CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (DEMOCRATIC REPUBLIC OF THE CONGO v. UGANDA)

International Court of Justice

Amicus Curiae Submission on Reparations by Queen's University Human Rights Centre

May 2019

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Introduction

1. Reparations are measures intended to acknowledge and remedy wrongdoing caused by a responsible actor. The *DRC v Uganda* case represents a complex and belated opportunity to redress some of the harms caused by one actor in the Congolese conflict. In the Judgment of the 19th December 2005, the International Court of Justice (ICJ) found Uganda liable for breaches of its international obligations in regards to violation of the territorial sovereignty of the DRC, belligerent occupation, violations of international humanitarian law and international human right law and the illegal exploitation of the natural resources of the DRC.[1] The Court stated that, satisfied in its finding of liability, Uganda has an obligation to make reparation accordingly.[2] There has been considerable progression regarding the purpose and legal basis of reparations in international law since the 2005 judgment; however, the ICJ has little precedence in adjudicating reparations for the scale of these violations. As such, this amicus draws upon other international and regional legal bodies as well as state practice, which have dealt with similar violations, to inform the decision making process of the Court.

2. This amicus sets out some broad parameters in how the ICJ can approach the issue of reparations for such widespread and systematic violations of human rights and grave breaches of international humanitarian law. It begins by outlining some principles on reparations, which should be taken into account in redressing gross violations of human rights and grave breaches of international humanitarian law. The second section of the submission outlines some issues with the administration of reparations for mass claims processes including issues of eligibility, application process, evidence and outreach. The third section details the forms of reparation, including individual and collective measures, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The final two sections of the submission highlight particular measures to respond to conflict-related sexual violence and exploitation of natural resources.

Principles

3. It is a well-established principle of international law that a State, which bears responsibility for an internationally wrongful act, is under an obligation to provide full

[1] *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v*
[2] Ibid para.259.

reparation for the injury caused by that act.[3] This principle is embodied in numerous judgments of the Permanent Court of International Justice and the International Court of Justice (ICJ);[4] the Court should continue to build upon this principle. The *Factory at Chorzów* case held that 'reparation must, so far as possible wipe out all the consequences of the illegal act and re-establish the situation which would in all probability, have existed if that act had not been committed.'[5] The Court is now asked to adjudicate on reparations in relation to the armed activities in the DRC.

4. At this point it is worth highlighting the language of 'so far as possible' in the *Factory at Chorzów* dictum, in that full reparation or full restitution may be as 'impossible, insufficient, and inadequate'.[6] Indeed a more feasible and modest approach that concentrates on alleviating victims' continuing suffering may be more appropriate. As Judge Cançado Trindade suggests, 'reparation cannot "efface" [a violation], but it can rather avoid the negative consequences of the wrongful act.'[7] Accordingly our submission draws upon the experience of mass claims processes and domestic reparation programmes that aim to strike a balance between ensuring adequate remedy and feasibility in implementation. Indeed former UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence Pablo de Greiff has noted that administrative reparation programmes over litigation, ease the burden on victims by 'offering faster results, lower costs, relaxed standards of evidence, non-adversarial procedures, and the higher likelihood of receiving benefits.'[8] As such this modest 'trade-off' is acceptable given that not all victims can bring individual claims or achieve full reparation through a lawsuit. A mass claims process or administrative regime can better cater to delivering reparations to a large universe of victims.[9]

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[3] International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No.10 (A/56/10) Chapter IV.E.1, adopted by the International Law Commission at its fifty-third session (2001).
[4] See *Factory at Chorzów, Jurisdiction* (1927) PCIJ Series A No.9, p.21, *Gabčikovo-Nagymaros Project (Hungary/Slovakia) Judgment* [1997] ICJ Reports, p.81, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment, ICJ Reports 2007, p193.
[5] *Factory at Chorzów* ibid.
[6] *Blake v Guatemala,* Reparations, Series C No. 48 (IACtHR, 22 January 1999).
[7] Separate Opinion of Judge Cançado Trindade, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation Judgment, ICJ Reports (2012) 324, para.26.
[8] Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014, para.4.
[9] Peter Van der Auweraert, The Potential for Redress: Reparations and Large-Scale Displacement, in R. Duthie (ed.), *Transitional Justice and Displacement*, ICTJ (2012), 139-186, p142.

5. There are no consistent or obligatory standards for reparations for gross violations of human rights and grave breaches of international humanitarian law. There are obligations on states to provide effective remedies for violations of human rights law,[10] and to a lesser extent reparation for breaches of international humanitarian law.[11] The 2005 United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation is a declaratory document, but indicates that reparations should be 'adequate, effective and prompt' as well as 'proportional to the gravity of the violations and the harm suffered.'[12] It is important to recall the nature of the conflict and to look at the specifics of the context to determine the nature of appropriate benefits; a conflict's characteristics and political context generally determine the appropriate type of reparations that would form part of a broad transitional justice process.[13]

6. It is submitted that the Court should develop a clear working definition and express a rationale regarding the purpose of reparation at the ICJ. For the purposes of this amicus in the *DRC v Uganda* case we define reparations as measures (individual and collective) to acknowledge and remedy the harm suffered by victims of gross violations of human rights and grave breaches of international humanitarian law by a responsible actor. As such, reparation encompasses a continuum between maximalist and minimalist approaches. The latter referring to responsible individuals and organisations that can publicly recognise moral harm, through apologies, acknowledgments of responsibility and contribution to truth recovery. Whereas a maximalist account of reparations would be the criteria of full reparation as ordered in individual cases before regional human rights courts. We believe that the ICJ in the *DRC v Uganda* case sit somewhere in between these two ends, in that it does not have the capacity to monitor and adjudicate on a comprehensive individual case-by-case reparations programme, as such approach to full reparations to all victims, would be unfeasible and unworkable given the scale of

[10] See Conor McCarthy, Reparation for Gross Violations of Human Rights Law and International Humanitarian Law at the International Court of Justice', in C. Ferstman et al. (eds.), *Reparations for Victims of Genocide, Crimes against Humanity and War Crimes: Systems in Place and Systems in the Making*, (2009), 283-311.

[11] Article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), and Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

[12] Principle 15, 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, Article 1(c) herein known as 'the UN Basic Principles'.

[13] The Rabat Report: The Concept and Challenges of Collective Reparations, ICTJ, (February 2009), p.40.

victimisation. That said the occupation and violations in Ituri by Ugandan forces should be placed within the wider context of the Congolese wars since 1996 by a range of states, non-state armed groups and third party actors who committed violations.[14] This requires a national reparation programme or claims commission in the DRC, in part funded by a dedicate domestic budget, legally committed amount from Uganda and the potential for a trust fund for other responsible actors to contribute to. Any approach to provide reparations on a mass scale should also consider widening any national programme that would be set up to other affected regions, such as the Kivus, Katanga, Maniema and Province Orientale, with the contribution of the Congolese state, other responsible actors and the international community.[15] This is to minimise regional tensions and to avoid a monopoly of redress for only victims in Ituri.

7. In terms of guiding principles the ICC, in the case of *Lubanga* stated that reparations fulfil two main purposes that are enshrined in the Rome Statute: they oblige those responsible for serious crimes to repair the harm they caused to victims; and they enable the Court to ensure that offenders account of their acts.[16] Reparations at the ICC are increasingly being viewed as one element of the Court's broader responsibilities to ensure accountability by publicly acknowledging and redressing victims' harm.[17] While the ICJ is concerned with the responsibility of states for their breaches of international law, victims' rights can still inform the way in which reparations agreed or ordered by the Court are framed, in terms of design, consultation, process and outcomes.

8. It is suggested that this present case allows the ICJ the opportunity to re-define its approach to reparations between States; strengthening the existing principles and building upon them to allow the needs of victims to be more adequately addressed. It is suggested that it would be helpful for both the ICC and ICJ to exhibit the same considerations to a certain extent on in order to complement the accountability of individuals and States for breaches of international law and recognise the rights of victims of connected atrocities. Particularly in the case of the DRC, the ICC has already issue reparations in the cases of *Lubanga* and *Katanga* (both of which committed crimes

[14] See UN Mapping Report 2010, para.1123-1124; and UNSC Resolution 1304 (2000) dated 16 June 2000, para.14.
[15] See UN Mapping Report, para.1090 and 1122-1123.
[16] *The Prosecutor v Thomas Lubanga Dyilo* (Order for Reparations) ICC-01/04-01/06-3129-AnxA (03 March 2015), para.2 herein known as '*Lubanga* Reparations'.
[17] Termed 'justice for victims' by Fiona McKay, Are Reparations Appropriately Addressed in the ICC Statute? In D. Shelton (ed) *International Crimes, Peace and Human Rights: The Role of the International Criminal Court,* (Transnational Publishers 2000) 163-174, p.164.

in the DRC), therefore it would be useful for both international courts to be seen as complementary to each other and any national programme on reparations. In particular this may factor into eligibility requirements or forms of reparations, to ensure that victims are not doubly compensated for the same harm, but to also draw from some of the evidence in the Iturian ICC cases to help inform reparations in the *DRC v Uganda* case.

Legal Basis of Reparations

9. In the Judgment, the ICJ found Uganda responsible for various internationally wrongful acts including illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resources. It is submitted that this separation is helpful due to the acknowledgement of differing purposes between granting reparations in each of these categories. The submission will address reparations in each of these categories individually.

Violation of Principle of Non-Use of Force and Non-Intervention

10. The Court in the Judgment found that Uganda had violated the sovereignty and territorial integrity of the DRC, with Uganda's actions constituting an interference in the internal affairs of the DRC. The unlawful military intervention by Uganda was of such a magnitude and duration that the Court considered it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4 of the Charter.[18]

11. The ICJ in its previous judgments has approached reparations on this issue in a variety of ways. In the case of *Nicaragua v USA*, the ICJ found that the United States of America was under an obligation to make reparation to Nicaragua for all injury caused by the breaches of the illegal use of force and military intervention under customary international law and Article 2(4) of the Charter.[19] On 28th July 2017, Nicaragua revived its claim for US$17 billion in compensation against the United States for this wrongful act and others declared in the initial judgment. Despite language on the open nature of

[18] The Judgment, para.165.
[19] *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* Judgment, ICJ Reports 1986, p.139

ongoing jurisdiction over reparations if not settled by the parties similar to the *DRC v Uganda* case,[20] the Nicaraguan government renounced its claim to reparation in 1991.[21]

12. There is some practice that satisfaction in the form of a judgment finding a breach is sufficient in of itself for occupation. For instance in *Cameroon v Nigeria* the Court found that Nigerian armed forces and police were present in large area found to belong to Cameroon, but it denied further relief, stating that 'by the very fact of the present judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all event have been sufficiently addressed.'[22] Similarly, the *Alabama* Commissioners in the arbitration rejected claims for damages for generalised economic interests of the victorious State or its nationals or to its expenses in waging war. The Commissioners stated that the claims of the United States for the transfer of American merchant vessels to British registry, increased insurance costs and the prolongation of the war and associated costs 'do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation.'[23] Furthermore, the United States-German Mixed Claims Commission emphasised the need for a direct causal connection between a loss and the actions of the defendant State, and rejected claims for 'all damage or loss in consequence of the war.'[24] The EECC, in deciding whether to award compensation for Eritrea's violation of Article 2(4) of the UN Charter stated that the threshold question was whether any award of damages should be designed to serve the exceptional purpose of helping to deter future violations of Article 2(4), or should, instead, serve the more conventional purpose of providing appropriate compensation within the framework of the law of State responsibility. The EECC considered the latter to be its responsibility with the primary role for addressing, and deterring, violations of Article 2(4) of the UN Charter to rest with the Security Council.

13. It is suggested that due to the ICJ's position as the court of the UN, it could grant reparations through compensation for violation of the use of force and non-intervention

[20] *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America).* Merits, Judgment. I.C.J. Reports 1986, 14, p149.
[21] *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America),* Order, 1991 ICJ Reports 47, 26 September 1991.
[22] *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v Nigeria)* Judgment, ICJ Report 2002, p.153.
[23] Record of the Proceedings of the Tribunal of Arbitration, June 19, 1872, reprinted in III Marjorie M. Whiteman, Damages in International Law p. 1773 (1943)
[24] Reports of International Arbitral Awards, Mixed Claims Commission (US and Germany) (1923 – 1939), p.23. Available at http://legal.un.org/riaa/cases/vol_VII/1-391.pdf.

with the purpose of deterring future violations. By virtue of the principle of proportionality, reparation should be proportional to the injury caused by the wrongful act.[25] An important consequence of this principle is that reparations are not punitive in nature; it is argued that reparations should be exclusively aimed at remedying the damage committed through the wrongful act, and not conceived as an exemplary measure, especially given the gravity of the violations on individuals and communities.[26]

14. It is noted that the determination of compensation in this area must take into account the magnitude and character of the violation of the use of force. This submission would draw attention to Uganda's use of force and the illegal exploitation of the DRC's natural resources; this exploitation will have far-reaching consequences, affecting future generations through weakening the economic capabilities of DRC and its control over its territorial resources. However, the EECC held that compensation for the unlawful use of force is often lower than awards for other violations, due to the lessons learnt from the harsh compensation placed on Germany following World War One in the Treaty of Versailles and its consequences. As stated by the EECC, a breach of *jus ad bellum* by a State does not create liability for all that comes after; instead there must be a sufficient causal connection.[27] A separate casual connection is discussed further below in relation to gross violations of human rights and grave breaches of international humanitarian law.

Violations of International Human Rights Law and International Humanitarian Law

15. Reparations for these violations are informed by the UN Basic Principles and Guidelines on the Right to Remedy and Reparations. These guidelines state that 'adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.'[28] Uganda has been found liable for numerous violations of these laws including, *inter alia*, indiscriminate killings, torture, seizure of civilian population, abduction and the use of child soldiers. Given the seriousness of the harm inflicted on victims in this case, we submit that comprehensive reparations which include an appropriate combination of

[25] Article 31, *Responsibility of States for Internationally Wrongful Acts* (2001).
[26] *Velásquez Rodríguez*, para. 38; ILC Commentaries on Articles of State Responsibility, pp. 99 and 107; Principle 15, UN Basic Principles.
[27] Eritrea-Ethiopia Claims Commission, Final Award Ethiopia's Damages Claims, Reports of International Arbitral Awards, Volume XXVI, 17 August 2009, p.631-770, herein known as 'EECC Final Award Ethiopia', para.289.
[28] Basic Principles (n.8) Principle 15.

material, symbolic, individual and collective reparations as well as priority access to services should be considered.

