁶³, it is often seen that new democracies emerging from periods of massive and/or systematic violations of human rights are unable, for a combination of practical and political reasons, to prosecute more than a tiny percentage of those responsible for human rights abuse. For this reason, strategies for dealing with the past must not become narrowly-focused on attempts to prosecute. Rather, more expansive and creative strategies should be considered and employed to address the rights of victims and the needs of society as a whole.

Is There An Individual Right to Reparation for Redressing Violations of Reproductive Rights?

Reparation includes measures that aim to redress or repair the impact of harm for the systematic violation of human rights commonly associated with armed conflicts. It is said to be the most victim-centred of all existing transitional justice mechanisms.

⁶¹ Fionniula, D. *et al.* "Transforming reparations for conflict related sexual violence principle and practice" (2015) *Minnesota Legal Studies Research Papers* retrieved from ssrn.com/abstract on 13 April 2017.

⁶² Verdeja, E., "A normative theory of reparations in transitional democracies" 37(2006), *Metaphilosophy*, 450-451.

⁶³ Van Zyl, P., "Dilemmas of transitional justice: The case of South Africa's Truth and Reconciliation Commission" 52(1999), *Journal of International Affairs* p. 2.

Compensation is the monetary aspect of reparations. This provision recognises awards of compensation for material losses such as loss of earnings, medical expenses and non-material damage which include pain, anguish, humiliation and suffering. Reparation can also be in the form of satisfaction and this can exist in the form of satisfaction-acknowledgement of breach, expression of regret and formal apology.

On the issue of whether individuals can have a right to reparation, the question that should be asked is to know if individuals are subject to international law. There are different schools of thought⁶⁴. The conventional classic theorist sees states as the only subjects of international law and the only holders of rights and duties. Arising from this thought, only states can be the right holders whenever a violation arises against the state. Individuals are not entitled to any rights under international law. Any violation to the individual can only be seen as a violation to the state. Hence, reparation can only be claimed by the state. Within this framework, an individual right to claim reparation appears to be unthinkable. This thought aligns with those of Huford and Merwe who affirm that international humanitarian law recognises reparation as a right. They said it is generally-accepted that, when an unlawful act is attributable to the state, international responsibility emerges immediately from this act as a consequence of the violation of international law and, attached to it, the duty to provide reparation and to cease the consequences of such violation⁶⁵.

A contemporary school of thought is in recent times recognising the enforcement of individual rights⁶⁶. This school of thought argues that, once duties can be imposed on individuals, then such individuals should be able to claim rights. Mazzeschi believes that this relatively-recent but fundamental shift in international law towards the recognition of the rights and duties of individuals opens the doors for an individual right to reparation for victims of violations of human rights and international humanitarian law and an appropriate recognition of victims' rights⁶⁷.

Others have also argued on whether there ought to be an individual right to reparation based on the enormity of the cost associated with it. As Mazzeschi rightly stated, with regard to monetary reparation the constant fear that states may be

⁶⁴ Van Zyl, P., "Dilemmas of transitional justice: The case of South Africa's Truth and Reconciliation Commission" 52(1999), *Journal of International Affairs* p. 2. Warren B, and Merwe, H. "Reparations in Southern Africa" 44(2004) *Cahiers d'etudes Africaines* pg.2.

Bianchi A., *International Law Theories: An inquiry into different ways of thinking*, Oxford: Oxford University Press, 2016, p. 12.

⁶⁷ Mazzeschi R., "Reparation claim by individuals for state breaches of Humanitarian Law and Human Right: An Overview" 1(2003) *Journal of International Criminal Justice* p. 343.

overburdened with compensation obligations after an armed conflict might be the reason for so much hesitation by scholars and courts and even the United Nations to support clearly a right to reparation⁶⁸. Other scholars have argued that, with respect to the enforcement of an individual right to reparation, one should distinguish between the individual, as the subject of enforceable claims on the international level and the individual as the beneficiary of a system of international law, in which the states are the subjects and actors, but in which they are directed to take action and assert claims on behalf of individuals⁶⁹.

However, contemporary international law is already developing towards the enforcement of individual rights. Today, states can enable individuals to assert certain rights before international bodies. For example the Convention against Torture enables individuals to submit petitions to the Committee against Torture and many human rights conventions confer on their respective commissions the competence to receive individual communications concerning the existence of cases of human rights violations.

Reparations for Human Rights Violations in Sierra Leone

The conflict in Sierra Leone was known for the scope and severity of atrocities, most especially sexual and gender-based violence mainly committed against women and girls. It has been documented that, years after the end of the conflict in Sierra Leone, little has been done to ensure that survivors of sexual violence and other reproductive rights violations receive justice, acknowledgement of their suffering, or full, meaningful and effective reparations⁷⁰. According to Amnesty International, the unimaginable brutality of violations committed against up to a third of Sierra Leone's mostly-rural women and girls has been well-known; but the government did not effectively address the physical, psychological and economic impact of these crimes on the survivors. Suffice to say that, without justice, recognition of the crimes or effective programmes to ensure their rehabilitation, without help to rebuild their lives or steps taken to ensure that they are protected from future crimes, the suffering of the women and girls would continue⁷¹.

⁶⁸ Ibid.

⁶⁹ Nambiar V. "International Law and Armed Conflict in the 21st century" Retrieved from www.vifindia.org on June 22 2017.

