

## Impact case study (REF3)

<b>Institution: University of Essex</b>		
<b>Unit of Assessment: 18 – Law</b>		
<b>Title of case study:</b> Enabling victims of sexual violence to obtain justice and reparation		
<b>Period when the underpinning research was undertaken:</b> 2007-2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Clara Sandoval	Professor	Sept 2003 – present
<b>Period when the claimed impact occurred:</b> 2014-2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<p><b>1. Summary of the impact</b></p> <p>Sandoval's research on justice and reparations for victims of sexual violence (VSV) has contributed to developing legal standards and guidelines on reparations at the United Nations (UN), International Criminal Court (ICC), Inter-American Court of Human Rights (IACtHR), States and international and national NGOs. Examples of impact include the adoption of the UN Secretary-General's Guidance Note on Reparations for Victims of Conflict-related Sexual Violence (2014, drafted by Sandoval) clarifying the UN's standards on reparation for VSV; through them, triggering legal reform including in places like Kosovo and Bosnia and influencing the views of the Colombian Constitutional Court. Furthermore, through litigation with REDRESS, the Coordinadora Nacional de Derechos Humanos (CNDDHH), and Promsex in the case of <i>Azul Rojas Marin and Other v. Peru</i>, Sandoval's research influenced the judgment of the IACtHR (2020), a precedent-setting ruling on sexual violence (SV) as a form of torture, and on the forms of reparations to be ordered in such cases.</p>		
<p><b>2. Underpinning research</b></p> <p>While the content of the right to reparation has been progressively clarified, questions remain as to how to adopt a gender sensitive approach to reparations for VSV and to provide victims with effective reparation. In response to these questions, Sandoval has crafted a holistic approach to reparations for cases of gender based-violence and SV, that results from socio-legal qualitative field research, conducted through semi-structured interviews, focus groups and participant observation, and from direct involvement in real-life cases working with experts in other disciplines (physicians, psychologists and anthropologists) [G1-G2].</p> <p>Sandoval began this research with Rubio-Marín in 2008-2009 [R1, R2], laying some of the critical normative foundations for gender-sensitive reparations for VSV. She built on this research, by testing and further developing the normative findings through fieldwork in Colombia, Guatemala, Peru and the Central African Republic [R3, R4]. This work has been possible through two major research grants [G1 and G2], her partnership with REDRESS and her work for the ICC and UN (OHCHR and UN Women).</p> <p>Her holistic approach responds to key challenges she has encountered in her research: (1) against an inadequate identification of victims, the approach puts forward an expansive concept of victimhood, including women/girls, men/boys and members of the LGBTI community, family members, communities and children born out of rape [R1, R2, R3, R4]; (2) against an inadequate identification of harms, it makes the case for a careful identification of various types of harm including individual, family, community and transgenerational harm [R1, R2, R3, R4]; (3) against the invisibility of forms of revictimization suffered by VSV as a result of stigma, her research considers the long-term consequences they generate for children born out of rape, forced motherhood, sexually transmitted diseases, discrimination, and displacement [R1, R3, R4]; (4)</p>		

against the lack of prompt and adequate State response to the situation of VSV, it provides an evidence base for the need to provide them with urgent reparations; [R3, R4]; (5) against the lack of effective remedies for VSV, it stresses that they should have access to different remedies to fulfil their right to reparation, judicial and non-judicial.

Furthermore, to enable access to justice and reparation, Sandoval has stressed the importance of victim participation and the need to habilitate adequate spaces for VSV to step up and speak out and be able to effectively participate in the design, implementation and monitoring of domestic reparation programmes, such as safe spaces, and camouflage measures [R3, R4, R6].

Another area where Sandoval has had a distinctive and significant voice is in relation to transformative reparations. For authors like Gready and Robins or Ní Aoláin, reparation should be transformative as it should not bring victims back to the *status quo ante* if that was a situation of discrimination. To test this claim, using an evidence-based approach, Sandoval's research [G1, G2] shows that the transformative potential of reparation depends on the forms of reparation used to redress VSV, how these forms relate to each other, and how their implementation coexists and complements other interventions including guarantees of non-repetition (a form of reparation), development measures and the realisation of economic, social and cultural rights [R1, R2, R3, R6]. Her research shows the need to use different forms of reparation, but particularly rehabilitation services [R3, R5, R6] going beyond health interventions and aiming at habilitating victims, such as the provision of education, productive projects or legal services [R3].