16. The UN Basic Principles on Reparations provide that victims should 'as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation…which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.'[29] This case presents the Court with an opportunity to expand the purpose of reparations within the ICJ beyond these traditional purposes utilising symbolic and transformative measures. As stated in the Impunity Principles, reparations should be linked with other measures aimed at redressing past violations, including criminal justice, truth-seeking and institutional reform.[30]

17. The Court must identify the most appropriate modalities of reparations, based on specific circumstances of the case at hand, identifying the harm caused to direct and indirect victims as a result for which a person was convicted, this is inter-linked with identifying the appropriate modalities of reparations in that specific case.[31] The Chamber should keep in consideration that the utmost must be done to ensure that the victims themselves perceive the reparations as meaningful.[32]

Administration

18. Given the unique nature of the *DRC v Uganda* case and the parties failing to negotiate an agreement on reparations, for the purposes of transparency and efficiency it would be helpful for a claims commission or reparation body to be established. Such a body or commission would be based on funding from Uganda for the violations it is held to have caused in Ituri, as well as to allow individual and group claimants to come before it to seek reparations. The United Nations Claims Commission employed methods to evaluate and decide the more than 2.6 million claims including mass claim techniques, such as computerised matching of claims information against outside date, statistical modelling, sampling and the grouping of similar claims into categories to be decided *en*

[29] Ibid Principle 18.
[30] See Commission on Human Rights, "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1).
[31] *Lubanga,* Reparations Appeals Judgment*,* ICC-01/04-01/06 AA2A3, 3 March 2015, para.200.
[32] Report of the Bureau on the impact of the Rome Statute system on victims and affected communities ICC-ASP/9/25 Appendix III, 22 November 2010, para.19.

masse.[33] Such methods may assist in minimising the administrative cost and infrastructure in adjudicating the inter-state claim in the *DRC v Uganda* case. While it is an inter-state case, the finding of responsibility of Uganda for violations of human rights and breaches of international humanitarian law establishes its liability, determining eligibility of individual claims connected to these violations will require a serious effort to administer. At the outset it would be worth fixing Uganda's liability, given the time since the violations, gravity of harm and vulnerability of victims to expedite the process.

19. This fixing of liability is in contrast to other administrative bodies – the Iran-United States Claims Tribunal (Iran-US CT) did not include issues of liability; and the EECC was established to determine the occurrence and liability for violations.[34] However at the UNCC, the UN Security Council had already established Iraq's liability for losses.[35] The UNCC was not established as an arbitral tribunal, but as a 'political organ' carrying out a fact-finding role to assess and verify whether or not each claim evidenced damage directly linked to Iraq's unlawful invasion and occupation of Kuwait and to grant monetary awards if this was the case.[36] Where claims were disputed, the commission also acted in a 'quasi-judicial function' to resolve them.[37] It is proposed that the structure utilised by the UNCC would be the most appropriate and effective means of establishing a claims process in this present case. By outlining from the beginning the clear purpose of the process, which it is proposed in this situation should be victim-centred, individuals and States can benefit from faster processes directed at repairing communities and assisting victims.

20. This amicus outlines some state practice and jurisprudence on reparations in mostly post-conflict societies that may be indicative for the ICJ in determining adequate and appropriate reparations in the *DRC v Uganda* case. We would suggest that if the ICJ is going to adjudicate and create a reparation programme in the case, it should make use of a team of experts to assist its decision-making. The International Criminal Court in its

[33] John R. Crook, Mass Claims Processes: Lessons Learned over Twenty-Five Years, in *Redressing Injustices through Mass Claims Processes: Innovative Responses to Unique Challenges*, Permanent Court of Arbitration, OUP 2006, 41-59, p57.
[34] See SD Murphy, W Kidane and TR Snider, *Litigating War: Mass Civil Injury and the Eritrea-Ethiopia Claims Commission* (OUP 2013).
[35] See S/Res/687 UN Doc S/RES687, 3 April 1991. N Wühler, The United Nations Compensation Commission' in Permanent Court of Arbitration (ed), *Institutional and Procedural Aspects of Mass Claims Settlement Systems* (Kluwer Law International 2000) 17.
[36] Report of the Secretary-General pursuant to paragraph 19 of the Security Council Resolution 687 (1991), para.20.
[37] Ibid.

reparation proceedings has made good use of experts to bolster its knowledge on reparations and provide technical information around costing, cultural and gender impact of crimes etc.[38] This is not to replace the views of the parties, or victims' views and concerns in the design of such a reparation programme, but the role of experts can provide a wider base of evidence to improve the quality of decision-making.

21. While some judges on the bench of the ICJ are well experience in reparation judgements or arbitration, the *DRC v Uganda* case requires a complex administrative body to remedy the widespread violations that occurred in Ituri. It may make sense to have an experience organisation, such as the International Organisation for Migration, to assist in the administration of such a reparation body, given its work on the UNCC, German Forced Labour scheme and work in other states on managing mass claims and reparation processes. Having an independent body to manage and assess claims could help to mitigate issue of fraud or political influence. One challenge which relates to funding is to ensure that one party/side do not have, or appear to have, a controlling or disproportionate influence on the budget.[39] The process must remain vigilant to avoid any appearance, or actuality, of purse-string influence by the paying party that might be seen to affect the independence of the claims process.[40] Having an independent body to administer reparations may help to minimise perceptions held by some victims in the *Katanga* case of distrust in the local administration in implementing reparations.[41] However, the lack of national ownership by the Congo and Uganda, may cause implementation or enforcement challenges. At the EECC, the Eritrean and Ethiopian governments only provided funding in six monthly instalments to facilitate the operations of the administration scheme, but failed to provide funding to implement the final claims.

22. In contrast the Commission of Real Property Claims of Displaced Persons and Refugees did not have any enforcement or implementation powers and instead imposed the responsibility for the implementation of decisions upon domestic authorities. According to the Commission's End of Mandate Report 'the domestic authorities have actively failed to implement CRPC decisions and have numerous ways to obstruct the process

[38] See for instance *Prosecutor v Bemba,* Expert Report, 30 November 2017, ICC-01/05-01/08-3575-Anx-Corr2-Red; and *Prosecutor v Al Mahdi*, Experts' Reports pursuant to Trial Chamber Decision ICC-01/12-01/15-203-Red of 19 January 2017, 1 May 2017, ICC-01/12-01/15-214.
[39] International Mass Claims Process n.35, p.357.
[40] Ibid.
[41] Registry Report, p.35.

until 2000'. Thus the High Representative imposed specific laws setting forth concrete steps which the local authorities are expected to take to implement decision. From 2000 onwards, the CRPC, working closely with the international organisations involved in the area, achieved widespread implementation of its decisions, utilising an extensive network of regional offices and mobile teams to distribute awards. The structure utilised for victim participation in the claims process could also be utilised in this regard.

Eligibility

23. 'Victims' of gross violations of international human rights law and serious violations of international humanitarian law are defined in the Basic Principles as 'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions…Where appropriate…the term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.'[42]

24. Harm does not necessarily need to be have been direct, but it must have been personal to the victim; it may be material, physical and psychological.[43] Some countries have included IDPs and refugees in their reparation programmes, such as Peru and Colombia. In the case of Colombia the inclusion of IDPs resulted in them accounting for 7.48 million claimants out of 8.7 million registered victims.[44] However including such a large number of victims has meant that only a fraction of victims have actually received redress. The Kenyan Truth, Justice and Reconciliation Commission categorised and prioritised victims to concentrate resources on those most vulnerable and only provide individual reparations to IDPs and refugees where they died.[45] The Commission organised victims of gross violations of human rights into the following categories: (1) violations of the right to life; (2) violations to the right to personal integrity, including sexual or gender based violence; (3) forcible transfer of populations; (4) historical and contemporary land injustices; and (5) systematic marginalisation. The TJRC prioritised

[42] UN Basic Principles, Principle 8.
[43] *Lubanga* Reparation, para.10.
[44] See Camilo Sanchez and Adriana Rudling, *Reparations in Colombia: Where to? Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict*, Policy Paper, Reparations, Responsibility and Victimhood in Transitional Societies, February 2019. Available at https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf
[45] TRJC Report Volume IV, p97–122.

victims in categories 1 and 2 as those most vulnerable under the heading of Priority A, and eligible for monetary compensation through a ten-year annual pension, as well as medical and psychological vouchers for rehabilitation. Under the TJRC reparation recommendations, all victims in the five categories are entitled to collective reparations, with other victims in Priority B only able to claim collective reparations. These collective reparations are to address the 'policies and practices that negatives impacted entire groups of people',[46] and include measures such as apologies, memorials, and land restitution.[47] The purpose of these collective reparations is to recognise victims' experiences, acknowledge the state's responsibility, restore their dignity and ensure non-recurrence.[48] Despite the sophistication of these recommendations, they have not been implemented.

25. It may be worth for a proposed claims commission to prioritise reparations to particular groups seen as vulnerable or have suffered grave violations. The 2010 UN Mapping Report on the DRC released states that the most important issue to resolve when creating any reparation mechanism is how to determine the beneficiaries of such a programme. It suggests several criteria that can be used to delimit the scope of a programme in order to reach those who suffered most and have the greatest need of assistance, without minimizing the suffering of other victims: the seriousness of the violation, its consequences for the physical or mental health of the victims, stigmas attached, any repetition of violations over time, and the current socio-economic situation of victims are all valid criteria that could be used to target the reparations program.[49] Thus there may be good grounds to prioritise certain classes of victims due to their vulnerability or particular suffering.

26. In other contexts reparations have been prioritised to victims who are considered to have suffered the most severe harm or are vulnerable. The truth commissions in Timor Leste and Sierra Leone recommended that reparations be addressed to amputees, orphans, widows, victims of sexual violence, and victims of torture.[50] In the Philippines reparations are organised on a ten point system which grants: 10 points to victims who died or disappeared and remain missing; 6-9 points to victims of torture, rape or sexual

[46] Ibid., p107.
[47] Ibid., p108.
[48] Ibid., p114.
[49] Mapping Report, para.73.
[50] Sierra Leone TRC Report Volume II, Chapter 4, para. 69-70; and Chega! Commission for Reception, Truth and Reconciliation in East Timor (CAVR), (2005), section 12.1.

abuse; 3-5 points to victims who were detained; and 1-2 points for victims who suffered from kidnapping, involuntary exile by intimidation, or forceful takeover of businesses and property.[51] The reparations board has the discretion to determine the points allocated to each victim with consideration for the type of violation, frequency and duration. Due to limited funds, the German Forced Labour Compensation Programme prioritised compensation to victims of medical experiments, injury or death of children in certain homes, but all claims for personal injury in lower priority categories were denied on the basis of lack of funds.[52] Priority can also place some victims at the front of the queue. In Peru individual reparations have been prioritised for elderly victims, so they are paid first, given their greater vulnerability and limited time to avail of such measures.[53] Similarly in the Swiss Banks Holocaust settlement, direct victims who had ongoing injuries were prioritised over heirs of those who had died.[54]

Apportionment

27. Apportionment refers to the division of benefits or awards amongst similarly situated indirect victims, i.e. the next of kin of a disappeared victim. The UNCC allowed in the situation where an otherwise eligible individual died before filing a claim with the Commission, the authorised representative(s) of the heirs or the executor or administrator of the deceased's estate was permitted to file the claims. Any award of compensation was still made in the name of the deceased 'claimant' and non-pecuniary losses personal to the deceased did not survive the death of the individual and could not be claimed by their heir. Similarly, the German Forced Labour Compensation Programme defined which heirs are eligible for compensation as heirs or legal successors of victims who died after the 16th of February 1999. However, the Programme established a strict priority for inheritance, giving the highest priority to surviving spouses and children of a claimant. Therefore, it is suggested that a claims process established for the DRC could include claims of heirs, utilising a similar prioritisation scheme to that of the German Forced Labour Compensation Programme.

[51] Section 19, Human Rights Victims Reparation and Recognition Act 2013.
[52] German Foundation Act, section 9(3), section 11(1) sentence 3, number 5.
[53] Cristián Correa, *Reparations in Peru: From Recommendations to Implementation*, ICTJ, June 2013, p16.
[54] See J. Gribetz and S. C. Reig, The Swiss Banks Holocaust Settlement, in C. Ferstman, M. Goetz and A. Stephens (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity,* Brill (2009), 115-142.

28. In terms of splitting amounts of compensation amongst family members who have lost a loved one during the conflict, there are different practices to ensure an equitable outcome. In Chile reparations were allocated according to a standard formula whereby the pension for a person disappeared or killed was apportioned as 40% for a surviving spouse, 30% for a mother or father in the absence of a surviving spouse, 15% for the mother or father of victim's biological children and 15% for each child of a victim.[55] Apportionment of reparations does not have to follow domestic inheritance law. The Moroccan Equity and Reconciliation Commission (IER) departed from sharia-based inheritance law to give a larger percentage to widows (40% rather than 12.5%) instead of the eldest son. In Peru the Comisión de la Verdad y Reconciliación (CVR) prioritised compensation to the spouse or widow, over children and parents. This amount was to be split with the spouse or cohabitee partner to obtain not less than 2/5, with 2/5 for children (to be equally divided), and not less than 1/5 for the parents (equally divided).[56]

Application process

29. The DRC government or organisation responsible for the administration of reparations ordered in the case will need to establish a registry of victims' harm and identification details to help map out the type of violations and provide transparency for costing.[57] Application forms for reparations should be limited to requiring victims to provide essential information, such as basic personal information, statement of facts and violations suffered, confidentiality issues, harms suffered, and supporting documents.[58] The International Criminal Court has reduced its initial application for victim participation and reparation forms from 17 pages to 1 page, with further information asked later on when determining amounts and forms of reparations. Due to the conflict and poverty in Ituri, many victims may have no educational background, be illiterate or may be silenced by cultural factors that could create barriers from them claiming reparations.[59] Applications should be translated into local languages and may need to be

[55] Article 20, Law 19.123, Establishes the National Corporation for Reparation and Reconciliation and Grants other Benefits to Persons as Indicated, Official Gazette No. 34 (188), 8, February 1992.
[56] Comisión de la Verdad y Reconciliación (CVR), 27 August 2003, p190-191, available at: http://www.cverdad.org.pe/ifinal/pdf/TOMO%20IX/2.2.%20PIR.pdf
[57] See Jairo Rivas, Official Victims' Registries: A Tool for the Recognition of Human Rights Violations, *Journal of Human Rights Practice*, 8(1) (2016), 116–127.
[58] Forms of Justice: A Guide to Designing Reparations Applications Forms and Registration Processes for Victims of Human Rights Violations, ICTJ (2017), p22.
[59] Amissi M. Manirabona and Jo-Anne Wemmers, Specific Reparation for Specific Victimization: A Case for Suitable Reparation Strategies for War Crimes Victims in the DRC, *International Criminal Law Review* 13 (2013), 977-1012, p1000.

accompanied with visual representations or other forms to assist illiterate, elderly or disabled victims to apply.

