

Tapping into the Transformative Potential of Reparations for Conflict-related Sexual Violence in Iraq: C4JR joint event in Erbil during 16 Days of Activism, November 29, 2023

Dr. Bojan Gavrilovic, Head of Program for Rights and Justice, Jiyan Foundation for Human Rights/C4JR remarks on Transformative Reparations, delivered in Erbil on Nov. 29, 2023:

Dear attendees and colleagues, thank you very much for showing up today to discuss the very important topic of reparations and women, peace and security agenda and intersections between the two. My role today is to set the stage for discussing such intersections and potential for synergies by providing short remarks on reparations, more precisely, the transformative aspect and potential of reparations.

So, without further ado I will begin. In next 15 minutes I will briefly explain the concept of reparations more generally, its origins, forms of reparations and finally the transformative potential of reparations and why it is important to go beyond righting a concrete wrong in a particular case.

Reparations are not exclusive to human rights. They originally emerged in the field of private law, then gradually migrated to public international law and finally in human rights law. But let's take a moment to talk about justice, as justice is often invoked as the basis for reparations.

In the face of injustice and inequality justice was conceived in two forms: corrective and distributive. Corrective justice is about a responsible party trying to restore the prior condition of the wronged party as nearly as possible by wiping out the consequences of the wrong. This concept governs relations established through contracts (international or between private parties) or criminal behavior between private individuals (or even state entities). Ideal is to re-establish equality between the parties. Distributive justice, on the other hand, concerns the socially fair allocation of resources, goods and opportunities in a society. So, when we talk about reparations, we need to consider both forms of justice. I need you to try to remember this corrective/distributive justice distinction as we move forward with the discussion today.

It is a well established principle of international law that a state must make full reparations for any injury or loss caused by an illegal act for which it is internationally responsible. So when a state official for example, unlawfully seizes a vessel of another state on the high seas, it is mandated, under the law of state responsibility, to make amends and repair the harm to the injured state. Today it is the case that a state has an obligation to provide reparations not only to another state but also individuals when it violated their rights, irrespective of their nationality.

This obligation stems mainly from international human rights law. It was either derived from the right to an effective remedy (International Covenant on Civil and Political Rights) or stipulated explicitly in the human rights treaties (UN Convention against Torture and the UN Enforced Disappearances Convention). It has been set forth in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

As to the substantive notion of redress i.e. reparations for grave international crimes, it is established that it encompasses at least the following types of relief: restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

Monetary compensation is the most commonly employed form of redressing the victims and it consists of awarding material and non-material damages. Basic Principles and Guidelines stipulate that “any economically assessable damage” should be addressed by way of compensation.

Satisfaction, as a means of redressing the victim, communicates the idea that making good consequences of violations requires more than merely awarding pecuniary damages. It includes acknowledgment of and apology for the crime, bringing those responsible to account before a court of law, search for the whereabouts of the disappeared, recovery and reburial of victim’s remains, commemorations and tributes to the victims, truth telling etc.

Rehabilitation includes making available medical and psychological care as well as legal and social services in order to mitigate, as far as possible, the consequences of endured traumas. It aims to restore survivors independence, physical, mental, social and vocational ability; and ensure full inclusion and participation in society.

Guarantees of non-repetition are measures that serve as safeguards against the repetition of an initial violation. They include taking measures on systemic or legislative level that address the root causes of violence, for example introducing civilian control of armed forces, resolving social conflicts, bringing detention conditions in line with human rights standards etc.

Restitution is an ideal form of redress, in that it seeks to restore the victim to a position occupied before the violation occurred. For example, if one was unlawfully detained he or she needs to be released, if someone was forcibly displaced he or she needs to be allowed to return etc.

Here we come to the center of the problem. What if, as is often the case, restoring the victim to the position occupied prior to the violation is not an optimal form of reparations either because it’s not possible (one cannot erase harm inflicted via long grave human rights violation such as torture or slavery) or if it would amount to restoring unequal or even discriminatory position of victim and societal relations which made survivor more vulnerable to initial violation. So, in this case, one needs to go beyond the notion of corrective justice and employ approaches closer to distributive justice.