⁷⁰ Langba J., Langba V. and Rogers N., "Sexual Violence in post conflict Sierra Leone: Obstacles to prevention responses" 11(2) (2013) *African Safety Promotion Journal* p. 66.

⁷¹ Amnesty International "Sierra Leone: Getting reparations right for survivors of sexual violence" Retrieved from <http://reliefweb.int> on June 22, 2017.

In a bid to address these issues, a hybrid criminal tribunal known as the Special Court for Sierra Leone as well as a Truth and Reconciliation Commission (TRC) was set up. The TRC was mandated to give attention to the experience of women and girls in particular. The Commission, in interpreting its mandate with respect to the rights of victims, was guided by the provisions of the Lomé Peace Agreement of 7 July 1999 and its enabling legislation, the Truth and Reconciliation Commission Act of 22 February 2000. Article XXVI of the Lomé Peace Agreement obliges the Commission to, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations. Article XXIX of the Lomé Peace Agreement refers to the establishment of a Special Fund for War Victims for the rehabilitation of war victims. Section 7(6) of the TRC Act makes provisions for the Commission to make recommendations for the special war fund for victims. Section 15(2) of the TRC Act mandates the Commission to make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of the Commission. This object includes: preventing the repetition of the violations or abuses suffered; responding to the needs of the victims; and promoting healing and reconciliation. Section 6(2) (b) of the TRC Act also requires the Commission to work to help restore the human dignity of victims and promote reconciliation⁷². Victims ranging from children, amputees, war wounded, war widows, spouses of amputees and victims of sexual violence were registered in the programme. The TRC provides extensive recommendations for reparations in its final report⁷³. Likewise, the United Nations and the Government of Sierra Leone recognised reparations as an acute area of concern when they undertook a one-year project, starting in August 2008, aimed at building the institutional capacity needed to implement the TRC recommendations⁷⁴. A good number of the recommendations of the TRC were not realised due to failure of the government to implement the recommendation of the commission⁷⁵.

⁷² See Text of the Law available at www.sierra.leone.org. Retrieved on 12 June 2017.

⁷³ Ibid.

⁷⁴ Suma M. and Currea C. *Report and Proposals for the implementation of reparation in Sierra Leone* New York, International Center for Transitional Justice, 2009, p. 1.

⁷⁵ Williams S, and Opdam, J. "The unrealized potential for transformative reparation for sexual and gender based violence in Sierra Leone" 21(2017), *International Journal of Human Rights* pg. 1-21.

Reparations and Antecedent Challenges

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law adopted by the United Nations General Assembly describe different forms of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition⁷⁶. The main requirements articulated in the Basic Principles are “adequate, effective and prompt reparation”. Adequacy of reparations, as prescribed in the Basic Principles, states that “reparation should be proportional to the gravity of the violations and the harm suffered. It should be noted that it is only the victims of reproductive rights violations and other human rights violations who can be the judges of “adequate” reparations⁷⁷.”

In addition, low-income countries often have numerous human and reproductive rights violations. Developing and sustaining reparations programmes, according to the Basic Principles standards, can become overwhelming. States in transition from violent situations are often devastated economically and structurally by armed conflict. A massive compensation scheme during a time of transition could have a negative impact on states economies. Similarly, the political will of the government has to be in place in order to have a successful reparations programme. Reparation programmes require legitimate dedication and effort by the host government to institute such change. Therefore, lack of legitimate political will could be a major challenge for establishing effective reparation schemes.

On a practical scale, the execution of an effective reparation scheme is determined by the abilities and resources the reparation programme has. Funding becomes a major issue when low-income countries experience difficulty finding funds for adequate compensation. Funds affect the quality of the administration and structures required for initiating and sustaining reparation programmes. Being able to initiate a reparations programme and sustaining it is very important. While international funding may be a feasible option, it often comes with strict conditions that may be impossible to meet. There is also a potential danger of relying too much on donors, as this often hinders the effect of perceptions of national ownership.⁷⁸

⁷⁶ Guidance Note of the Secretary-General on Reparations for Conflict Related Sexual Violence Retrieved from <http://www.ohchr.org> on June 22 2017.

⁷⁷ Duggan C, Colleen R and Jacobson R. *Reparations of sexual and reproductive violence: Moving from codification to implementation The Gender of Reparations, Unsettling Sexual hierarchies while redressing Human Rights Violations* London, Cambridge University Press (2009) p. 10.

⁷⁸ Ibid.

Conclusion

Governments are encouraged to implement reparation programmes immediately to satisfy the needs of the victims of sexual abuse. Morally, this is a plausible standpoint. However, combined with providing adequate and efficient reparations, governments have a daunting task. It would be more plausible to state that governments are obliged to avoid unsatisfactory delays and speedily move ahead with construction of the reparation programme. In general, international practice seems to suggest that more and more countries are coming to the realisation that when reparations are owed to a large universe of victims resulting from widespread and systemic use of violence, reparative programmes, as opposed to court system, may be better option. It should be borne in mind that, for a successful reparations programme, consultations with victims are particularly important in order to hear their views on the specific nature of reparation. However, providing reparations for gross and systemic violations could overwhelm the best efforts to provide redress due to the large numbers of victims and perpetrators. States could reject responsibility based on weak national structures to accommodate reparations.