30. The EECC's Rules of Procedure contemplated procedures for mass claims brought my individuals including prisoners of war, for unlawful expulsion, displacement, or detention, or for any other loss, damage or injury.[60] However, these special procedural rules for mass claims were never implemented or utilised with Ethiopia and Eritrea instead opting to file government-to-government claims, and the vast majority of these were, 'filed as claims of the governments themselves, [and] not as claims of persons that were transmitted to the Commission by the governments.'[61] The EECC left open the question of how the compensation provided would be utilised to redress victims of the conflict and instead contemplated that the funds would be used for 'relief programmes for categories of victims'.[62] To date, no such programmes have been implemented and neither party has paid the awarded amounts.[63]

Evidential basis

31. In terms of evidential proof for claims there can be a range of burden of proofs placed on claimants depending on the amount demanded and the violation. The ICC in the *Lubanga* case recognised that the burden of proof is 'fundamentally different nature' in reparation proceedings from criminal proceedings and the potential 'difficulty victims may face in obtaining evidence'; as such their claims should be assessed on the balance of probabilities.[64] In situations involving large numbers of victims both the IACtHR and the European Court of Human Rights (ECtHR) have relaxed the burden of proof for harm suffered. In cases of destruction of homes and properties by security forces in Turkey for example, the ECtHR assumed the existence of pecuniary damage when documentary evidence was lacking, awarding damages that were necessarily 'speculative and based on the principles of equity.'[65] Local market values have for

[60] EECC Rules of Procedure, October 2011, http://www.pca-cpa.org/showpage.asp?pag_id=1151 arts 30–32.
[61] M. Henzelin, V. Heiskanen and A. Romanetti, Reparations for Historical Wrongs: From ad hoc Mass Claims Programs to an International Framework Programs? 2 *Uluslararasi Suçlar ve Tarih* (2006) p.311.
[62] Eritrea-Ethiopia Claims Commission, Decision No. 8 (Relief to War Victims), 27 July 2007, [5].
[63] Murphy, Kidane and Snider, p.408.
[64] Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, ICC-01/04-01/06-3129-AnxA, para.22.
[65] *Selçuk and Asker v Turkey*, Judgement of 24 April 1998, Rep. 1998-II, 915 para.106.

example been used to determine the size of the award.[66] For personal harm both the IACtHR and the ECtHR have chosen not to impose a high evidential burden on victims, on the basis that it is reasonable to assume that anyone subjected to abuses that amount to gross violations of human rights and humanitarian law will experience moral suffering.[67]

32. In other contexts this has included evidential presumptions that victims' claims for certain reparations would be accepted on the grounds of 'good faith' subject to verification by the state administrative body.[68] Before certain reparation bodies identification by two credible witnesses' statements was deemed necessary to support victims' claims on harm and identification.[69] The Inter-American Court of Human Rights in dealing with reparation claims after conflict has taken a relaxed burden of proof, finding that such claims are 'not subject to the same formalities as domestic judicial actions' and the court pays 'special attention to the circumstances of the specific case and taking into account the limits imposed by the respect to legal security and the procedural balance of the parties.'[70]

33. Most claims commissions have used a relaxed burden of proof, with the parties cooperating in gathering evidence to reduce the evidential burden on the claimant.[71] The UN Claims Commission for the Iraqi invasion of Kuwait took a flexible approach requiring claimants to provide 'simply' documentation on the proof of the fact and the date of injury or death, i.e. *prima facia* proof.[72] For those claiming for property damage up to $100,000 they had to be 'supported by documentary and other appropriate

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[66] Heidy Rombouts, Pietro Sardaro and Stef Vandeginste, The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights, in Koen de Feyter, Stephan Parmentier, Marc Bossuyt, and Paul Lemmens (eds) *Out of the Ashes: Reparation for Victims of Gross Human Rights Violations*, Intersentia (2006), p386.
[67] Ibid, p383.
[68] In Colombia see Artículo 5, Ley de 1448/2011.
[69] Carla Ferstman and Mariana Goetz, Reparations before the International Criminal Court: The Early Jurisprudence on Victim Participation and its Impact on Future Reparations Proceedings, in C. Ferstman, M. Goetz, and A. Stephens (eds), *Reparations for Victims of Genocide, Crimes Against Humanity and War Crimes: Systems in Place and Systems in the Making* (Martinus Nijhoff 2009), 313–350, p323. *Uganda Situation*, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 of 10 August 2007, ICC-02/04-101, 10 August 2007, para.14.
[70] *Miguel Castro Castro Prison v Peru*, Merits, Reparations and Costs. Judgment 25 November 2006, Series C No.160 (IACtHR), para.184.
[71] Property, Restitution and Compensation: Practices and Experiences of Claims Programmes, IOM (2008), p26.
[72] Recommendations made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims), S/AC.26/1994/1 26 May 1994, at 34-5. Article 35(2)(b), UNCC Rules.

evidence sufficient to demonstrate the circumstances and the amount of the claimed loss', i.e. on the higher evidential burden of a balance of probabilities.[73] The Holocaust claims process a relaxed standard of proof of 'plausibility' that claimants were entitled to the dormant bank accounts, taking into account the destruction of the Second World War and the Holocaust, as well as the long passage of time.[74]

34. As thousands of Iturians were displaced or made refugees in neighbouring countries, many individuals are likely to have lost their identification, have insufficient medical records, or be unable to provide other evidence to support their claims for reparations. To require victims to supply such evidence may exclude most victims, in particular impoverished and rural victims who cannot afford to travel to the regional capital to have new documents issued. The government has a responsibility to provide displaced individuals with new documentation.[75] Consideration will need to be made on how personal identifying information of victims can be securely held and if it needs to be verified or shared with other bodies, who may be responsible for delivering services, such as healthcare.

Outreach

35. Reparations should be based on principles of remedying and acknowledging the harm caused in a non-discriminatory, victim-centred manner. Reparations can only be effectively delivered on a national level where there are sufficient guarantees of peace and security. Reparations can play an important part in establishing a human rights-based culture and rebuilding the social fabric amongst individuals and communities, as well as civic trust in the state.[76] Such efforts have to be complemented with wider efforts to deal with the past and the root causes of violence, including issues such as power sharing and constitutional and administrative governance reform. Reparations have to be part of a broader, coordinated transitional justice process, that collectively seek to prevent victimisation going unaddressed and grievances festering to cause future social disruption and potentially violence.

[73] Article 35(2)(c), UNCC Rules.
[74] Article 22, Rules of Procedure for The Claims Resolution Process Adopted on October 15, 1997 by the Board of Trustees of the Independent Claims Resolution Foundation.
[75] Article 13(2), African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009.
[76] See Lisa Magarrell, Reparations for massive or widespread human rights violations: Sorting out claims for reparations and social justice, *Windsor Yearbook of Access to Justice* 22(1) (2003), 85–98.

36. Any agreed or ordered reparation programme should take a gender-inclusive approach to reparations at the design, access and implementation stages.[77] Women and girls can suffer harm differently from men and boys. Wider social inequalities can disproportionately compound the suffering of women and girls, such as being subjected to sexual and domestic violence, being forced to abandon their education or career to care for their family after parents or a spouse is killed or seriously injured, suffering loss of income, or being left to search for the remains of loved ones and to demand justice.[78] Girls and women can also have distinct reparation preferences from their male counterparts, such as prioritising healthcare over compensation. It may be appropriate for the DRC government to adopt certain bespoke reparations based on gender. Reparations as such should also be gender-sensitive in content and delivery. Attention should also be paid to conflict-related sexual violence and efforts to provide an inter-disciplinary approach to responding to the harms caused to the physical, psychological health and dignity of such victims.

37. A reparation programme for Ituri should consider the needs and interests of youth, who have been disproportionately affected by the conflict, not only through their direct victimisation and coercion to join armed groups, which has meant they have lost out in education and job opportunities later on, but also from the transgenerational impact of harm caused to their family, which can result in psychological trauma.[79] It may be that interim or prioritized reparations are made to vulnerable victims, such as those who have suffered sexual violence, children, disabled or elderly to help mitigate early on their harm.[80] Prioritisation can take the form of paying interim relief payments, as in Nepal and Sierra Leone, or fast tracking their applications.[81] That said the experience of Nepal and Sierra Leone has been that interim relief was not followed up with reparations to

[77] See Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparations 2007; and Reparations for Conflict-Related Sexual Violence, UN Guidance Note of the Secretary-General, June 2014.
[78] Ruth Rubin-Marín, A Gender and Reparations Taxonomy, R. Rubin-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, (CUP 2009), 1-17, p2.
[79] See such an approach in Northern Ireland - Transgenerational Trauma: Dealing with the Past in Northern Ireland, WAVE Trauma Centre, March 2014; and in Peru Article 7(c), Reglamento de la Ley Nº 28592, Ley Que Crea El Plan Integral de Reparaciones (PIR), Decreto Supremo Nº 015-2006-JUS.
[80] Such as in Sierra Leone - See Mohamad Suma and Cristián Correa, Report and Proposals for the Implementation of Reparations in Sierra Leone, ICTJ (2009); and in Tunisia - Article 12, Organic Law on Establishing and Organizing Transitional Justice 2013.
[81] Section 16, Agreement between the Federal Republic of Germany and the State of Israel 1952.

respond to victims' harm and excluded a number of groups of victims from benefiting from the interim relief payments.

38. Victims should be participants in the design, process and assessment of outcomes in any agreed reparations framework. This is not only to recognise their rights to a remedy and to make them effective, but also to calibrate measures to be appropriate and effective, as well as to give the reparation programme legitimacy.[82] As such a reparation programme needs to engage with and consult victims, victim associations and civil society on what reparations should look like, so that they adequately and appropriately respond to their needs.[83] This may require some sensitisation on what reparations means in international law and the practices of other jurisdictions. The UN Mapping Report suggests that at a minimum consultation on reparations should include, 'the scope of application of any reparation programme, the types of reparation to be granted, procedures for carrying out the programme and the utility of an emergency programme.'[84] Civil society and donors could play an important role in improving the reach of the state in these consultation efforts across the country, particularly given the size of the country and poor infrastructure. A range of mediums should be used, such as community mobilization events, radio broadcasts, SMS messaging, and newspaper notices. Engagements with victims, victim associations and affected communities should be made in accessible and understandable terms, including in local languages and using mediums such as visual representations and storytelling where appropriate for those who are illiterate. Consultations and participation of victims in the design of reparations should make a special effort to ensure that women, children, elderly and those who are disabled are able to contribute to the process and have their views and concerns heard and considered. Particular attention and provision should be paid to victims of sexual violence and torture, who may feel stigmatized, socially excluded or psychological harmed, such as private, discreet forums.

39. Many mass claims processes generally do not conduct formal consultation with prospective parties concerning the planning of the organisation and procedures of the respective claims processes. However in some cases, recommendations of claimants

[82] UN Mapping Report para.1090.
[83] See Principle 32, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.
[84] UN Mapping Report, para.1099.

were expressed informally.[85] In the Iran-US CT, the two Government parties were involved in the initial planning, although representatives of the private claimants did not directly participate, some in the US presented their recommendations and views to the US Government. It is unlikely this structure would be successful due to the circumstances existing in the DRC; many rural communities were affected by violations and without adequate infrastructure to enable communication through individual petitions to the state, a national programme responsible for directly engaging with victims would be more effective.

40. The Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I) enabled the representatives of the largest group of potential claimants to take part in the planning and implementation of CRT-I. The Memorandum of Understanding between the World Jewish Restitution Organisation, the World Jewish Congress and the Swiss Bankers Association resulted in the formation of an Independent Committee of Eminent Persons that included officials of these organisations. Inasmuch as the same procedures governed all claimants equally, the participation in the planning process of a representative of the largest group of potential claimants effectively provided a voice for other claimants as well.[86] However, it is suggested that this process must be careful in ensuring all victims' views are equally represented in order to prevent further marginalisation or stigmatisation. It is important that efforts be made to make the process accessible for all victims, by adequately identifying the legal, cultural, economic, religious and other obstacles that victims encounter, as well as their concerns.[87] Particular efforts should be made to engage previously marginalise groups such as women and girls, minority communities, child victims and refugees.

41. A mass claims process has little practical value unless the potential claimants are aware of the opportunity to make claims and are given information on how to do so.[88] Outreach can be targeted if all of the claimants are expected to be from the same region and when claims arise from relatively recent events such as those dealt with by the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina or the Housing and Property Claims Commission in Kosovo; as these Commissions dealt only with property and housing claims outreach could be more

[85] International Mass Claims Processes n.35, p.91
[86] Ibid p.92
[87] UN Submission, para.26.
[88] International Mass Claims Process n.35, p.141.

targeted. However, outreach can be much more complex when dealing with claims arising from long past events and the heirs of victims; this will most likely be the situation in the DRC due to the commission of these violations occurring between 1998 and 2003. The credibility of the Claims Process depends on the public perception that the effort to find potential claimants has been vigorous and sincere.[89]

42. In the UNCC only governments or international organisations were permitted to submit claims, except in very limited circumstances. Governments generally obtained and disseminated information on UNCC categories of claims within their own countries whilst some utilised existing governmental mechanisms. With regard to refugees and potential stateless claimants – in particular Palestinians – who were not able to have claims submitted through their governments, various international organisations engaged in outreach programmes, and numerous UN offices submitted claims for claimants where no government was able to do so.[90] It is proposed that in the present case, the ICJ should appreciate and utilise the role of NGOs in the DRC and their potential assistance in reaching out to victims/claimants. For the German Forced Labour Compensation Programme, the International Organisation for Migration ran several extensive and comprehensive information campaigns, using its worldwide network of field officers, and employing a whole range of techniques, including public service announcements, posters, brochures, press releases, newspaper advertisements, radio spots, press conferences, and they also maintained a special website with relevant information and documents.[91] This multiple format and transnational approach to outreach is particularly important in relation to displaced people given the movement of people following the Congolese conflicts.

43. It is suggested that the structure utilised in the creation of the UN Mapping Report by the Office of the High Commissioner of Human Rights in August 2010 offers a model that could be used to facilitate victim participation and outreach. Between October 2008 and May 2009, a total of 33 staff worked on the report; of these, some 20 human rights officers were deployed across the country, operating out of five field offices, to gather documents and information from witnesses.[92] Field mapping teams met with over 1,280

[89] Ibid p.142.
[90] UNCC Governing Council Decision 5 of 18 October 1991, *Guidelines relating to paragraph 19 of the Criteria for Expedited Processing of Urgent Claims* UN Doc S/AC.26/1991/5 (23 October 1991).
[91] International Mass Claims Processes, n.35, p.146
[92] UNHR, 'What is the "DRC Mapping Exercise?" – Objectives, methodology and time frame' (2010).

witnesses to corroborate or invalidate the violations listed in the chronology.[93] Further, contacts were established with Congolese NGOs in order to obtain information, documents and reports on serious violations of human rights and international humanitarian law that occurred in the DRC during the ten year period.[94] It is proposed that this structure and network could offer the opportunity of engaging directly with victims and obtaining their views on reparations and a claims process. By collaborating with NGOs in this area, who have operated in the DRC through the worst of the violence, further insight could be gained into the necessity of certain reparations programmes, specifically collective reparations, and whether this could be meaningful to the communities affected. Similarly, the techniques mentioned above utilised by the International Organisation for Migration, could operate out of the field offices which were established for the Mapping Report with assistance from NGOs in the area.

44. As seen in previous mass claims processes, there will often be NGOs and advocates' groups that wish to assist victims in gaining access to the Process and receiving fair treatment by it.[95] It is proposed that designers in this instance should consider procedures that allow and regulate this form of participation as they can offer positive contribution to the Process including, *inter alia,* ensuring transparency, outreach to victims, and making claimants aware of their rights. Many previous mass claims processes have not availed of specific mechanisms enabling victims to have a voice in proceedings; some have instead opted to receive submissions from various bodies regarding funds as seen in the Holocaust Victim Assets Programme and the Claims Resolution Tribunal (CRT-II). As seen at the EECC, various international aid organisations and advocacy groups in the afflicted region provided information and assistance to the two governments, but not to the Commission directly.[96] Due to the ongoing human rights issues in the DRC and Uganda, it is suggested that a commission would be better placed to receive information from these groups and organisations in this regard. In the present case of the DRC and Uganda, a mass claims process would benefit from the creation of a specific mechanism to facilitate the voice of victims whether through NGOs, advocates or through the participation of victims themselves, for example as seen at the Extraordinary Chambers of the Courts of Cambodia (ECCC),

[93] Mapping Report, para.10.
[94] Ibid para.11.
[95] International Mass Claims Process n.35, p.272.
[96] Ibid p.276.

which enabled victims to participate in proceedings as civil parties. Further, the acknowledgement of a right to participate as a party has been described as 'valuable reparation' by a lawyer acting on behalf of victims participating as Civil Parties at the ECCC.[97]

45. Various mass processing techniques have been developed in modern Mass Claims Processes contributing to the efficiency of the process. Among these are the extensive use of large-scale computerisation,[98] which can facilitate the verification and evaluation of thousands of individual claims through computerised matching and advanced techniques, such as sampling and statistical modelling. For instance, the UNCC used a large database to store all relevant data pertaining to the claims before it and to perform a number of statistical operations.[99] Besides speeding up the management of the process, computer technology also facilitates the grouping of claims, which permits mass claims processes to identify and resolve common issues in a single decision applicable to an entire group of claims, without having to resort to case-by-case adjudication.[100] This method allows collective participation and provides greater efficiency to the process; however, it remains crucial that victims are able to voice their opinions and views, assisting in the creation of an effective reparation programme.