### 3. References to the research [available from HEI on request]

- R1** Rubio-Marín, R., and Sandoval, C. "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the *Cotton Field* Judgment." *Human Rights Quarterly*, 33 no.4, (2011), pp.1062-1091. <http://doi.org/10.1353/hrq.2011.0060>
- R2** Díaz, C., Rubio-Marín, R and Sandoval, C. "Repairing Family Members: Gross Human Rights Violations and Communities of Harm", in R. Rubio-Marín (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press (2009), pp. 215-290.DOI: <http://doi.org/10.1017/cbo9780511596711.008>
- R3** Gilmore, S., Guillerot, J., and Sandoval, C. "Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes", *Reparations, Responsibility and Victimhood in Transitional Societies*, (2020) ISBN:9781916256170  
[https://reparations.qub.ac.uk/assets/uploads/QUB-SGBV\\_Report\\_English\\_Web.pdf](https://reparations.qub.ac.uk/assets/uploads/QUB-SGBV_Report_English_Web.pdf)
- R4** Expert Report on Reparation, Presented to Trial Chamber III, ICC, *in the case of the Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-3575-Anx-Corr2-Red, 28 November 2017, public redacted version. [https://www.icc-cpi.int/RelatedRecords/CR2017\\_07036.PDF](https://www.icc-cpi.int/RelatedRecords/CR2017_07036.PDF)
- R5** Sandoval, C. Rehabilitation as a Form of Reparation under International Law, REDRESS, London (2009). <https://redress.org/wp-content/uploads/2018/01/The-right-to-rehabilitation.pdf>
- R6** Sandoval, C. "Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition" In R Duthie, and P. Seils, (eds.) *Justice mosaics: How Context Shapes Transitional Justice in Fractured Societies*, ICTJ (2017), pp. 166-201. REF 2, [https://www.ictj.org/sites/default/files/ICTJ\\_Book\\_JusticeMosaics\\_2017.pdf](https://www.ictj.org/sites/default/files/ICTJ_Book_JusticeMosaics_2017.pdf)

#### Grants:

- G1** Sandoval, C. Co-investigator - ESRC grant, *Implementation and Compliance with Human Rights Law: An Exploration of the Interplay between the International, Regional and National Levels*. Principal investigator Professor R. Murray (Univ. of Bristol, £1,099,963 GBP, £287,921 to Essex) (09/2015- 02/2019).
- G2** Sandoval, C. Co-investigator - AHRC grant, *Reparations, Responsibility and Victimhood in*

*Transitional Societies*. Principal Investigator Dr. Luke Moffett (Queen's University Belfast, £655,198 GBP, £66,361 to Essex) (10/2017- 03/2021).

#### 4. Details of the impact

##### **(1) Influencing the development of a gender approach to reparation for victims of conflict-related sexual violence at the United Nations and with other stakeholders**

Given her research on reparations, Sandoval was hired by UN OHCHR and UN Women, the key permanent bodies at the UN working on human rights and women's rights, to draft, with their feedback and comments [S.1.1], the 2014 *Guidance Note of the Secretary-General of the United Nations on Conflict-Related Sexual Violence* (GN) [S.1.2]. The GN provides "policy and operational guidance for United Nations engagement in the area of reparations." It builds on key principles and standards identified and explored by Sandoval in [R1, R2, R5]. It is part of the daily toolkit used by stakeholders such as OHCHR, UN Women, governments, courts and civil society organisations, dealing with sexual violence [S.1.3]. Written in English, it has been translated into Spanish, Arabic and French. 7,000 copies were made available to the public and were launched in key places such as Bosnia and Tunisia in 2016 [S.1.3, p. 21]. The GN has enabled better laws, policies and standards in States around the world as well as at key tribunals like the ICC, generating significant opportunities for VSV to fulfil their right to reparation.

UN Action, which includes 13 different UN entities working on ending SV like UN Women, OHCHR, UNDP, WHO, UNAIDs, and UNHCR, indicates that "since the launch of the *Guidance Note* there has been increased political willingness to provide reparations for victims of [Conflict Related Sexual Violence]" [S.1.3, p. 21]. For example, in Bosnia and Kosovo new legislation was adopted, creating special mechanisms for VSV to access reparation. In Kosovo, UN Women applied the GN to support the Government's efforts to enact and reform new legal frameworks recognising victims of sexual violence and giving them reparation [S.1.4, S.1.5]. In 2018, a special body was set up in Kosovo to provide reparation to VSV, and victims are coming forward to secure reparation [S.1.5]. UN bodies are also using the GN to help international tribunals to define the scope of the right to reparation of VSV. For example, the UN presented a Joint Submission on Reparations to the ICC in the *Katanga* case in 2015 [S.1.6], using the GN, to stress the importance of maintaining both individual and collective reparations for VSV, the need for transformative reparations and for addressing stigma. [R5] is cited to support the need for rehabilitation measures. The GN has also been used by domestic courts like the Colombian Constitutional Court. In case T-718 (2017), VSV in el Salado claimed that their right to collective reparation was violated as there was no gender approach to reparation and no consultation. The Court used the GN to explain what engendering reparations for VSV entails [S.1.7, paras. 181-183], and how domestic reparation programmes should work. Sandoval's research [R1] is also referred to in the decision [S.1.7, p. 56].

