Bridging justice and health: reparations for conflict-related sexual violence


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* As compared to conventional fluid management systems currently on the market.
Bridging justice and health: reparations for conflict-related sexual violence

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Introduction

Conflict-related sexual violence (CRSV) is a key challenge in health care and conflict today. In international law, sexual violence can amount to a war crime, genocide or crime against humanity.1 While much legal and scholarly attention has historically focused on the investigation and prosecution of perpetrators, in recent decades there has been an increasing focus upon victims and their needs. This has been particularly evident in the field of reparations, which has seen the evolution of ever more sophisticated engagement with gender-based harms. Reparations for CRSV are intended to address various physical, mental and socio-economic harms that impact the health and quality of life of those directly and indirectly affected by such violations; for example, children born out of rape, or entire communities where abuses have been normalised.

Although gender-based violence is a prominent issue in settled democracies, there is significant evidence that such violations are often exacerbated during conflict.2 In response, medical actors and professional associations have become progressively engaged in this arena. The Royal College of Obstetricians and Gynaecologists has committed to supporting the United Nations’ (UN) Sustainable Development Goals (SDGs) on promoting peace and prosperity through action on good health and wellbeing (SDG 3) and gender equality (SDG 5).3 However, beyond SDGs 3 and 5, reparations also provide specialist rehabilitative medical care (such as fistula surgery or psychosexual medicine) to harms arising from sexual violence, which intersects with SDG 16, on peace, justice and institutions, including health and social care.

This article outlines how clinicians in obstetrics and gynaecology are in a unique position to help narrow the ‘justice gap’ by illuminating implications for health, but also to more effectively articulate and provide meaningful outcomes to enhance victims’ quality of life. We outline the normative and legal basis of reparations, explore some of the key challenges in delivering reparations for victims of conflict-related sexual violence, and offer some specific suggestions on the ‘value added’ benefits of a medical lens in navigating some of the tensions concerning the reparations/CRSV intersection.

Reparations for conflict-related sexual violence

Reparations are the variety of efforts used to acknowledge and repair human rights violations, crime, abuse or other injury by a responsible actor. A state, nonstate actor or individual with responsibility for addressing the wrong in question may deliver reparations. In international law, various obligations exist requiring an effective remedy for those affected by sexual violence.4 CRSV encompasses violations directly or indirectly related to conflict and can occur alongside other violations or patterns of violence. The UN Secretary-General (UNSG) defines CRSV as including ‘rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict’.5 For activists and victims in the field, this was idly viewed as an overly restrictive definition. As a result, in 2019, over 50 civil society organisations, together with victims and independent experts, created a ‘Civil Society Declaration on Sexual Violence’, which articulated a more complex array of sexual violence violations.6

In the legal realm, reparations have evolved from concepts in private law and international human rights law,
concerning notions such as remedy, compensation and restitution. A minimalist understanding of reparations requires some form of acknowledgement of the victims’ harm, as well as a system to provide them with compensation (usually financial) for the harm suffered. However, more imaginative understanding is evolving in international law and practice. For example, the 2005 UN publication, ‘Basic Principles and Guidance on the Right to an Effective Remedy and Reparation’ outlines three complementary and overlapping variants of reparations: satisfaction, rehabilitation and guarantees of non-repetition. Others have argued for the importance of considering symbolic forms of reparations, including truth recovery, memorialisation and carefully choreographed apologies. Despite these advances, the field remains underdeveloped with regards to the specific contribution of healthcare to those who have suffered CRSV.

Challenges in implementing reparations

Providing reparations to victims of gross violations of human rights often faces three main challenges: 1) Who will benefit? 2) How will it be funded? 3) Does the state in question have the capacity and political will to deliver the required measures?

After years of conflict, determining who is a victim is often contested and complex. Monochromatic notions of who is a perpetrator and who is a victim do not always match the messy realities of conflict-affected societies. With regard to both funding and capacity, conflict often devastates infrastructure, housing, education, employment and so on, resulting in such services sometimes being prioritised over the needs of victims. It may also be difficult to prioritise specialist rehabilitative services for sexual violence, when basic healthcare needs for the whole population are not being met. In some circumstances, addressing the needs of victims of sexual violence may not be prioritised because it draws attention to the past actions of the state, or other powerful actors, which were responsible for such abuses in the first place, sapping political will to deliver reparations.

With these challenges in mind, the medical profession – and obstetricians and gynaecologists, in particular – can offer a unique added value to these debates. According to the International Federation of Gynaecology and Obstetrics, healthcare professionals in sexual and reproductive health have a duty to enunciate concerns when legislative, policy or regulatory measures obstruct access to medical care. This includes after sexual violence, or when they deprive persons of their choice regarding their right to a private and family life, whether through identifying and caring for victims of sexual violence in a sensitive and empathetic manner, documenting the scale and medical consequences of such abuses or performing rehabilitative medical or surgical interventions to improve the sexual, urological, or reproductive functions of victims after sexual violence.

These are all key contributions, albeit rarely conceptualised as a form of reparations. Indeed, clinicians can provide invaluable insight to reparations and their effectiveness, given that they holistically understand the patient.

Conclusion

A professional commitment to women’s healthcare is at the ethical core of obstetrics and gynaecology. Therefore, as a specialty, we can enhance the legal practice of reparations and take a victim-sensitive approach in the care and treatment of sexual and gender-based violence, while also ensuring that patriarchal norms do not spill into reparations delivering vital healthcare. Treating the individuals violated as patients, rather than as eligible victims, we can also provide reparative benefits through caring for them with dignity and respect, mediating tensions on appropriate reparations, as well as contributing to concepts of restoration. Our continuing work is to develop a framework for improving the effectiveness of reparations, including the involvement of healthcare professionals.

Disclosure of interests

There are no conflicts of interest.

Contribution to authorship

SG conceived, designed and drafted the article. KM contributed to drafting and revising the article. Both authors approved the final version.

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