46. Victims, their relatives and the public should have access to easily obtainable, in relevant languages and concise information on the transitional justice processes and progress. The state is responsible for disseminating information to victims and the general public on 'all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.'[101] Engagement with victims should be a 'two-way communication … to conduct interactive activities, to listen to victims and respond to what they are saying, and to take into account victims' concerns'.[102] The Office of the High Commissioner for Human Rights as stated that 'national consultations are a form of vigorous and respectful dialogue whereby the

[97] *Co-Prosecutors v. Kaing Guek Eav*, alias Duch, Case No. 001/18-07-2007/ECCC/TC, Transcript of Trial Day 73, 23 November 2009, para.80.
[98] See V. Heiskanen, Innovations in Mass Claims Dispute Resolution: Speeding the Resolution of Mass Claims Using Information Technology, *Dispute Resolution Journal* 58(3) (2003) 79-84, p.80.
[99] N. Wühler, The United Nations Compensation Commission' in Permanent Court of Arbitration, *Institutional and Procedural Aspects of Mass Claims Settlement Systems* (Kluwer Law International 2000), p.20
[100] Heiskanen n.98, p.81
[101] Principle 24, 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, A/RES/60/147, 16 December 2005, (UNBPG).
[102] ICC Strategy in Relation to Victims 2009, ICC-ASP/8/45, para.22.

consulted parties are given the space to express themselves freely, in a secure environment, with a view to shaping or enhancing the design of transitional justice programmes.'[103]

47. As such consultations are not PR exercises and are distinct from outreach, which aim to sensitise affected communities. Once institutions are legislated for, set up and operational, outreach to affected communities is key. The United Nations Secretary General notes the importance of outreach in ensuring the impact and sustainability of transitional justice institutions so that they are clearly understood and coherently communicated.[104] Effective consultation also can contribute to the collective dimension of the right to truth for society and not just victims to be aware of the consequences of the conflict and the need to redress the suffering of those most affected.[105]

Forms of Reparation

48. Reparations can take the form of restitution, rehabilitation, compensation, measures of satisfaction and guarantees of non-repetition.[106] These measures are intended to be used together to comprehensively respond to victims' harm.[107] For instance in Chile, the National Corporation of Reparation and Reconciliation provided the children of those who had been disappeared a pension, as well as military service waivers and education support, including university fees and expenses.[108] It is noted that 'rehabilitation' is generally not recognised as an appropriate form of reparations in public international law, given its focus on remedying breaches of obligations between states.[109] However, as Uganda is liable for causing international human rights and international

[103] National consultations on transitional justice, Rule-of-Law Tools for Post-Conflict States, (2009), p3.
[104] Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, March 2010, p10.
[105] See *Youth Initiative for Human Rights v. Serbia*, (Application No. 48135/06), 25 June 2013; and *Magyar Helsinki Bizottság v Hungary*, (Application No. 18030/11, 8 November 2016.
[106] Principles 19-23, UN Basic Principles; and Article 34 Responsibility of States for Internationally Wrongful Acts (2001).
[107] *Plan de Sánchez Massacre v Guatemala*, para. 93; and Dinah Shelton, *Remedies in International Human Rights Law,* Oxford University Press, (2006), p8. See Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014.
[108] Law 19.123, 8 February 1992; educational scholarships were made transferrable to grandchildren under Law 20.405, 10 December 2009.
[109] See Article 34, ILC Responsibility of States for Internationally Wrongful Acts (RSIWA), Yearbook of the International Law Commission (2001), vol. II (Part 2).

humanitarian law violations to individuals in Ituri, it is important that any reparation package consider their needs for medical, social and legal rehabilitation.

Individual and collective measures

49. While reparations should be comprehensive in the measures it offers, they should be attuned to the individual and collective harm caused by gross violations of human rights and grave breaches of international humanitarian law. Individual reparation allow the victims to regain their self-sufficiency and to make decisions for themselves on the basis of their needs.[110] The Truth and Reconciliation Commission of South Africa stated that 'the individual reparation grant provides resources to victims in an effort to restore their dignity.'[111]

50. The UNCC allowed claims for individuals submitted on their behalf by governments or other recognised entities. Similarly, the Luxembourg Agreements of 1952, established two protocols to compensate victims of the Nazi regime. Protocol I called for the enactment of laws that would compensate Nazi victims directly for indemnification and restitution claims arising from Nazi Persecution; whilst Protocol II allocated funds to the Claims Conference to be used for the benefit of victims according to the urgency of their needs, the principles and priorities determined by the Conference and in principle for the benefit of those living outside Israel.[112]

51. Individual reparations allow for direct benefits to victims of gross and serious violations and can be useful in allowing the prioritisation of implementation of the reparations, particularly in regards to the elderly and other victims with demonstrably urgent need. The German Forced Labour Compensation Programme administered by the International Organisation for Migration allowed priority to be given to the processing of claims by actual victims rather than those by heirs or descendants, as victims are often elderly and in urgent need of assistance.[113] This will be particularly crucial in the present case given the lapse of time between the judgment and these reparations proceedings. The needs of victims and families will most have become more acute due to the passing of time; this could be remedied by the effective and fast implementation

[110] Annex 1 to the Registry Report of 16 December 2014, ICC-01/04-01/07-3512-Conf-Exp-Anx1, para.68; HRC and TIJ Submission of 14 May 2015, ICC-01/04-01/07-3551, para.29.
[111] Report of the South African Truth and Reconciliation Commission, Cape Town, 1998, V, para. 68.
[112] Karen Heilig, From the Luxembourg Agreement to Today: Representing a People, *Berkeley Journal of International Law* (2002) 20(1) 176-196, p.180.
[113] Howard M Holtzmann and Edda Kristjánsdóttir, *International Mass Claims Processes: Legal and Practical Perspectives,* OUP (2007), p.65.

of individual reparations, allowing victims to address their most urgent needs as they see fit. Collective reparations encompasses measures provided to groups or communities of individuals who due to their cultural, economic or social bonds have been subjects to collective harm.[114]

52. The conflict in Ituri did not just harm individuals, but also ruptured family, clan and community social fabric, any reparation programme that is to be established should consider collective reparations to respond to this collective harm. Collective reparations are meant to provide 'benefits conferred on collectives in order to undo the collective harm that has been caused as a consequence of a violation of international law.'[115] Collective reparations can include the collective delivery of victim-focused services, such as to child soldiers, as well as symbolic measures, such as memorials or apologies to a community for a massacre. Collective reparations are distinguishable from general economic development to war affected areas, by being responsive to victimised groups' suffering and acknowledging such harm by a responsible actor. Providing collective reparations alongside individual measures such as compensation may help to broaden benefits and inclusion of affected communities in the reparation process.

53. Collective reparations may benefit a group, including an ethnic, racial, social, political or religious group which predated the crime, but also any other group bound by collective harm and suffering as a consequence of the crimes of the convicted person.[116] For example, the Peruvian reparations process considered certain groups of people as beneficiaries of the collective reparations programme; one category included peasant communities, indigenous populations and villages affected by the conflict while the second category refers to non-returning displaced people from affected communities.[117] In Colombia, the programme initiated collective reparations pilot programme in a limited number of communities affected by conflict, selecting the communities according to the impact of the violence and on the basis of cultural, ethnic, geographic and socioeconomic diversity.[118] In Peru the collective reparations programme focused on communities most affected by the conflict, providing funding for infrastructure,

[114] *Prosecutor v Katanga,* United Nations Joint Submission on Reparations, ICC-01/04-01/07, 14 May 2015, para.19; and see The Rabat Report: The Concept and Challenges of Collective Reparations, ICTJ (February 2009).
[115] Friedrich Rosenfeld, Collective reparation for victims of armed conflict, *International Review of the Red Cross* 92(879), September 2010, 731-746, p732.
[116] *Katanga* Reparations, para.274.
[117] The Rabat Report, p.42.
[118] Ibid.

livestock and irrigation projects, but these were politicised at times and reduced over a number of years, as well as blurring the line between reparations and development.[119]

54. Collective reparations can also be formulated as a way of simplifying delivery of reparations either in the contexts of practical limitations or of concerns about drawing too stark a line between classes of victims or between victims and non-victims' groups. Collective reparations avoid the potentially disruptive effect individual payments can have on communities.[120] The UN Mapping Report found, in conjunction with the volume of incidents during this period, the conflicts of 1998 to 2000 included at least eight national armies and 21 irregular armed groups. Therefore, during the time period of Uganda's acknowledged violations, various other incidents were also happening creating victims and devastation across the DRC. Individual reparations risk creating a hierarchy of victims due to only specific victims of Uganda's violations benefitting from reparations or compensation. This could result in resentment within communities and risks marginalising a class of victims. Reparations should avoid any practices which may be discriminatory, exclusive or deny victims equal access to their rights.[121] Efforts must also be made to ensure that reparations do not create stigma, discrimination or ostracise victims, and do not further expose victims or put them at risk by identifying them.[122]

55. The EECC favoured granting reparation in the form of compensation; however in the area of awarding reparation for victims of rape, the Commission awarded both Eritrea and Ethiopia $2,000,000 in damages expressing the hope that both States will use the funds awarded to develop and support health programmes for women and girls in the affected areas. The effectiveness of this measure is questioned. To date, it appears no payments have been made to victims following the EECC and a report by UN Women in Ethiopia found there are currently only an estimated 12 shelters which provide rehabilitation and reintegration services for women and girl survivors of violence,

[119] Cristián Correa, *Reparations in Peru: From Recommendations to Implementation*, ICTJ (2013) p11-13.
[120] Lisa Magarrell, *Reparations in Theory and Practice, Reparative Justice Series*, International Center for Transitional Justice (2007) p5-6.
[121] *Lubanga* Reparations, para.47.
[122] UN Submission, para.39.

> Many [women and girl survivors of violence] are left with many psycho-social needs that often go unmet because of limited resources to support their rehabilitation and reintegration.[123]

It should be noted that this report was issued in 2016, seven years following the EECC's final award. It is proposed that rather than hoping States will utilise compensation in this way, the Court should explicitly state the structure and implementation of collective reparations.

56. The Chamber in *Katanga*, regarded collective reparations as appropriate to the case in that they would address shared needs and the complexity of the suffering of various victims; collective reparations could foster reconciliation.[124] Further, collective reparations may fill the gap where individual reparations will not completely redress the harm suffered by all the victims of mass crimes or their community.[125] These gaps can be the transgenerational impact of the conflict, which will be increasingly relevant given the lapse in time, the loss of opportunities and the effect on economy and industry. The concept of reparations could change over time in any society and policymakers should have to consider the effects of harm on victims changing situations and the intergenerational transmission of harm on the descendants of the primary victims.[126] As seen in the Liberia, the Truth and Reconciliation Commission recommended a reparation programme which would span a 30 year implementation period including direct victim support programmes and the creation of a compulsory free education programme which must operate for at least 30 years.[127] As highlighted by the Chamber in *Lubanga,* reparations need to support programmes that are self-sustaining, in order to enable victims, their families and communities to benefit from these measures over an extended period of time.[128]

57. Given the financial and practical challenges to assessing each individual and repairing fully their harm, material reparation measures must have some symbolic component to give them meaning beyond their material impact.[129] Such symbolic measures should not be 'hollow', in allowing all activity to respond to victims' needs or assist them is

[123] Shelters for Women and Girls who are Survivors of Violence in Ethiopia, UN Women (2016), p.VI.
[124] *Katanga* Reparations, para.289.
[125] UN Submission, para.22.
[126] The Rabat Report, p.41.
[127] Republic of Liberia Truth and Reconciliation Commission, Volume II: Consolidated Final Report (30 June 2009), herein known as 'TRC Liberia', [17.0].
[128] *Lubanga* Reparations para.48.
[129] The Rabat Report, p.50.

labelled reparation, as this risks diluting victims' rights and the meaning of such measures.[130] In the *Katanga* case, victims were very clear that they did not want symbolic or collective measures as similar programmes had been run by NGOs and international organisations in the past and to award them as reparations would be unsuitable, pointless or have the potential to cause unrest.[131]

58. Collective reparations can be an effective means of planning for the future and ensuring victims, and communities, are supported throughout their lives by practical means such as access to education, economic programmes and programmes for empowerment.[132] As seen in the German Reparations to Israel and Victims of the Holocaust, during the first phase of the Claims Conference expenditure, 76% of the funds allocated were used for the relief, rehabilitation and resettlement of Nazi victims, 20% of funds were used for cultural and educational reconstruction, 1.5% for the legislative programmes of the Claim Conference and 2.5% for administration.[133] Projects included educational institutions, community and youth centres, homes of the age, children's homes, summer camps and medical institutions.[134] Similarly, the Truth and Reconciliation Commission of Liberia recommended reparation in the form of psychosocial, physical, therapeutic, counselling, medical, mental health and other health related services for all physically challenged individuals who were incapacitated as a consequence of the civil war to rehabilitate them in returning to normal live utilising the full potentials of other human resources.[135] These collective reparations operate to benefit an entire community of people recovering from conflict whilst also focusing on the individual needs of victims through specialised services.

59. Therefore, individual and collective reparations can complement each other to address gross and serious violations of international human rights law and international humanitarian law. The Inter-American Court, the African Commission on Human and People's Rights and the Court of Justice of the Economic Community of West African States have often ordered the simultaneous implementation of collective and individual

[130] The Rabat Report, p.59.
[131] ICC-01/04-01/07-3728-tENG, para.301.
[132] See TRC Liberia, [17.3].
[133] Conference on Jewish Material Claims against Germany, *Twenty Years Later: Activities of the Conference on Jewish Material Claims Against Germany 1952-1972* (New York 1973) p.11.
[134] Jewish Virtual Library, 'Conference on Jewish Material Claims Against Germany', (2008) https://www.jewishvirtuallibrary.org/conference-on-jewish-material-claims-against-germany accessed 12th March 2019.
[135] TRC Liberia, [17.1].

reparations.[136] Crucially, collective reparations must, to the utmost, address the victims as individuals.[137]

60. Given the passage of time, the lack of basic services during the conflict to mitigate initial harm and continuing economic and social marginalisation of many victims, collective measures through specialist services to victims may help to alleviate their continuing vulnerability.[138]

Restitution

61. Restitution seeks to 're-establish the situation that existed before [a] violation occurred'.[139] It is a means to reconstitute the legal equilibrium after the loss or damage to property or rights.[140] Restitution can take the form of returning property, rights/benefits, or a position to an injured party, such as the restoration of their employment rights or liberty.[141] With gross violations of human rights or grave beaches of international humanitarian law, *restitutio in integrum* to the *status quo ante* may be 'impossible, insufficient, and inadequate'.[142]The experience in Colombia and South Africa show that land restitution after mass violence is incredibly difficult to implement, especially in the former case were violence in certain areas is ongoing.[143] While Uganda no longer occupies Ituri, there may be grounds for restitution of natural resources or their value in kind, discussed further below, as a means of restitution. That said given the scale of violations and the passage of time, it may be more feasible, and therefore more proportionate and materially possible, to provide compensation in lieu of restitution.[144]

[136] *Prosecutor v Katanga,* Redress Trust Observations, ICC-01/04-01/06-3554, 15 May 2015 paras.17 and 29.
[137] *Katanga* Reparations Order, para.294.
[138] Manirabona and Wemmers, p980.
[139] Shelton, p. 272; see Principles 8–11, UN Victims' Declaration, and Principle 19, UNBPG.
[140] Factory at Chorzów, Merits, p. 47; and Article 35, Responsibility of States for Internationally Wrongful Acts, ILC 2001.
[141] Pablo de Greiff, Justice and Reparations, in P. de Greiff (ed.), *Handbook of Reparations*, (OUP 2006) 451-477, p.453.
[142] *Blake v Guatemala,* para.42.
[143] Bernadette Atuahene, *We Want What's Ours: Learning from South Africa's Land Restitution Process*, (Oxford University Press, 2014); and Jemima García-Godos and Henrik Wiig, Ideals and Realities of Restitution: the Colombian Land Restitution Programme, *Journal of Human Rights Practice*, 10(1) (2018), 40–57.
[144] Article 35(a) and (b).

