

**WIDE ANGLE**

# THE LUBANGA AFFAIR AND REPARATIONS FOR SERIOUS VIOLATIONS IN THE DEMOCRATIC REPUBLIC OF CONGO



**L'OSSERVATORIO**

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RESEARCH CENTRE  
ON CIVILIAN VICTIMS  
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**ICI REPOSENT LES  
VICTIMES DE LA GUERRE  
DE MAI 2000  
A KISANGANI**

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Cover Photo: Memorial plaque for victims of the so-called Six Days War placed over the common grave in the cemetery for war victims in Kisangani.

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The Democratic Republic of Congo (DRC) has to face a growing number of demands for reparations as a consequence of the flagrant violations of international human rights law and serious violations of international humanitarian law. These have arisen from the succession of armed conflicts which have racked the country for more than two decades. Although we are concerned with this most recent period, it is important to note that since colonial and post-colonial times the DRC has experienced episodes of violence which have always resulted in massive violations.

In spite of the wide impact of consequences for its people the Congolese state has never seriously considered compensating victims. Although the lack of political will on the part of the government has been the main cause of this situation, it is nonetheless not the sole justifying factor. Among other determining factors one could mention the judicial framework, the profiles and needs of victims, the question of finance and the creation of an effective procedure. Considering the present situation, in the light of these elements it seems absolutely necessary for the Congolese state to design and set up a programme to administer reparations alongside the judicial reparation scheme. To this end it might follow the models set by other countries, and most importantly the principles for reparations laid down by the International Criminal Court (ICC).

In the case between the Prosecutor of the ICC and Thomas Lubanga Dyilo the ICC established the principles governing reparations. Although they relate to judicial matters, the standards set out may help to overcome the challenges arising from the design and operation of a reparations programme. These sorts of challenges had to be considered and resolved by the ICC in this case.

The aim of this study is to set out these principles and to apply them to the prevailing circumstances of reparations in the DRC. I describe their potential to contribute to the achievement in practice of the right to reparation for the many victims of serious violations who are demanding justice from the Congolese state. The DRC clearly cannot escape its obligations indefinitely because there is a basic right to reparation which the DRC must accept in line with international agreements, its own constitution and other national texts.

**Key words:** Human Rights, massive violations, Lubanga, reparation, armed conflict.

## Contents

<b>Introduction .....</b>	<b>5</b>
<b>I. Reparation for serious violations in the DRC.....</b>	<b>7</b>
I. 1. The legal framework .....	8
I. 2. Beneficiaries of reparations in the DRC .....	8
I. 3. Financing and the reparations process .....	9
<b>II. Brief presentation of the cases before the ICC concerning the DRC .....</b>	<b>10</b>
II. 1. Summary .....	10
II. 2. The Thomas Lubanga Dyilo case .....	11
<b>III. Analysis of the principles of reparations set out by the ICC in the Lubanga case.....</b>	<b>12</b>
III. 1. The legal framework of reparations defined by the Court.....	12
<i>III. 1. 1. The Principles of Reparation.....</i>	<i>13</i>
<i>III. 1. 1. 1. The Reparation Order must be made against the person found guilty.....</i>	<i>13</i>
<i>III. 1. 1. 2. The Order must establish the responsibility of the guilty person for the purpose of reparation and inform him/her of it .....</i>	<i>14</i>
<i>III. 1. 1. 3. The Order must set out the reasons justifying the form of reparation required .....</i>	<i>14</i>
<i>III. 1. 1. 4. The Order must establish the harm caused by the crimes which led to the verdict.....</i>	<i>15</i>
<i>III. 1. 1. 5. The Order must define what is required to justify reparation, based on the link between the harm suffered and the crime committed.....</i>	<i>16</i>
III. 2. Beneficiaries of reparations and the principles for their selection.....	16
III. 3. The methods of reparation .....	17
III. 4. Financing reparation.....	18
III. 5. The Reparation Process .....	19
<b>IV. Contribution of the ICC principles to the issue of reparation for victims of serious violations in the DRC .....</b>	<b>19</b>
IV. 1. The legal framework of reparations.....	20
IV. 2. Victim profiles in the DRC .....	20
IV. 3. Victims' needs and the methods of reparation.....	21
IV. 4. Financing reparations.....	23
IV. 5. The Reparation Process .....	24
<b>V. Conclusion .....</b>	<b>25</b>
<b>Endnotes.....</b>	<b>28</b>



## Introduction

The Democratic Republic of Congo (DRC) has many victims of human rights violations. Several decades of armed conflict are the primary cause of this situation. The report of the Mapping Project of the UN High Commission for Human Rights (HCHR) concerning the most serious violations of human rights' and international humanitarian law committed between March 1993 and June 2003 notes that 'th[is] period [ . . . ] marks what is probably one of the most tragic episodes in the recent history of the DRC. During these ten years there was a series of major political crises, wars and ethnic and regional conflicts, causing the deaths of hundreds of thousands, if not millions of people. Few civilians, whether Congolese or foreign, living within the territory of the DRC were able to escape this violence, falling as victims of murder, physical assault, rape, forced removal, looting, destruction of their possessions or violation of their economic and social rights'<sup>1</sup>.

The cycle of violence continued after this period and still goes on today, particularly in the east of the country in North-Kivu, South-Kivu and Katanga provinces<sup>2</sup>.

The victims of the serious violations in the DRC demand reparations which they have not received despite the existence of national and international orders guaranteeing these rights<sup>3</sup>. The reason is not only the lack of public policy in this area in spite of the active and persistent demands from the victims, but also judicial practice which limits reparation to its classical formulation of civil liability based on concepts of offence and indemnity.