##### **(2) Influencing the development of a gender approach to reparations for victims of conflict-related sexual violence at the International Criminal Court (ICC)**

Sandoval's research [R1, R2, R3, R4 and R5] has influenced the ICC in crafting its approach to reparations for VSV. Sandoval was appointed in 2017 by the ICC to act as one of its experts on reparation in the *Bemba* case (Central African Republic), the first in which the Court had to address allegations of rape as a crime against humanity. The output of that process was a co-authored report [R4] where Sandoval's research was significant in relation to identifying harms caused to the victims, the recognition of children born out of rape and urgent reparation. While Bemba was acquitted, the final ICC Decision on the reparations' proceedings from 2018 [S.2.1, paras, 8-9], recognises the experts' work, particularly in the area of SV.

The two expert reports commissioned by the ICC in the later case of *Ntaganda (situation in DRC)* and submitted in October 2020, concerning rape and sexual slavery, among other crimes, make

extensive reference to [R4] and to Sandoval's research. The first expert report indicates that *"for their recommendations of reparations for victims of the attacks, the Experts in the present case found the findings and recommendations in the expert report in Bemba relevant"* [S.2.2, footnote 164], following the report on issues such as types of harm, victims' participation and consultation, forms of reparation with a transformative dimension, children born out of rape and urgent reparations. The Expert report also refers to the GN [S.1.2, p. 26, 54-66].

The second expert report on reparations [S.2.3] in the *Ntaganda* case before the ICC refers extensively to Sandoval's research [R1, R3, R6] to note the need for safe spaces for VSV to participate and to deal with transformative reparations. It also refers to the GN [S.1.2, p. 14, 19, 53].

The Registry at the ICC also filed observations on reparations in the *Ntaganda* case, referring to [R3] and the GN [S.1.2] as key developments for the identification and inclusion of other principles to be adopted by the Court on reparations for VSV [S.2.4, para. 9]. The judgment is pending.

### (3) Securing new standards on sexual violence and reparation for victims of the LGBTI community – The litigation in the case of *Azul Rojas Marín and Other v. Peru*

As a result of Sandoval's research on reparation and the Inter-American System of Human Rights, the leading NGO REDRESS engaged Sandoval in a multi-year partnership, to help REDRESS develop its litigation strategy in various cases including *Azul Rojas Marín* [S.3.1]. Sandoval, on behalf of REDRESS and in partnership with two Peruvian NGOs (CNDDHH, and Promsex), filed a petition in 2009 before the Inter-American Commission on Human Rights on behalf of Luis Alberto Rojas Marín (now Azul), a gay male, who in the course of the litigation, transitioned to female, who was arbitrarily detained by Police and subjected by them to SV while in detention because of her sexual orientation.

After a decade of litigation, the Court handed down its judgment in March 2020, setting a ground-breaking precedent for members of the LGBTI community subjected to sexual violence [S.3.2]. As recognised by REDRESS, Sandoval *"used her research on rehabilitation and on transformative reparation to help us, and eventually also the Court to understand the central importance of rehabilitation and guarantees of non-repetition."* [S.3.1]. [R1] and [R5] were used to underpin the gender dimensions of the case in relation to torture and reparation [S.3.2, paras. 84, 86-95, 137, 158-167] to identify suitable forms of redress for Azul and her mother [S.3.2, paras. 232-234, 235-237, 258-267], as well as to consider the transformative potential of reparation [S.3.2, paras. 238-255, R1, R2, R5]. The Court awarded both rehabilitation and guarantees of non-repetition with a gender dimension.

The significance of the judgment is considerable. Referring to the importance of the case, the UN independent expert on sexual orientation and gender identity, Victor Madrigal-Borloz, stated that the case *"is extraordinary [...] because it carries a holistic analysis of the circumstances in which violence and discrimination are nurtured. [...] it actually addresses the notion of prejudice that lies at the root of acts of discrimination and violence and provides a legal reasoning [...] that will be used for years and decades to come, [...]. And [...] it establishes a comprehensive programme for reparations that goes from the individual in [...] into the whole condition and context in which the acts were perpetrated and, in a way, [it] becomes a blueprint for the State as to how to combat violence and discrimination"* [S.3.3].