Compensation

62. In the *Factory at Chorzów* case, the ICJ stated that when restitution is not possible, there should be payment of a sum corresponding to the value which restitution in kind would bear.[145] Therefore, compensation is ordered when damages exist that cannot be redressed by restitution alone. As stated by Crawford, '…awards of compensation encompass material losses (loss of earnings, pensions, medical expenses) and non-material damage (pain and suffering, mental anguish, humiliation, loss of enjoyment of life and loss of companionship or consortium), the latter usually quantified on the basis of an equitable assessment.'[146] This aspect has been construed in some areas as compensation for moral damages.

63. The Eritrea-Ethiopian Claims Commission (EECC) expressly rejected the claim for moral damages on the basis that they are difficult to quantify and limit. In particular, this concept cannot be reasonably expanded to situations involving claimed moral injury to whole populations of large areas.[147] The EECC relied heavily upon evidentiary standards, seeking to quantify and measure harm, therefore they rejected the abstract claims of moral damages. It is submitted that in choosing this approach, we should question what the purpose of reparation is. Arguably, they are purely to restore the situation to its previous standing or, conversely it can be said that the international customary law is moving towards a greater recognition of the emotional suffering caused by the actions of States and the effects of conflict beyond that of purely physical harm.

64. In terms of compensation this can take the form of one off payment of a lump-sum, periodic or pension payments,[148] micro-financing[149] or even a top-up for collective measures, such as housing or education.[150] Compensation can be more discreet than collective measures, given ongoing insecurity; it can make use of technology, such as

[145] *Factory at Chorzów*.
[146] Text of Draft Articles on State Responsibility with commentaries by the special rapporteur John Crawford adopted by the ILC at its 53rd Session, 2001, herein known 'Commentaries'.
[147] Christian Tomuschat, *Reparations in Favour of Individual Victims of Gross Violations of Human Rights and International Humanitarian Law* in Promoting Justice, Human Rights and Conflict Resolution through International Law, p.584.
[148] As in Chile, see Elizabeth Lira, The Reparation Policy for Human Rights Violations in Chile, in P. de Greiff, *Handbook of Reparations,* OUP (2006), 55-101.
[149] See Anita Bernstein, Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary Reparations, in R. Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, Cambridge (2009) 291-323.
[150] *Prosecutor v Germain Katanga*, Draft implementation plan, ICC-01/04-01/07-3751-Red, 25 July 2017, para.102.

mobile banking. A symbolic amount to provide victims with some means to start a new life or to cover costs for education, may provide some remedy and acknowledgement of their suffering.

65. In South Africa, the Truth and Reconciliation Commission recommended that $2,700 be awarded for six years to victims of gross violations of human rights (namely killing, abduction, torture or severe ill-treatment) who came before it, but the government only made a single payment of less than $4,000.[151] In Colombia compensation for disappearance, murder, torture or sexual violence is calculated based on 30 or 40 monthly minimum salaries, depending on the seriousness of the harm ($6,218-$8,290).[152] In Argentina families of those disappeared were awarded a far larger amount of $224,000 USD based on the highest earnings of public employees, rather than the industrial accidents scheme, so as to distinguish their individual harm as intentional, wrongful acts.[153] In Peru a fixed rate of $3,700 USD was awarded to eligible victims who suffered harm that resulted in disability or from sexual violence connected to the conflict, with the same amount to be apportioned amongst next of kin of those killed or disappeared.[154] Regional and international courts have determined the appropriate amount of compensation based on discretionary amounts of 'equity' or what seems fair, not to enrich or impoverish the victim.[155]

66. It is important to note that the awarding of fixed sum compensation should be coupled with programmes which encourage and train victims to use community credit unions, known in the DRC as *Mutuelles de solidarité* (MUSOs) in order to remove obstacles such as lack of access to the formal banking sector and focusing the spending of the award on reasons related to the harm suffered.[156] Compensation could also b complement with material kits with tools, equipment or merchandise. Focus should be given to the elaboration and implementation of specific income-producing projects that can promote peaceful coexistence and mutually profitable economic relations between

[151] Promotion of National Unity and Reconciliation Act, No. 34 of 1995. TRC Vol.5, Chapter 5, at 184-6.
[152] Article 149, Decree 2800 of 2011.
[153] See José María Guemba, Economic Reparations for Grave Human Rights Violations The Argentinean Experience, in de Greiff (2006), 21-47.
[154] Supreme Decree No. 051-2011-PCM, 16 June 2011.
[155] *Garrido and Baigorria v Argentina*, Judgment, Series C No. 39, IACtHR, 27 August 1998, para.43; *Case of Varnava and Others v Turkey,* ECtHR, 18 September 2009, para.224; and *Prosecutor v Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG 17-08-2017, para.191.
[156] UN Submission para.41.

various groups.[157] This could be particularly useful when addressing DRC refugees in Uganda through encouraging economic collaboration between the two States and the rebuilding of communities to allow displaced people to return home which would operate in conjunction with new measures obligating Uganda to assist in capturing and ending impunity of armed groups in the region.

Rehabilitation

67. Rehabilitation is an essential part of repairing the person's integrity, dignity and sense of place. Rehabilitation is a type of restitution as it is the process of trying to reinstate an 'individual's full health and reputation after the trauma of a serious attack on one's physical and mental integrity . . . [so as to] restore what has been lost'.[158] The World Health Organisation defines rehabilitation as, 'the combined and co-ordinated use of medical, social, education and vocational measures for training or retraining the individual to the highest possible level of functional ability'.[159] As Judge Cançado Trindade stated rehabilitation is,

> 'intended to overcome the extreme vulnerability of victims, and to restore their identity and integrity. Rehabilitation of the victims mitigates their suffering and...helps the victims to recuperate their self-esteem and their capacity to live in harmony with others. Rehabilitation nourishes the victims' hope in a minimum of social justice.'[160]

68. Rehabilitation should also be freely provided to victims, including healthcare, social and legal support. Rehabilitation services for victims of murder should include the provision of 'medical services and healthcare, psychological, psychiatric and social assistance to support those suffering from grief and trauma; and any relevant legal and social services'.[161] Such support may include equipping public or NGO-run hospitals and health centres to provide psychological assistance to victims. Rehabilitation is vital for

[157] Ibid para.43.
[158] Shelton, p275; and Principle 21, UN Basic Principles.
[159] World Health Organisation, Expert Committee on Medical Rehabilitation, Second Report, Technical Report Series 419 (1968), p. 6, cited from Clara Sandoval, *Rehabilitation as a Form of Reparation under International Law*, Redress, December 2009, p8.
[160] Separate opinion of Judge Cançado Trindade in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, para.84-85.
[161] ICC-01/05-01/08-3399, para.42.

victims, as it often serves as a precondition for victims to benefit from other forms of reparations.[162]

Measures of Satisfaction

69. Reparations should also aim to provide symbolic measures to awaken society to the violations to occur so that they remember and victims' suffering is publicly acknowledged to prevent its repetition. Measures of satisfaction are supposed to reaffirm the victim's dignity and acknowledge their suffering.[163] They can also 'awaken […] public awareness to avoid repetition', and 'maintain remembrance of the victim'.[164] Symbolic measures can include memorials, apologies, acknowledgements of responsibility and memorial prayers as a 'communal process of remembering and commemorating the pain and victories of the past.'[165] Traditional rituals should be incorporated where appropriate to ensure social equilibrium and spiritually cleanse persons and land from the bloodshed.

70. Under public international law satisfaction as a form of reparation involves a variety of measures that endeavour to repair the moral damage of a state, i.e. the 'honour, dignity and prestige' caused by a violation or crime that cannot be redressed by restitution or compensation, due to its intangible and unquantifiable nature.[166] In inter-State adjudication, satisfaction has a rather exceptional character since it only emerges when restitution and compensation do not achieve full reparation and refers to injuries which are not financially assessable, which amount to an affront to the State.[167] Measures of satisfaction are therefore symbolic and include 'an acknowledgement of the breach, an expression of regret, [or] a formal apology', but must not be disproportionate to the injured or humiliating to the responsible state.[168] Satisfaction was utilised within the case of *Bosnia and Herzegovina v Serbia and Montenegro*; the Court could not prove the causal nexus between Serbia's violation of its obligation under the Genocide

[162] See Clara Sandoval, *Rehabilitation as a Form of Reparation under International Law*, (London, REDRESS, 2009).
[163] *Plan de Sánchez Massacre*, para. 93; Shelton, p. 78.
[164] Principle 22, UNBPG; 19 Tradesmen, paras 272–273; Myrna Mack-Chang, para. 286.
[165] Report of the South African Truth and Reconciliation Commission Report, Volume 5, Chapter 5, 175.
[166] Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded 9 July 1986 between the two states and which related to the problems arising from the Rainbow Warrior affair, 30 April 1990, UNRIAA, vol. XX, 215–284, pp. 267–273; Corfu Channel case; see ILC Commentary on RSIWA (A/56/10), 2001, p. 105; Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) [2002] ICJ Reports 3, para. 75.
[167] Article 37(1), RSIWA.
[168] Article 37(3), RSIWA.

Convention to prevent the genocide which took place at Srebrenica and the damage resulting from the genocide, therefore compensation was held to not be the appropriate form of reparation.[169] The ordering of satisfaction, without other forms of reparations can make such judgments appear empty for those most affected by such gross violations.

71. Satisfaction for gross violations of human rights has often required the responsible party to publicly acknowledge and apologies for their wrongdoing. Apologies should be a remorseful recognition by a responsible actor acknowledging and empathising with those who have suffered. McAlinden indicates that apologies usually contain the following elements: acknowledging the wrong; acceptance of their responsibility in that wrong; an expression of regret to victims for the harm caused; an assurance of non-repetition; and an offer of repair or corrective action.[170] Apologies can be distinguished from acknowledgements of responsibility by their contrite framing and gestures of such statements.[171] There are a number of factors that can make an apology successful in that it mainly satisfies victims: timeliness; explicit statements of apology and regret; an acceptance of personal responsibility; the avoidance of offensive explanations or excuses; sincerity; willingness to make amends; and promises to avoid future transgressions.[172]

72. Apologies need to be sincere and culturally relevant. In the *Katanga* case at the ICC the convicted person provided a recorded video where he apologies to the victims of the Bogoro massacre, as part of an assessment for reducing his sentence. However, the victims participating in the case rejected his apology. While the defence counsel did meet with the victims in Bogoro to discuss the apology, the victims remained unhappy with some feeling further traumatised by the meeting. There was a feeling amongst the victims that Mr Katanga's apology was not sincere and would not have been forthcoming without him benefiting through a reduced sentence. The legal

[169] *Bosnia and Herzegovina* para.462.
[170] See Anne-Marie McAlinden, Apologies and Institutional Abuse, 2018, p7 available at https://apologies-abuses-past.org.uk/outputs/reports/
[171] Federico Lenzerini, *Reparations for Indigenous Peoples: International and Comparative Perspectives* Oxford University Press, (2008), p119.
[172] See C. Ancarno, 'Press Representations of Successful Public Apologies in Britain and France,' 3 *University of Reading Language Studies Working Papers* (2011) 38; J. B. Hatch, Race and Reconciliation: Redressing Wounds of Injustice (Lexington Books, Plymouth, 2010), p189; M.R. Marrus, 'Official apologies and the quest for historical justice' 6 *Journal of Human Rights* (2007) 75; N Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*, (Stanford University Press, Stanford, 1991), p17; and M. Cunningham, Saying sorry: the politics of apology, 70 *The Political Quarterly* (1999) 285.

representative of the victims further presented testimony from a community leader in Bogoro on the traditional settlement of disputed by the Hema as,

> "According to our custom, when there is a conflict between two people they can sit down to discuss it; the first thing that we do is seek to make amends. The second stage is to bring people together to try to find a solution. Where Katanga is concerned, it is as if he is reversing the process. Personally, I do not agree with this back-to-front approach. People should first sit down, make amends, and then apologise. If someone has been hurt, the wound must be treated and, once the person is cured, forgiveness can be sought."[173]

As a result, despite Mr Katanga offering to meet with victims to offer a personal apology, it was rejected as insufficient in benefitting victims for the purposes of sentence reduction.[174] This example demonstrates the importance of sequencing in reparation measures, as well as appropriate consultation with victims of what the apology includes, when, who delivers it and where.