Transformative reparations are measures that attempt to transform’ [victims’] circumstance of inequality by elevating their legal or social standing (rights, safeguards and protections) altogether that is to say not related (or at least not directly related) to the concrete violations at hand. They are a “response to past socio-economic injustices, with forward-looking outcomes, for victims.”

Along these lines, one should take special note of the Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation released in 2007 which assert that “**reparation 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 girls' lives".

Committee for the Elimination of Discrimination Against Women has in 2013 stated "Rather than re-establishing the situation that existed before the violations of women's rights, reparation measures should seek to transform the structural inequalities which led to the violations of women's rights, respond to women's specific needs, and prevent their re-occurrence".

Moreover, 2014 Guidance note of the UN Secretary General on reparations for CRSV reiterates this by noting that "reparation should strive to have a transformative effect in that it dismantles or contribute to dismantling preexisting structural conditions conducive to sexual violence against women and men.

Therefore, transformative reparations approach challenges traditional notions of reparation founded on restitution that seeks to re-establish the situation as it existed prior to the illegality, since to do so would be to restore the inequalities that made possible the harm in the first place. They consider victims' circumstances and aim to change the way they live in light of the root causes of the conflict.

The question remains, however, how to realize transformative reparations in reality? How to put these policy documents to practice? Today's discussion should consider the potential of the Yazidi Survivors law to provide a route through which to address discrimination and violence against women and girls and thus contribute towards realization and implementations of women peace and security agenda in Iraq.

Just as a reminder, in 2016 Iraq and the UN addressed a critical issue of conflict-related sexual violence by concluding a Joint Communiqué on the Prevention and Response to Conflict-Related Sexual Violence in Iraq. This document identified 6 priority areas including legislative and policy reform to strengthen protection, ensure accountability and reparations for survivors of sexual violence committed in the context of ISIL created conflict in Iraq. Moreover, GoI voiced its commitment to provide protection, care and services to survivors of sexual violence as an aspect of implementation of the NAP on UNSC 1325.

In 2000, the UNSC passed Resolution 1325 on women, peace and security which calls for women to participate in peacebuilding, be protected from human rights violations, and have access to justice. Iraq has thus far developed several national action plans, on federal and regional level, on the implementation of UNSCR 1325.

Passing of the Yazidi Survivors Law on March 1, 2021 marked an important milestone in Iraq's post-conflict recovery period, as it promises to deliver long-awaited relief not only to Yazidi, Shabak, Turkmen and Christian women that ISIL subjected to conflict-related sexual violence (CRSV), but also, to men and women from these communities that survived mass killings as well as captured Yazidi children. It is also one of the very few precedents of states taking deliberative action to specifically address the rights and needs of survivors of CRSV. The YSL mandates a number of critical state-sponsored reparative measures including financial support; medical and psychological care; the provision of land, housing, education and a

quota in public sector employment. Moreover, it officially recognizes that ISIL committed genocide and crimes against humanity against Yazidi, Christian, Turkmen and Shabak minority groups, and mandates memorialization, the search for those still in captivity, opening of mass graves, identification of remains and their return to the families and calls Iraqi institutions to ensure that perpetrators of genocide and crimes against humanity are held accountable.

In addition, the associated bylaws expanded these obligations even further, including, for instance, an obligation for government agencies to develop specialized curricula on the ISIL conflict designed to promote peaceful coexistence and the renunciation of violence. Finally, the YSL explicitly stipulates an objective to, inter alia, prevent the recurrence of the violations that occurred against the indicated minorities.

Many of the envisaged measures in Iraq NAPs to implement UNSCR 1325 such as justice and accountability for CRSV and creating a system for ensuring that all survivors of violence have access to rehabilitation, basically reiterates, though from a wider perspective and not with a focus on minorities, reparative measures guaranteed under the YSL. Therefore, proper implementation of the YSL can have a wider transformative impact and serve as a model to be used in meeting the milestones envisaged in WPS NAP's.

This event should provide the main stakeholders an opportunity to reflect upon the transformative potential of the YSL, and to discuss how YSL can be used to shape state responses to violence against women and girls. How can proper implementation of the reparative measures stipulated in the YSL not only provide a good measure of corrective justice, but also go beyond it and address issues around distributive justice, discrimination and inequality. Let us think of the YSL as a distinct window of opportunity, a window that can show the way towards implementing national action plans on women, peace and security in Iraq.

Thank you.

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