## 5. Sources to corroborate the impact

### 1. Standard Setting on reparation for victims of sexual violence at the United Nations and for other stakeholders

**S.1.1** Contract of OHCHR hiring Professor Sandoval to write the draft of the Guidance Note.

**S.1.2** 2014 *Guidance Note of the Secretary-General of the United Nations on Conflict-Related Sexual Violence*, <https://www.unwomen.org/>

</media/headquarters/attachments/sections/docs/2014/unsg-guidance-note-reparations-for-conflictrelated-sexual-violence-2014-en.pdf?la=en&vs=1356>

#### UN Evidence of Impact:

**S.1.3** UN Action assessment of the impact of the Guidance Note. (PDF available from HEI)

**S.1.4** UN Women, Reparations for Conflict-Related Sexual Violence: Lessons From the Western Balkans, Conference Report, 2017, p. 8 and 11, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/reparations-for-conflict-related-sexual-violence-en.pdf?la=en&vs=3104>

**S.1.5** UN Women, The Conflict Did not Bring Us Flowers: The Need for Comprehensive Reparations for Survivors of Conflict-Related Sexual Violence in Kosovo, 2016, p. 13, 17, and 22, [https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/the-conflict-did-not-bring-us-flowers\\_eng.pdf?la=en&vs=5055](https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/the-conflict-did-not-bring-us-flowers_eng.pdf?la=en&vs=5055)

**S.1.6** United Nations Joint Submission on Reparations in the Case of the Prosecutor v. Germain Katanga (Situation in the Democratic Republic of Congo), ICC-01/04-01/07, 14 May 2015. [https://www.icc-cpi.int/CourtRecords/CR2015\\_05806.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_05806.PDF)

#### Evidence of impact beyond the UN:

**S.1.7** Colombian Constitutional Court, Decision T-718/17, Justice Alejandro Linares Castillo, 11 December 2017, paras. 180-181, footnotes 185 and 186. This decision also makes direct reference to research output 1 by Sandoval at footnote 199, <https://www.corteconstitucional.gov.co/relatoria/2017/t-718-17.htm>

### 2. Influencing the development of a gender centred approach to reparations for victims of conflict-related sexual violence at the ICC

**S.2.1** ICC, Trial Chamber III, Final Decision on the Reparations Proceedings, ICC-01/05-01/08, 3 August 2018, 3 August 2018, paras 8-9, available at: [https://www.icc-cpi.int/CourtRecords/CR2018\\_03967.PDF](https://www.icc-cpi.int/CourtRecords/CR2018_03967.PDF)

**S.2.2** Experts Report on Reparation, Presented to the Trial Chamber IV, International Criminal Court, Case of the Prosecutor v. Bosco Ntaganda (DRC), 29 October 2020, [https://www.icc-cpi.int/RelatedRecords/CR2020\\_05969.PDF](https://www.icc-cpi.int/RelatedRecords/CR2020_05969.PDF)

**S.2.3** Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare, Presented to the Trial Chamber IV, International Criminal Court, Case of the Prosecutor v. Bosco Ntaganda (DRC), October 2020, [https://reparations.gub.ac.uk/assets/uploads/CR2020\\_05970.pdf](https://reparations.gub.ac.uk/assets/uploads/CR2020_05970.pdf)

**S.2.4** ICC, The Registry's Observations on Reparations in the *Ntaganda Case* (Public), Annex I, Icc-01/04-02/06-2475-Anxl, 28 February 2020, [https://www.icc-cpi.int/RelatedRecords/CR2020\\_00707.PDF](https://www.icc-cpi.int/RelatedRecords/CR2020_00707.PDF)

### 3. Securing new standards on sexual violence and reparation for victims of the LGBTI community – The litigation in the Case of *Azul Rojas Marín vs. Peru*

**S.3.1** Letter from Rupert Skilbeck, Director of REDRESS, June 2020.

**S.3.2** Judgment of the Inter-American Court of Human Rights, *Azul Rojas Marín and Other v. Peru*, 12 March 2020, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_402\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_ing.pdf)

**S.3.3** Interview of UN Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, 9 July 2020, [https://www.youtube.com/watch?v=T6Ex\\_XSr660](https://www.youtube.com/watch?v=T6Ex_XSr660) – PDF of link and screenshots of video with subtitles