73. A notable difficulty in the aftermath of conflict is the remains or fate of those killed or missing continue to be unknown for families as 'ambiguous loss', unable to fully grieve for their loved one or provide the appropriate burial rites in the hope that they may still be alive.[175] Uganda could provide helpful intelligence and information on the location of battles, graves and remains that occurred during their occupation of Ituri that could assist in the recovery of these remains, in particular where GPS location was used. Organisations such as the ICRC and International Commission on Missing Persons may be able to act as a facilitator for such information or to help build the capacity of a domestic programme in the Congo. This commission could be provide an inter-state focus to the violence which has occurred in the DRC and Uganda, in particular the abduction of thousands of northern Ugandans by the LRA in part to north-eastern DRC, many of whom remain missing.[176] As a further measure of satisfaction Uganda should carry out effective investigations and prosecutions of those responsible for violations in Ituri, in particular for violations that amount to international crimes such as

[173] Legal Representative's observations on the reduction of sentence of Germain Katanga, 18 September 2015, ICC-01/04-01/07-3597-tENG, para.54.
[174] Decision on the review concerning reduction of sentence of Mr Germain Katanga, ICC-01/04-01/07-3615, 13 November 2015, paras.91-103.
[175] See Simon Robins, Ambiguous Loss in a Non-Western Context: Families of the Disappeared in Postconflict Nepal, *Family Relations* 59(3) (July 2010), 253-268.
[176] Luke Moffett, Uganda needs a body to recover 'missing persons', *Daily Monitor*, 16 October 2018.

disappearances, some of whom have already been implicated in the Iturian cases before the ICC.[177]

Guarantees of Non-Repetition

74. Guarantees of non-repetition are efforts by a responsible party to take measures to prevent the violation from reoccurring, for states this often involves institutional reforms and legislative amendments to improve governance, such as independence of the judiciary and civilian oversight of the military.[178] In international law guarantees of non-repetition (GNR) are meant to cease the breach and restore the legal situation affected by the violation, in that they 'serve a preventive function and may be described as a positive reinforcement of future performance'.[179] Mégret defines them as 'a commitment made by the State to never engage again in the practices that led to violations, backed by a number of reforms and restructuring initiatives to make good on that promise'. As de Grieff points out in comparison to truth, justice and reparations, guarantees of non-recurrence involve a function that can be satisfied by a broad range of measures.[180] The UN Impunity Principles justify the need for GNR 'to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions.'[181]

75. It should be noted that in 2012, the UN Security Council's Group of Experts for the DRC stated that despite the strong denials of Rwanda and Uganda, both supported M23 rebels in their fight against Congolese government troops. The Report states that Uganda allowed M23's political branch to operate from within Kampala.[182] Though this may not satisfy the strict criteria of use of force or military intervention, it can be construed as evidence that Uganda has not acknowledged, learnt or sought to completely rectify their previous violation. It is suggested, that in repairing the harm caused by Uganda's violation of the principles of non-force and non-intervention, Uganda must assist with operations in the area to combat the presence of rebel groups and work with the DRC to

[177] Thordis Ingadottir, The ICJ Armed Activity Case – Reflections on States' Obligation to Investigate and Prosecute Individuals for Serious Human Rights Violations and Grave Breaches of the Geneva Conventions, *Nordic Journal of International Law* 78 (2010) 581–598, p590.
[178] Moffett p175. UNBPG Principle 23.
[179] Yearbook of the International Law Commission 2001, 2(2), p88.
[180] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/30/42, 7 September 2015, para.23.
[181] Principle 35.
[182] UNSC 'Letter Dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the DRC addressed to the President of the Security Council' (15 November 2012) S/2012/843, p.6

bring perpetrators of international human rights and international humanitarian law violations to justice, cooperating fully with UN missions in the region.

Measures to respond to Conflict-Related Sexual Violence

76. Victims of sexual violence often face stigma from their family, community and society that disincentivises them from speaking out or punishes those who do so. Reparations programmes for such victims, who may also suffer other harms, should be astute to making such programme accessible and discrete in their delivery to minimize or avoid stigma. Victims may be unwilling to identify themselves as harmed from rape and may use alternative language, as evidenced in some applications to participate before the International Criminal Court, where victims used phrases such as "faire du mal" (doing harm) to identify sexual violence.[183]

77. A reparation programme should take a gender-inclusive approach to the process, design and implementation of reparations.[184] Women and girls can experience harm differently from men and boys resulting in 'gender specific injuries' which must be taken into consideration.[185] For instance, women and girls are at risk of pregnancy when they are subjected to sexual violence and are at a higher risk of obstetric complications in pregnant girls less than 15 years old. Furthermore, women's victimisation is situated within pre-existing social inequalities which disproportionately compound their suffering. These include social and employment discrimination, cultural conventions regarding women's honour and chastity, lack of access to land and property rights and exposure to intimate violence.[186] Men and boys, on the other hand, may suffer harm differently as a result of hyper-masculinity resulting in the destabilisation of gender and sexual identity.[187] The need for tailored intervention to address these gender-specific harms cannot be underestimated.

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[183] As highlighted by victims at the ICC in the *Bemba* case - Public redacted version of "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings", ICC-01/05-01/08-2247-Red, 19 July 2012, para.37 citing the Internal Report of the field interpreters, 29 November 2011, ICC-01/05-01/08-1960-Conf-Exp-Anx2.

[184] See Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation 2007; UN Guidance Note; Lubanga, ICC-01/04-01/06-3129, 3 March 2015, para.18.

[185] R. West, The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, *Wisconsin Women's Law Journal* 15(1) (2000) 149-215.

[186] Fionnuala Ní Aoláin, Catherine O'Rourke and Aisling Swaine, Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice, 28 *Harvard Human Rights Journal* (2015), 97–146, p102.

[187] See Philipp Schulz, The "ethical loneliness" of male sexual violence survivors in Northern Uganda: gendered reflections on silencing, *International Feminist Journal of Politics* 20(4) (2018), 583-601.

78. Public registration processes that openly categorise violations are likely to exclude many victims of sexual violence. In Timor Leste, the Commission for Reception, Truth and Reconciliation (CAVR) recommended that the categories of single mothers, widows and children born out of rape were used to provide reparation to victims of conflict-related sexual violence, under the assumption that they would be more willing to claim reparations if their harm was treated with some confidentiality.[188] In Sierra-Leone, the process of registration for reparations was sex-segregated; however, when women came together in large groups they were asked to publically identify the harm they had experienced.[189] As a result, many women registered as 'widows' as opposed to 'rape victim' due to the belief that they would receive support for their family and children as well as themselves. Consideration should be made to ensure safe and privacy spaces are available for victims of sexual violence to have their views and concerns heard. This may be through a trusted, neutral and discrete community workers, such as a health provider as part of regular health check ups, using appropriate coding and training.[190] We set out the types and modalities of reparations for rape under the sub-headings of: rehabilitation (physical and psychological); compensation; guarantees of non-repetition; and measures of satisfaction.

Rehabilitation

79. Rehabilitation of victims of rape would require a centralised hospital setting to address complex cases. This has the advantage of physicians maintaining competency by managing a minimum number of cases and facilitating acceptable medical standards (measured outcomes include but are not limited to; serious and frequently occurring complication rates, recurrence rates if applicable, patient satisfaction). Centralisation is pertinent to very specialized services where the strongest evidence exists, such as reconstructive and fistula surgery. Certain surgical or medical treatments require a partnership in their delivery to ensure the full extent of harms are realized and managed. For example, a 13 year old child diagnosed with a complex fistula may require colorectal and gynaecology surgical expertise, as well as specialized medical input such as from paediatrics and adolescent gynaecology. In this thread, centralisation enables a

[188] Chega!, The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste Report, Part 11: Recommendations, p.43.
[189] R. Rubio Marin, Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue, *William and Mary Journal of Women and the Law* (2012) 19(1) 69-104, p87.
[190] Sunneva Gilmore, Medico-legal reparations for conflict-related sexual violence, Working Paper 2019.

multi-disciplinary team to operate in unison and formulate a comprehensive care plan on discharge to aid a victim's transition into community life. Therefore a centralized rehabilitation programme for complex conditions arising from the acts of sexual and reproductive violence would in theory encourage a maximization of the reparation principle of munificence;[191] a centralized hospital with multiple disciplines under one roof is amenable to practically working in teams.

80. Technology may offer benefits in connecting services negating the need for victims to always attend a centralized hospital if it is not practically feasible or personally desired, as well as enabling follow up at more accessible healthcare centres in their locality. Centralized hospital attendance may only be required for the duration of a highly-specialised service that cannot be attained elsewhere or where there is only one regional expert. A mapping out of pre-existing public and private services, as well as participatory input from official medical organisations and specialist medical bodies (such as FIGO) will provide valuable insights on the reservoir of healthcare professionals and the facilities at their sites of medical practice. Victims may receive funding for transport links to healthcare centres and community crèche services for their dependents. Innovative strategies are required to encompass victims in rural areas. Using mobile units to provide visiting clinics to regional health centres, on an interval basis such as fortnightly, may pose a solution to poor follow up rates.[192] This continuity of care may reduce physical complication rates and help dispel the social stigma of attending larger specialised centres. Local services can be sustained to an extent by technology, such as the availability of an on call physician to answer queries and offer advice, victims can be informed of investigation results and consulted in care plans at a local centre and video-link or telephone consultations at a health centre. Electronic notes (via secured access) ensure teams are aware of progress at review meetings and may provide a useful synopsis from various professionals when a new specialist is asked to contribute to care. Inadequate access requires careful consideration and innovation, using existing links and formulating new sustainable health programmes.

81. The medical profession may require education and training in sensitive patient interactions and rehabilitation programmes whether in community based or hospital care (secondary or tertiary level care). Guidelines and clear local protocols when treating

[191] Pablo de Greiff, Introduction, Handbook of Reparations, OUP (2006), p12-13.
[192] A. Kohli, A Congolese community-based health program for survivors of sexual violence, *Conflict and Health* 6(1) (2012), 1752-1505.

victims who have come into contact with healthcare is essential in ensuring compliance by professionals and confidence in their decisions. There are also non-specialised services for victims of sexual violence in which healthcare professionals and outreach community workers may contribute in the delivery of care or identification of harms in which victims may benefit from medical assessment and treatment. The paucity of high quality research studies on health/medical outcomes of conflict-related sexual violence, means policy on reparation based frameworks requires a review panel to ensure effectiveness.[193] This may be a necessary part of the administration of the reparation programme to measure how effective it is delivering redress to victims.

82. As many of the violations occurred early two decades ago, there is a need for reparations to consider the medium and long-term impact of such sexual violence on victims. However, the deficit of short-term medical assistance in a conflict zone has a number of implications for victims. Inaccessibility to post-exposure prophylaxis for Human Immunodeficiency Virus (HIV), lack of screening and treatment for other sexually transmitted infections, and an inability to access emergency or urgent medical treatment secondary to fear or lack of resources, can lead to longstanding physical disability or infertility. Due to the plurality of harms associated with sexual violence and its consequences a dual approach to reparations should be taken i.e. certain needs are more readily dealt with on a collective basis, whereas other needs can only be addressed on an individual basis.

83. Transmission of sexually transmitted infections (STI) is one of the most commonly reported physical complications, as high as 83% in some studies of victims in conflict zones.[194] Among the most serious infections is human immunodeficiency virus (HIV). The type of sexual violence impacts on the risk of HIV transmission. Rape, gang rape and sexual slavery are prevalent among victims of conflict related sexual violence.[195] The increased number of sexual perpetrators involved in these acts increases the risk of HIV acquisition. Mutilation, bodily injury or genital trauma including penetration of the vagina and anus with sharp instruments or weapons that may be contaminated with

[193] I. Ba and R.S. Bhopal, Physical, mental and social consequences in civilians who have experienced war-related sexual violence: a systematic review (1981–2014), *Public Health* 142 (2017), 121-135.
[194] Ibid.
[195] C. Watts, A. Foss, M. Hossain, C. Zimmerman , R. von Simson, and J. Klot, Sexual Violence and conflict in Africa: prevalence and potential impact on HIV incidence, *Sexual Transmitted Infection* 86(3)(2010) 93-99.

bodily fluids or blood,[196] highlights that the type of sexual violence or concurrent trauma factors iinfluence transmission risk of HIV and other infections.

84. Access to post-exposure prophylaxis (PEP) and screening of sexually transmitted infections in a conflict environment may be limited. Late diagnosis and therefore delayed testing is one of the major contributors to HIV-associated morbidity and mortality. [197] Future sexual activity of HIV-infected individuals risks further onward transmission and harm to partners where victims are not informed of preventative strategies or factors that increase transmission. This can impact victims' decisions to conceive children, such as whether their viral load of HIV is above negligible levels or the availability of sperm washing. Pre-exposure prophylaxis (PrEP) of HIV is a relatively recent intervention that is becoming advocated for specific uses by medical bodies such as the British Association for HIV, to reduce transmission in high risk situations for those who satisfy the criteria and include heterosexual HIV-negative men and women, HIV-negative trans people and HIV-negative men having condomless anal sex.[198] The scope of victims encompassed in reparations often extends to family members and next of kin, albeit usually children born of rape.[199] Therefore ensuring the victim (and their partner's) sexual and quality of life is 'restored', or as far as possible repaired could arguably include the (male and female) partners of victims of sexual violence receiving PrEP. Further still, the downstream consequences of sexual violence may be reduced with important pubic health benefits.

85. As evidenced by studies, there is a positive impact on transmission rates and sexual health using PrEP, but conceptualising medical reparations that traverse sexual and cultural norms can be met with resistance. PreP may be interpreted as located close to the maximalist view on the scale of reparation, and counter-intuitive where a minimalist approach lacks, such as adequate health assessment and STI testing. As well as financial concerns, PrEP for men who have sex with men (MSM) is unlikely to be embraced

[196] Prevention of Transmission of HIV. World Health Organisation, WHO/EHT/CPR 2004 reformatted. 2007 WHO Surgical Care at the District Hospital 2003 http://apps.who.int/medicinedocs/documents/s15325e/s15325e.pdf

[197] In the UK, late diagnosis is the most important factor in HIV related morbidity and mortality. UK National Guidelines for HIV Testing 2008. September (2008) Prepared jointly by British HIV Association and British Association of Sexual Healthand HIV and British Infection Society https://www.bashhguidelines.org/media/1067/1838.pdf

[198] Some of the criteria include for men who have sex with men See BHIVA/BASHH Guidelines on the use of HIV pre-exposure prophylaxis (PrEP) 2018 https://www.bhiva.org/file/5b729cd592060/2018-PrEP-Guidelines.pdf

[199] Such recognition of a beneficiary is provided for in Peru - Law 28592, art. 6(c).

where homosexuality is illegal or taboo. Furthermore there may be a reduced societal value on sexual function and identity, as well as gender inclusivity that may impede reparations for conditions as a result of sexual activity or behold a transformative potential. Therefore, victims may be affected with the chronic implications of HIV and other sexually acquired infections. These include syphilis, genital herpes, herpetic neonatal transmission, hepatitis and other tropical infections, namely Lymphogranuloma venereum (LGV). Syphilis may be transferred to fetus transplacentally, and may progress to tertiary syphilis with neurological and cardiovascular consequences. The contraction of one STI also increases the risk of contracting other STIs. Genital chlamydia trachomatis may be asymptomatic at presentation but in cases of delayed or missed treatment, long term consequences of pelvic inflammatory disease, infertility, pelvic pain and life threatening ectopic pregnancy may ensue.[200] Victims with HIV require specialist input with anti-retroviral therapy, education, and access to acute services when required. To improve reproductive outcomes for victims of sexual violence and their children, antenatal screening of infections such as HIV and syphilis is essential; provision of anti-retrovirals, including highly active retroviral therapies (HAART) can reduce vertical transmission from mother to fetuses; small outreach or nurse led teams can provide acute case; and educational initiatives may limit transmission rates. These interventions provide opportunities to protect and promote sexual and reproductive health beliefs.

86. Victims may not have access to food that amounts to a nutritionally replete diet. Thus impairing recovery of opportunistic infections (from HIV) and contributing towards the risk of such infections where food and/or water contaminated and milk products are unpasteurized. HIV increases the risk of co-infection with other sexually transmitted infections and their potential sequela, such as syphilis and gonorrhea. Therefore a minimum standard of testing is required on diagnosis of HIV. Harm arising from HIV and other infections may also be extended to neonates in the case of mother-to-child transmission. The impact on physical and mental health will be influenced by baseline health status, the type of sexual violence committees, whether adequate medical assistance delivered shortly after the violence as well as concurrent injuries. These may be far ranging from head trauma and burns. In terms of their physical injury there can sexual and reproductive damage caused that include but not limited to genito-urinary

[200] J. Tscholl, M. Letson, and H. Williams, Sexually Transmitted Infections in Child Abuse, *Clinical Pediatric Emergency Medicine* 17(4) (2016) 264-273.

and rectal fistulas, genital tears and pelvic organ prolapse, which may need medical or surgical intervention to mitigate incontinence and sepsis. Such harm can impinge upon the quality of life and life expectancy of such victims awaiting medical reparations that may need short-term relief to avoid disability or death.[201]

87. Whole communities were targets for rape, irrespective of sex, marital status or age.[202] Early adolescent pregnancy is associated with a higher rate of adverse pregnancy outcomes.[203] This may be attributed to biological immaturity of female victims less than 15 years of age and poor antenatal care due to neglect and stigma. Pregnancies may have been concealed due to fear of a woman's future prospects of marriage. Preterm birth, stillbirth, low birthweight and intrauterine growth restriction (IUGR) are some researched perinatal complications of impregnated females aged 13-15 years. Adverse neonatal outcomes are thus high with neonatal morbidity and mortality.[204] Bereavement from the loss of their child adds to the trauma of the event. Therefore, bereavement services whether individualised or in a collective setting, could help women who have suffered miscarriage or death of a child as a result of sexual violence.

