

I wish to start by thanking Zawadi for the relentless and courageous work that she and SOFEPADI are doing on the ground to bring justice to the survivors of sex- and gender-based violence. And I would also like to thank her for trusting UQAM's International Clinic for the Defense of Human Rights to contribute to the legal battle conducted in the DRC for survivors, through a research partnership that I had the opportunity to oversee during two academic terms.

I would like to use this forum to share some of the experience of the students involved in preparing, in winter 2017, the *Guide for effective access to appropriate reparation mechanisms for survivors of sexual violence crimes in the Democratic Republic of Congo*. In the early stages of the work, the concept of the "right to reparations" was somewhat unclear to students, but over the course of their research and discussions with SOFEPADI's legal team, they have gained a keen understanding of how important it is to develop appropriate mechanisms for victims of sexual violence to heal from the traumas experienced and initiate a reconstruction process. Through their research, they also found that effectively addressing impunity inevitably involves establishing mechanisms that require society as a whole to consider the underlying and structural causes – including gender stereotypes – that lead to violence against women and reinforce the devastating effects of such crimes on women. Indeed, prejudice and stereotypes operate at different levels: not only do they help trivialize sexual violence, but they also attach very serious stigmas to the survivors of such crimes, making them vulnerable to rejection by their family and community and forever hindering their ability to get on with their lives. In this context, access to appropriate reparations, that address the specific impacts of sexual crimes and help overcome and transform the gender stereotypes existing in society, is key to achieving justice.

### 1. Testimony review

In the first place, students had access to testimonies from survivors of sexual crimes, including forced marriage, sexual slavery, gang rapes and forced pregnancy, through SOFEPADI and the CSiW Project. Students could then leave aside theoretical analysis to listen to the needs, demands and expectations of survivors.

For instance, through reviewing the testimonies, students could better understand how crimes had impacted the lives of survivors, their relatives and their community. They found that the impacts most often reported were threefold: psychological impacts (post-traumatic syndrome, stress, depression, anxiety, shame...); physical impacts (sexually transmitted infections, mutilations, loss of reproductive capacity...); and social impacts, in the longer term (stigma, affecting eligibility for marriage, rejection by partner and relatives).

Another finding by students related to the needs raised by survivors, which, contrary to expectations, generally went beyond requests for individual compensation. Most survivors called for a sustainable peace process, reintegration programs and mechanisms to ensure the safety of the civilian population.

### 2. Basis of the right to reparations

Bearing in mind the specific impacts associated with gender-based violence, students then explored what can be learned from regional and international human rights instruments about the

right to reparations. They therefore summarized the general principles related to the right to reparations for SOFEPADI's lawyers to build upon them in their claims before national courts. These principles include the need for reparations to be proportional to the gravity of the violation committed; for the victim to be restored to the situation they would have been in if the violation had not occurred (principle of restitutio in integrum or full restitution) and for the right to reparations to be exercised without discrimination of any kind, in a safe environment. It is also critical for victims to benefit from special care in order to avoid their re-traumatization in the course of legal procedures. Furthermore, the State must enforce domestic judgments against individuals or entities liable for the harm suffered.

Students reviewed, in particular, the five forms of reparations advanced by the jurisprudence of international human rights law, namely by the Inter-American Court of Human Rights. These forms include:

- Obligation of restitution, e.g.:
  - Restitution of stolen property
  - Release of women held captive
- Compensation, e.g.:
  - Compensation for physical, material and moral harm
  - Compensation for lost employment or education opportunities
  - Reimbursement of legal costs
  - Reimbursement of medical expenses
- Rehabilitation, e.g.:
  - Access to medical, psychological or social services to return to normal life in dignity
- Satisfaction, e.g.:
  - Commemorations
  - Tributes
  - Measures to end violations
- and Guarantees of non-repetition, e.g.:
  - Measures to ensure that civilian proceedings abide by international standards of due process, impartiality and fairness
  - Providing human rights education
  - Preventing and resolving social conflicts.

As these notions are common to all human rights violations, students also examined additional relevant, gender-sensitive principles. In this regard, it is recognized that women's and girls' participation in determining appropriate reparation mechanisms is key to ensure that measures have the intended impact. Moreover, survivors should be able to choose what is desired in terms of reparations. Identifying legal, economic and cultural obstacles to the participation of survivors in the legal or administrative process also helps address impunity, just as developing programs that take into account the impacts, sensitivities and stigma associated with sexual violence. Finally, reparation measures must drive social transformation in terms of gender-based inequalities. For example, they should help address misconceptions and taboos associated with sexual violence, including by highlighting the fact that women are not responsible for the

violence suffered, that these crimes don't make them "impure" or that they do not disgrace their family.

### 3. Examples of reparation mechanisms

As these notions may seem a bit theoretical, even for lawyers, students then dedicated a chapter to describing different reparation mechanisms in place – highlighting their pros and cons, target beneficiaries, the goals they serve and the harms they address. They examined in particular the impact of judicial mechanisms – such as criminal penalties and civil compensations, administrative reparation programs – as well as extra-judicial mechanisms – such as medical reparations, access to psychological care and socio-economic reparations (schooling and career development programs, access to housing). Special attention was given to guarantees of non-repetition, which remain the most effective remedy to address sexual violence crimes after an armed conflict. Indeed, these reparation mechanisms establish measures for the prevention and non-recurrence of such crimes through extensive structural reforms, which may potentially change gender relations in a society. Such guarantees therefore call for a social discussion on the nature of gender-based violence with a view to rebuild an equal and inclusive social order. Such guarantees include sexual violence awareness and education programs for state agents (police officers, investigators, judges), institutional reforms to promote women's participation in the public sphere and truth and reconciliation commissions.

### 4. Making financial compensations accessible in the DRC: advocacy for the abolition of proportionate fees

One critical issue faced by SOFEPADI's lawyers with regards to reparations has to do with the requirement to pay high legal fees in civil courts. In an attempt to remove this structural barrier, students have been engaged in the drafting of an argument for victims of sexual violence to be exonerated from paying such exorbitant legal fees that make judicial reparations an illusory process. Indeed, when a victim resorts to civil courts and receives a positive ruling that orders her offender to pay financial compensation, they must pay to the court clerk a fee of up to 3% of the amount allocated to enforce the judgment. Such fee must be paid to initiate implementation of the final judgment and potentially obtain the payment of damages awarded. Students have demonstrated that this requirement violates the rights of survivors of sexual crimes to access to justice, equality and non-discrimination, which are guaranteed by a number of international instruments ratified by the DRC. Indeed, such fees place an undue financial burden on women victims of sexual violence in legal proceedings and violate their right to meaningful, effective and non-discriminatory access to justice. In practice, this burden makes the right to reparation an illusion. Furthermore, this measure does not take into account existing inequalities faced by women in DRC and leads to indirect discrimination, by acting as a structural obstacle to women's access to effective and enforceable remedies.

## **Conclusion**

All in all, this collaboration with SOFEPADI's lawyers has been very rewarding for CIDDHU students, as it made them view law as a tool for social transformation, especially when used in ways that are creative and responsive to the needs of victims. Likewise, the assignment offered

them a number of opportunities to reflect on the structural limitations of judicial systems in enabling survivors of gender-based violence to obtain justice and reparation. Such reflection, which is crucially needed, can be applied to our justice system and is part of the common challenges faced by all societies committed to address impunity for gender-based violence.