88. Obstetric implications of those exposed to sexual violence include genital mutilation, psychological impacts of re-experiencing pain in sexual organs, and fears in the first stage of labour. Intimate vaginal examinations may be perceived as invasive and painful, and victims may lack confidence in medical personnel. Obstetricians, midwives or registered birth attendants require training in managing the labour of victims of sexual violence. One to one support, and tailored antenatal programmes may be of benefit.[205] There is a paucity of data on women who have been victims of sexual violence and the subsequent obstetric outcomes. The majority of research that exists has been conducted in high income countries and non-conflict zones. Logically the greater the degree of physical disability, the more likely labour is to be prolonged or obstructed. While sexual violence may have happened over a decade ago, for young victims this can have lifetime complications.

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[201] Sunneva Gilmore, Medico-legal reparations for conflict-related sexual violence, Working Paper 2019.
[202] E. Dartnall and R. Jewkes, Sexual violence against women: The scope of the problem, *Best Practice & Research Clinical Obstetrics and Gynaecology* 27 (2013) 3–13.
[203] M. Kaplanoglu, M. Bülbül, C. Konca, D. Kaplanoglu, M. Selcuk Tabak, and B. Ata, Gynecologic age is an important risk factor for obstetric and perinatal outcomes in adolescent pregnancies, *Women and Birth* 28 (2015) 119–123.
[204] S. Tabak and B. Ata, Gynecologic age is an important risk factor for obstetric and perinatal outcomes in adolescent pregnancies, *Women and Birth* 28 (2015) 119–123.
[205] A. Gisladottir, M. A. Luque-Fernandez, B. L. Harlow, B. Gudmundsdottir, E. Jonsdottir, Obstetric Outcomes of Mothers Previously Exposed to Sexual Violence, *PLoS ONE* (2016) 11(3) 1-12.

89. Although the following discussion relates to victims who are living with the consequences of rape, reparations must account for those that have died as a result of complications of the sexual violence or other physical injuries they sustained during the assault. Death may have resulted from physical complications arising from sexual violence. Penetrating pelvic trauma, which extends within the bony confines of the pelvis to involve urinary or intestinal organs or vasculature, can lead to life-threatening conditions.[206] For instance, it can cause haemorrhagic shock where emergency haemostasis is not possible; or septic shock, arising from fistula, pelvic abscess, urosepsis, miscarriage or atypical infection from acquired immune deficiency associated with HIV. In addition, pregnancies as a result of rape may have been concealed. Women may have suffered a miscarriage (increased likelihood in young adolescents), ruptured ectopic pregnancy (higher rates in cases of pelvic inflammatory disease), and complications from labour dystocia as women laboured without accessing health services given fear of stigmatisation. These factors increase maternal and fetal mortality. Family members of these victims may have also witnessed the death or resultant disability. Other physical injuries sustained during the sexual assault may include head trauma, intracranial haemorrhage, venous thromboembolism from long bone fractures and self-neglect from depression. This short list highlights the importance of treating the victim holistically and devising individual care plans. Due to the plurality of harms associated with sexual violence and its consequences a dual approach to reparations should be taken i.e. certain needs are more readily dealt with on a collective basis, whereas other needs can only be addressed on an individual basis.

90. Conflict related sexual violence has also been associated with higher incidence of fistulae formation in comparison to non-conflict related sexual violence.[207] A fistula is an abnormal connection between two body parts such as organs, blood vessels or other internal surfaces. Fistulae related to sexual violence involve the genito-urinary and/or intestinal system. This debilitating condition has a profound impact on quality of life, functionality of vital body functions whilst also subject to complications such as

[206] E. Hornez, T. Monchal, G. Boddaert, P. Chiron, J. Danis, Y. Baudoin, J. L. Daban, P. Balandraud, S. Bonnet, Penetrating pelvic trauma: Initial assessment and surgical management in emergency, *Journal of Visceral Surgery* 153(4) (2016), 79–90.

[207] A. O. Longombe, K. M. Claude, J. Ruminjoc, Fistula and Traumatic Genital Injury from Sexual Violence in a Conflict Setting in Eastern Congo: Case Studies, *Reproductive Health Matters*, 16(31) (2008), 132-141. Studies from victims of sexual violence in conflict zones have revealed varying rates of rectal and vaginal fistulae ranging from 9%-40.7%. Genital trauma is also prevalent with some studies reporting 28.7% suffering severe genital tears.

infection.[208] Sexual dysfunction as a result of such physical insult, or secondary psychological harm is a common consequence.

91. Fistulae can lead to body dysmorphia, social and marital rejection and community isolation. The type and extent of acquired genito-urinary or recto-genital fistula, will depend on the pathogenesis and mechanism of injury.[209] In conflict situations a fistula may develop from direct vaginal trauma, erosion from a foreign body, a pelvic abscess, an infected vaginal vault haematoma or as a result of an obstetric injury from a pregnancy as a result of rape. This dynamic and evolving area of medicine poses surgical challenges. Therefore, a thorough diagnostic evaluation is required to determine classification according to anatomical structures, size and site. A specialised team can then manage the fistula based on conservative or surgical interventions.[210]

92. Reparations provide an opportunity to increase financial and human resources in existing genital injury and fistula services, which are currently overburdened and unable to provide optimal care. Victims with fistulas secondary to vaginal trauma, or who acquired an obstetric fistula from a pregnancy resulting from rape, will benefit from an enhanced quality of treatment. Current infrastructure for essential surgery and chronic care is inadequate.[211] In addition to vital medical equipment, human resources in the form of adequately trained doctors and medical personnel are scarce. Monetary reparations and opportunities for training scholarships and fixed term medical positions may help provide competent fistula surgeons and the multi-disciplinary team that is essential for long term care of these complex patients.

93. Most women with a fistula remain untreated for the majority of their lives, and those victims who received surgical repair of fistula, often do not receive sufficient medical follow up. Strategies for registration and follow-up mechanisms will reduce fistula associated morbidity, while obstetric education will enhance maternal and fetal wellbeing. The International Federation of Gynaecology and Obstetrics, the

[208] N. Dossa, M. Zunzunegui, M. Hatem, and W. Fraser, Fistula and Other Adverse Reproductive Health Outcomes among Women Victims of Conflict-Related Sexual Violence: A Population-Based Cross-Sectional Study, *BIRTH* 41(1) (2014) 5-13.
[209] M. Stamatakos, C. Sargedi, Theodora S., and K. Kontzoglou, Vesicovaginal Fistula: Diagnosis and Management, *Indian Journal of Surgery* 76(2) (2014)131–136
[210] R. Pal et al., Role of conservative management of genitourinary fistula: review of literature, *International Journal of Reproduction, Contraception, Obstetrics and Gynecology* 5(10) (2016) 3280-3282; and Stamatakos et al. ibid.
[211] M. Kouo-Ngamby, F.N. Dissak-Delon, I. Feldhaus, C. Juillard, K. A. Stevens and M. Ekeke-Monono, A crosssectional survey of emergency and essential surgical care capacity among hospitals with high trauma burden in a Central African country, *BMC Health Services Research*, 15 (2015) 478.

International Society of Obstetric Fistula Surgeons and the Fistula Foundation have devised a competency based obstetric fistula training programme.[212] A co-ordinated effort between professional medical bodies, UN agencies, voluntary and humanitarian bodies will make reparations more effective.[213] Funding may be allocated to hospital services specialising in survivors of fistulae and complications from genital trauma. This may translate into funding fellowships, training programmes/scholarships and long term fixed medical positions. In rural areas, healthcare centres unable to facilitate complex cases require education on referral pathways to specialist centralised services.[214]

94. Individualised medical reparations for victims of complex genital trauma are vital. Victims may require examinations and investigations such as imaging and microbiological testing, which pose financial expenditures. If operative intervention is deemed beneficial, for example in the correction of female uro-genital fistula, an appropriately trained surgeon and a multidisciplinary team capable of providing post-operative care is imperative. Victims with fistulae who have previously undergone surgery, remain vulnerable to complications and fistula recurrence. Funding of services including visiting scholarships to surgeons would help ensure adequate training and staffing levels. The patient may also require education, physical therapy, mental health programmes, cognitive coping mechanisms and contraceptive advice.

95. In terms of psychological needs sexual violence causes particular psychological and social consequences. The trauma of rape and other forms of sexual abuse, especially that which is committed with weapons and violence, is a significant risk factor for suicide.[215] Moreover, research in the DRC supports that the delay in addressing the assault emotionally, aggravates the victim's isolation and psychological wellbeing.[216] Family members are at considerable risk of psychological damage, particularly when they have witnessed the sexual violence or been forced to participate in the rape of their family members.[217]

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[212] S. Elneil, Provision of fistual Services and Programmes, RCOG International News, September 2012.
[213] Supporting Efforts to end obstetric fistula, Report of the Secretary General, Sixty-Ninth session of the United Nations General Assembly, A/69/256, 5 August 2014.
[214] R. B. Singh, S. Satish Dalal, S. Nanda, and N. M. Pavithran, Management of female uro-genital fistulas: Framing certain guideline, *Urology Annals* 2(1)(2010) 2–6.
[215] Dartnall and Jewkes.
[216] N. Dossa, M. Zunzunegui, M. Hatem, and W. Fraser, Mental Health Disorders Among Women Victims of Conflict-Related Sexual Violence in the Democratic Republic of Congo, *Journal of Interpersonal Violence* (2015) 30(13) 2199–2220.
[217] "Now, the world is without me": an investigation of sexual violence in Eastern Democratic Republic of Congo, Harvard Humanitarian Initiative and Oxfam International (2010), p1.

96. Courts have previously ordered psychological rehabilitative reparations for sexual violence. The IACtHR has ordered the State to 'provide appropriate and effective medical, psychological or psychiatric treatment, immediately and free of charge, through specialised State health institutions … [and should specifically address] the psychological trauma as a result of the gender-based violence'.[218] In terms of appropriate psychological interventions in the Bemba case, clinical psychology and counselling services need to be available within community medical centres, and on an outreach basis to rural communities. Meeting areas may take the form of a variety of settings, such as community halls. Collective and individual services may be adopted. As such, victims should have a choice in terms of individual or group psychological rehabilitation, where resources allow. Such psychological rehabilitation should be accompanied with sensitisation measures aimed at communities and society in Ituri, which will require State cooperation and support of donors to fund such programmes.

97. For male victims of sexual violence, there may be feelings of emasculation as they may be unable to provide for their families due to the physical and psychological trauma experienced.[219] This may have a direct impact on the economic earnings of the family unit and their livelihood. Male and female victims of sexual violence will share certain barriers as informed by the socio-cultural context in the DRC, such as 'stigma, fear, shame, guilt, confusion and the need to focus on immediate survival priorities.'[220] The Court must be mindful that reparative measures need to take into account the additional barriers that are gender specific to male victims of sexual violence, which include the perceived need to live up to masculine gender norms heightened as a result of war, a lack of cultural expressions or terms to describe male sexual violence, or a perception that men and boys simply cannot be victims of sexual violence. Reparations can be used to provide support services for male victims who have faced sexual violence, but have not yet come forward due the barriers above.[221] In addition, wider community

[218] *Gonzáles et al. ('Cotton Field') v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment, IACtHR Series C No. 16 November 2009, para. 549.
[219] Bemba, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, 21 March 2016, para. 494 and 498.
[220] V. Oosterveld, Sexual violence directed against men and boys in armed conflict or mass atrocity: addressing a gendered harm in international criminal tribunals, *Journal of International Law and International Relations*, (2014) 10, 107-128, p127; S. Sivakumaran, Sexual violence against men in armed conflict, *European Journal of International Law*, (2007) 18(2), 253-276.
[221] S. Sivakumaran, Male/male rape and the" taint" of homosexuality, *Human Rights Quarterly* 27(4) (2005) 1274- 1306.

sensitisation could help to better inform communities of the harm caused to male victims of sexual violence and encourage greater understanding.

Compensation

98. While quantification of awards is difficult, a gender-sensitive approach is needed and requires that all consequences flowing from sexual violence are included. In calculating economic damage, it is important to take into consideration traditional gender roles in society. For instance in many communities, women's work is at home looking after family, or working on family land, where they do not receive any income.[222] Furthermore, economic damage should be interpreted as including loss of educational opportunities, employment or social benefits, as well as the material implications of the birth of children as a result of rape, fertility issues for women and men, and lifelong reproductive health problems.[223] In terms of moral damage, this may include harm to the reputation and dignity of the victim as a result of stigmatisation, and impact on women's ability to access marriage and social benefits.[224] Relief awards have been ruled as insufficient to be an adequate remedy commensurate with sexual violence.[225]

99. The severity of the specific physical violation of sexual violence can be compounded by inequality, destitution, and social dislocation, as well as family separation and isolation. Sexual violence has long-term ramifications for the economic futures of the survivors. In the DRC and among Ethiopian refugees in Sudan, research found that agricultural output has reduced because women who were sexually violated are afraid to return to their 'normal' lives.[226] Similarly, a study of male survivors of sexual violence in the DRC found that all of them had abandoned their previous occupations as a result of fear and stigma, with the result that their families lacked 'funds to meet basic household needs such as food, medication, shelter and education for children'.[227] For women, the stigma attached to sexual violence and the consequences flowing from such stigma can be

[222] The World Bank, World Development Report: Gender Equality and Development, (2012), Chapter 5.
[223] See Ni Aolain et al.
[224] G. Citroni, P. Grant, L. Mamut and S. Korjenic, *Between Stigma and Oblivion, A Guide on Defending the Rights of Women Victims of Rape or other Forms of Sexual Violence in Bosnia and Herzegovina*, TRIAL (2012), p56.
[225] *Sharma v Nepal*, CCPR/C/122/D/2364/2014, Human Rights Committee, 25 May 2018, para.9.12.
[226] See J. Kelly, M. Van Rooyen, J. Kabanga, B. Maclin and C, Mullen. Hope for the Future Again: Tracing the effects of sexual violence and conflict on families and communities in eastern Democratic Republic of the Congo, (Harvard Humanitarian Initiative, 2011).
[227] M. Christian, O. Safari, P. Ramazani, G. Burnham, and N. Glass, Sexual and gender based violence against men in the Democratic Republic of Congo: effects on survivors, their families and the community, *Medicine, Conflict and Survival* 27(4) (2011) 227-246.

linked to the high value placed on ideals such as chastity, honour and purity. The stigma attached to sexual violence can result in the breakdown of the family unit with severe economic consequences. In contexts where marriage represents women's best – and sometimes only – route to security, abandonment by their partner or the loss of their marriage prospects can be detrimental to their future and result in a lifetime of poverty.[228]

100. The moral and material damage caused by sexual violence requires a combination of individual and collective reparations.[229] Compensation to each victim would be the most appropriate, given the personal harm caused, but complemented with wider collective measures of rehabilitation, measures of satisfaction and guarantees of non-recurrence. Compensation may take the form of a lump-sum payment enabling the victim to spend the money as they see fit. Moreover, a lump sum can provide victims who have been stigmatised with the financial independence to start over, i.e. to live elsewhere or find alternative employment.[230] Alternatively, the claims commission could create a pension program, enabling victims to have some financial security in the long term. In Chile annual pensions of between approximately US $2,300 and US $2,600 were awarded to survivors of sexual abuse.[231]

101. It is clear that the harm of rape is compounded by prejudicial, stereotyped, and false beliefs about sexual violence, which direct blame towards the victim and have a devastating impact on their sense of self.[232] The victims' relationship to their bodies and their gender identity is negatively affected by sexual violence.[233] In this regard, monetary compensation is insufficient by itself and should be complemented with other rehabilitative and reparative measures.[234]

102. Collective measures, such as educational programmes for the wider community, are also necessary to address the root cause of stigmatisation. In *TPF v Peru*, the Committee on the Elimination of Discrimination Against Women called for 'education and training programmes to encourage health providers to change their attitudes and behaviour in

[228] See Harvard Humanitarian Initiative and Oxfam International; and Ni Aolain et al.
[229] REDRESS, A Report on Reparations and Remedies for Victims of Sexual and Gender Based Violence, (2016) p9.
[230] UN Guidance Note, p17.
[231] UN Women Virtual Knowledge Centre to End Violence Against Women and Girls: Mechanisms.
[232] *Bemba*, ICC-01/05-01/08-3399, para. 38-39.
[233] I. Skjelsbæk, Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina, *Feminism and Psychology*, 16(4) (2006) 373-403, p395.
[234] CEDAW, *RPB v the Philippines*, 12 March 2014 Communication No. 34/2011.

relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence'.[235] Similarly in *Gonzalez v US*, the IACtHR recommended that the United States 'continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs'.[236]

Measures of satisfaction

103. Measures of satisfaction for sexual violence can be important in awakening society to the consequences of such violations and in turn 'facilitate the process of victims' psychological and social rehabilitation'.[237] While a fine balance has to be struck in protecting victims' privacy, measures of satisfaction publicise the wrongful nature of rape and try to engender social solidarity with the victims' plight. Symbolic measures can help to restore the dignity of victims by publicly acknowledging the wrongfulness of the harm they have suffered and affirming their rights as human beings. The IACtHR in the *Gonzáles et al. ('Cotton Field') v. Mexico* ordered a monument of 'commemoration of the victims of gender-based murder', on the basis that it was 'a way of dignifying them and as a reminder of the context of violence they experienced, which the State undertakes to prevent in the future.'[238]

104. The former UN Special Rapporteur on Violence against Women, Rashida Manjoo, stressed that States' obligations to eliminate and prevent violence against women and girls and hold perpetrators to account demands that they 'ensure comprehensive reparations for women victims of violence and their relatives.'[239] There may be a space for investigation and prosecution of Uganda troops for their individual role in CRSV.

[235] CEDAW, TPF v Peru, 4 November 2011, Communication No. 22/2009.
[236] Inter-American Commission on Human Rights, *Jessica Lenahan (Gonzalez) v US*, Report No. 80/11 Case 12.626.
[237] Rubio-Marín, p114; and Hamber and Wilson.
[238] *Gonzáles et al. ('Cotton Field') v. Mexico*, para 471.
[239] Statement by Ms. Rashida Manjoo, Special Rapporteur on Violence against Women, Its Causes and Consequences,' Commission on the Status of Women, 4 March 2013.

Guarantees of non-repetition

105. The Nairobi Declaration sets out that reparations 'must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls' and that 'reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of the violations of women's and girls' human rights predate the conflict situation.'[240] The profound harm experienced by direct victims and their families can be compounded by the underlying structural and socio-cultural context in which they live. The IACtHR has endorsed this position when considering the issue of reparations for women victims of sexual violence, stating that 'bearing in mind the context of structural discrimination in which the facts of this case occurred, […] the reparations must be designed to change this situation, so that their effect is not only of restitution, but also rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable.'[241]

106. In order to minimise stigma and silence of victims a public sensitisation campaign should be carried out by any proposed or agreed reparations programme with civil society, which raises awareness in specific communities in the DRC about the discriminatory practices and negative stereotypes of women victims and their children. Such a public campaign can be delivered in various forms such as television, radio, newspapers, and other appropriate mass media, such as radio programmes or comic strips. Moreover, these could be deployed in diverse forums such as schools, community groups, hospitals and places of worship. The knowledge expertise of civil society partners will be integral to the design and delivery of such campaigns in order for reparations to have a longer term effect in tackling deeper societal inequalities that affect victims and their families.[242]

Measures to respond to exploitation of natural resources

107. Illegal exploitation of natural resources in the DRC is one of the driving factors in the context of the conflict. It is well acknowledged that this exploitation facilitated the

[240] Nairobi Declaration on Women's and Girls' Right to Remedy and Reparation (2007), para. 3.
[241] *Gonzáles et al. ('Cotton Field') v. Mexico*, para. 450.
[242] WHO, Violence Prevention: the evidence. Promoting Gender Equality to Prevent Violence against women, (2009).

continuation and prolongation of the violence experienced in the region.[243] Whilst the Judgment by the ICJ represents a milestone in the area of accountability for exploitation of natural resources in armed conflict, reparations are crucial for acknowledging the widespread effects of such violations upon not only the economy of the DRC but also on civilians, victims and communities.

108. The 2006 Protocol against the Illegal Exploitation of Natural Resources establishes that Member States shall freely dispose of their natural resources.[244] This right shall be exercised in the exclusive interest of the people, and in no case the populations shall a State be deprived of it. In case of spoliation, the dispossessed Member State shall have the right to the lawful recovery of its property, as well as to adequate compensation.[245] Other Member States have an obligation to seize of confiscate illegally exploited natural resources and return them to their legitimate owner.[246] Given that the ICJ found that members of the UPDF had engaged in illegal exploitation of the DRC natural resources, rather than a policy of Uganda itself, it is incumbent on the Ugandan government to locate such assets, provide compensation in lieu, establish liability of legal persons and exercise its jurisdiction to extradite or prosecute individuals responsible for offences outlined in the protocol on exploitation of natural resources.[247]

109. Global Witness propose that the question of how the DRC's natural resources are exploited and governed needs to be redefined as a human rights issue.[248] This submission suggests that in assessing reparations owed for the illegal exploitation of the DRC's natural resources, the Court must examine the far-reaching and long-lasting effects of this exploitation, particularly the violence and impact upon communities. Therefore, it is proposed that alongside the granting of compensation to the DRC in accordance with the above protocol, the Court should order collective reparations, acknowledging the extent of the harm suffered by communities in the DRC. As highlighted in *Katanga,* it is desirable that reparations support programmes that are self-

[243] See Amnesty International described the competition for control of natural resources by combatant forces as "major – if not the main – factor in the evolution and prolongation of the crisis in Ituri." Amnesty International, 'On the precipice: the deepening human rights and humanitarian crisis in Ituri', March 2003, p.3.
[244] Article 3, International Conference on the Great Lakes Region 30 November 2006. The DRC and Uganda are Member States.
[245] Article 3(2).
[246] Article 16(5).
[247] Articles 16-18.
[248] Global Witness, 'Natural Resource Exploitation and Human Rights in the Democratic Republic of Congo 1993 to 2003' (A Global Witness Briefing Paper, December 2009) p. 25

sustaining to enable victims to benefit from these measures over an extended period of time.[249] The implementation of collective reparations would assist in transforming the current economic environment pervading the DRC and acknowledge the right of citizens to control their own natural resources.[250]

110. The Chamber in *Katanga* noted that shared harm required for collective reparations does not necessarily pre-suppose the violation of a collective right. Victims may be bound by harm resulting from the violation of a collective right which was vested in them prior to the crime, but also as result of the violation of the individual rights of a large number of members of the group or the violation of individual rights with collective impact.[251] Applying this principle, we can examine the illegal exploitation of natural resources as a violation of the DRC's citizens' right enshrined in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Or alternatively, implement collective reparations on the basis of addressing numerous individuals' rights violated due to the illegal exploitation of natural resources, for example forced labour amongst others. Indeed there is precedent at the Inter-American Court of Human Rights for development funds to be established for victimised communities, in particular indigenous ones, for exploitation of their traditional land or natural resources without their consent.[252] Such development funds can provide agricultural, housing, water and sanitation, education and health facilities that have been denied or damaged by gross violation of human rights associated with such exploitation of natural resources or land of such communities.

111. Indeed the Inter-American Court has gone as far to say that economic exploitation of natural resources impacts upon communities 'not only because they are their main means of survival, but also because the form part of their worldview, of their religiousness, and consequently, of their cultural identity'.[253] This is in cases where indigenous communities have a special connection to the land as it inhibits their ability to 'develop their culture, their spiritual live, their integrity and their economic

[249] *Katanga* Reparations (n.42) [48].
[250] Article 3 Protocol against the Illegal Exploitation of Natural Resources (2006).
[251] *Katanga* Reparations (n.42) [276].
[252] See *the Sawhoyamaxa Indigenous Community v. Paraguay,* Judgment of March 29, 2006 (Merits, Reparations and Costs), para.224; *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Reparations and Costs), Series C no. 79, para 167; and *Garífuna Punta Piedra Community and its members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 304, para.332-336
[253] Ibid, para 118

survival'.[254] While not all communities in Ituri may have a spiritual or cultural connection to mineral resources, they are likely to have one with the forest, which some depend on for food, medicine and charcoal. There may be grounds for reparations to be made for charcoal or logging exploitation of Ituri by the UPDF, such as reforesting efforts to provide more environmental resilience and diversity for areas deforested.[255]

112. 'Military commercialism' defines the system of exploitation implemented by Uganda during 1998 – 2002; it refers to the use of the army in order to generate direct profits for the political-military elites of Kampala.[256] The increase in mining lead to an exodus of young men from the rural community, which resulted in a decline in agricultural and a reduction in food security, due to a deficit in the male labour force.[257] It is the prolonged absence of the young men at the mines that contributed to the destabilisation of farms and reduces the productive capacity of family farming.[258]

113. There is also a clear social impact of mining activity with those who work in the mining sites suffering from the breakdown of families, the deterioration of moral standards and the emptying of the schools (the rates of children dropping out of school is worse in mining areas that in rural areas). Some women complained of being left behind in the village, bringing up the children and cultivating the land without any financial support, as most of the diggers are unable to save any money. The men's absence not only has economic consequences, but it is felt also on the level of personal security.[259] It is suggested that the ICJ should take these effects into account when addressing reparations in this area; collective reparations implementing education programmes, skills training and lending schemes could seek to address these issues.

114. The EECC addresses Ethiopia's liability for various violations committed in Eritrea including, *inter alia,* the looting and stripping of buildings, inflicting damage on infrastructure and destruction of livestock. To calculate these claims, the Commission sought to develop a reasonable estimate of the losses resulting from the injuries it found, taking account of likely population of the affected areas and estimates of the frequency

[254] *Sawhoyamaxa Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Series C no. 146, para 113-a.
[255] *Garífuna Punta Piedra Community and its members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 304, para.333.
[256] International Alert, 'The Role of the Exploitation of Natural Resources in Fuelling and Prolonging Crises in the Eastern DRC', (January 2010) p.35
[257] Ibid p.59
[258] Ibid p.60
[259] Ibid p.61

and extent of loss. According to the EECC, awards of compensation for loss or destruction of property frequently stem from serious threats to physical integrity.[260] Looting, plundering and the exploitation of the DRC's natural resources have a direct impact upon the lives of civilians and this should be recognised. There is a link between the exploitation of natural resources and the exploitation of local inhabitants through civilian massacres, widespread violence and the destruction of communities. In doing this, the Commission particularly took into account the seriousness of these losses to the persons who suffered them; particularly given many victims' limited resources, the loss of their residential and/or business property left many of them facing protracted destitution and dependency. The EECC focused on the long lasting implication of these violations upon individuals and communities, and further acknowledged the effect upon society, government welfare, the younger generation and standards of living.

115. Specifically, in Ituri, when Ugandan and Rwanda armies became directly involved, the violence escalated to unprecedented levels; the presence of gold and timber was a major factory in fuelling the conflict. In 2003, the UN Special Rapporteur on Human Rights in the DRC stated 'despite the ethnic appearance of the conflict, its root causes are of an economic nature.'[261] The economic agendas and the political strategies which ensued as Uganda and Rwanda alternately backed a series of extremely violent rebel groups, led to a massive loss of human life. According to Human Rights Watch, an estimated 5,000 civilians died from direct violence in Ituri between July 2002 and March 2003 alone.[262]

116. Uganda's failure to address this violation should also be considered. According to a recent Group of Experts Report, Uganda and Rwanda are the major gold exporters in the Great Lakes region.[263] Further, Global Witness state that these 'conflict minerals' from the DRC pass through Uganda on their way to international markets.[264] Sanctions have been attempted to be imposed but, according to the UN, one of the great weaknesses of the present systems is the lack of cooperation among the states that have responsibility for implementing the sanctions. Although the UN put the two largest Ugandan gold

[260] EECC Final Award Ethiopia (n.28) p.633.
[261] UNGA, Interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo, October 2003, A/58/534.
[262] Human Rights Watch, Ituri: 'Covered in blood'. Ethnically targeted violence in north-eastern DRC, (July 2003).
[263] UNSC Group of Experts (2018) para.113.
[264] Global Witness, 'Uganda: Undermined' (June 2017) see https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/uganda-undermined/ accessed on 13th March 2019.

exporters on their list in 2007, these companies were never bothered by the Kampala authorities. The Group of Experts' December 2008 report emphasises the reluctance of the Ugandan Central Bank and of several other banks in Kampala to freeze the accounts of Ugandan gold-trading companies blacklisted by the UN. In Uganda, the Porter Commission recommendations to initiate further enquiries have never been carried out.[265]

117. As part of the reparation package, Uganda must commit to ending impunity in the region regarding the exploitation of the DRC's natural resources and the illegal trade of minerals. Justice will be key to breaking these patterns, not only within the DRC, but at the international level: action should be taken to address the international systems that make these trading practices legally possible, despite the fact that they continue to cause massive loss of life.[266] Uganda and other foreign governments should provide assistance to the Congolese justice system to enable such cases to proceed according to international standards and to support the victims of these crimes in obtaining redress.

Conclusion

118. Reparations are measures intended to acknowledge and remedy the suffering as far as possible of victims of gross violations by a responsible party. Given the passage of time and the gravity of the violations involved, the harm caused by Uganda's occupation and gross violations of human rights and grave breaches of international humanitarian law mean that victims have experience nearly two decades of suffering without much relief. As Uganda exploited natural resources from eastern Congo, it has prevented some of the natural wealth of the country being determined and benefited by its own people. It also has meant that Uganda has more than breached its international obligations, but continues to enjoy the spoils of its violations. In a way reparations offer an opportunity to rebalance the social and legal disruption caused by Uganda's violations and provide an opportunity for an effective remedy for victims who have suffered from some of these violations. The International Court of Justice can break new ground in adjudicating on reparations in this case and offer an avenue for remedy for victims who should no longer await redress.

[265] International Alert, p.68.
[266] Global Witness, p.25.