Reparation aims to deal with the harm caused by serious violations. It may be considered as the restoration of the balance destroyed by this harm, where possible



**Victims of the wars in Kisangani standing beside the Town Hall in Kisangani at one of their weekly meetings.**

*Credit: Guy Mushiata/ICTJ*

placing the victim once again where he/she was or would have been if the harm had not occurred<sup>4</sup>. The classical formulation of reparation relates to the concept of civil liability, that of the harm caused by an offence. There has to be a link between the harm and the offence.

Considering serious violations which are the subject of this study, reparation goes beyond the classic notion of civil liability for negligence or virtual negligence understood as ‘the requirement to compensate for harm arising from violation of the general duty to avoid causing harm to others by one’s own actions or those of people for whom one is responsible’<sup>5</sup>. In violations of human rights the focus of attention is not on the offence but the harm caused, the situation of the victim. Reparation becomes a duty of the State. ‘Under international public law and international human rights’ law it is the State’s duty to compensate for acts and omissions for which it may be considered liable on its own territory or beyond. States should also try to create national reparation programmes when those responsible for the harm are unable or refuse to meet their obligations’<sup>6</sup>. This is the approach of transitional justice.

Restorative action may be individual or collective, material or symbolic, and may take various forms, for example restitution, indemnification, readaptation, satisfaction and the guarantee of non-repetition. It may have various aims: acknowledging the harm suffered by victims, relieving their suffering, reintegrating them or reconciliation between victims and their aggressors.

In any specific situation such as that of the DRC, different types of reparation must take into account the socio-economic and cultural circumstances of the beneficiaries to ensure that reparation is absolutely fair and adequate. Given the large number



Memorial plaque for members of a family all killed during the 2000 War placed in the cemetery for war victims in Kisangani.  
Credit: Guy Mushiata/ICTJ

of victims and the limited resources available reparations must also be arranged over varying periods of time.

As noted earlier the right to reparation in the DRC has not been met. Nonetheless the International Criminal Court (ICC), which is one of the paths available to victims pursuing that right, has already delivered several judgments in cases concerning the DRC, especially the Lubanga case which dealt with reparation.

I shall examine these rulings to highlight the relevant factors decided by the ICC concerning reparations and to promote future examination aimed at improving both national judicial practices and especially carrying out a reparation programme going beyond legal decision-making. I shall consider the potential of a contribution from current experience, that is the rulings on reparations made in the Lubanga case and their application in matters of reparation in the DRC. This study will adopt both legal and sociological methods in its analysis.

In order to do this I shall consider four areas: the current situation on reparations for serious violations in the DRC(I), presentation of the cases concerning the position of the DRC at the International Criminal Court (II), analysis of the principles of reparations in the Thomas Lubanga Dyilo (Lubanga) case (III), and what these principles do to improve the right to reparation in the DRC (IV).

## **I. Reparation for serious violations in the DRC**

Victims of serious violations in the DRC do not have access to reparation for the harm they have suffered. By February 2013 none of the victims officially recognized by judgments in cases of war crimes and crimes against humanity heard in national courts had received payment of the compensation awarded by the court<sup>7</sup>. Nothing has changed since then. This is also true for victims who for various reasons do not have access to justice. It needs to be noted as well that there is no meaningful discussion of the issue in Congolese society.

However the basic principles and directives concerning the right to redress and reparation for victims of gross violations of international human rights' law and serious violations of international humanitarian law<sup>8</sup> state that victims of these violations have a right to be heard as equals in court, a right to real, adequate and rapid reparation for the harm suffered and a right to information regarding the violations. The same order adds that 'a person is to be treated as a victim whether or not the perpetrator of the violation has been identified, arrested, prosecuted or condemned and whatever the family relationship that may exist between perpetrator and victim'<sup>9</sup>.

How should we judge this state of affairs? What needs to be done to change the situation?

In the next section I make some suggestions and raise the questions they provoke. These concern the legal framework, the status of the possible beneficiaries of reparations, the wide variety of harm done and the financing of reparations.

## **I. 1. The legal framework**

The current judicial framework for reparations follows the classical conception linking the idea of reparation to the offence and civil liability. Its legal base lies in Article 258 of the Congo Civil Code, Volume III which states: “any action by a person which causes harm to others requires reparation by that person”. Article 260 of the Code adds: “one is responsible not only for harm caused by those for whom one is answerable, or those items under one’s protection. A father, or mother after the death of her husband, is liable for harm caused by their children living with them, employers and principals for harm caused by employees and agents in carrying out their duties (...)”. It is on this ground that the Congolese state has been regularly found guilty of serious violations committed by its agents, specifically military personnel.

Examining this framework is unfortunately not sufficient in confronting the results of the serious violations suffered by a large number of victims, because it requires ascribing the offence to a perpetrator and his conviction in order to claim compensation. For various reasons many victims are unable to meet this requirement. As the only route to reparations is the legal one, these victims do not have access to restorative justice. This is contrary to international law which charges states to compensate victims of serious violations.

The judicial approach is therefore insufficient to achieve reparation for a large number of the victims in the DRC. More comprehensive legislation is required laying down an administrative approach to reparations. This has the advantage of focusing on the victims and the harm they suffered without burdening them with proving the link between that harm and those supposed to be responsible. This calls for the broadening of the legal framework. What would be the content of effective legislation that provided the necessary and sufficient conditions for a reparations policy centred on the profile of victims?

## **I. 2. Beneficiaries of reparations in the DRC**

The number of victims, the nature of the harm they suffered and their location within the country or abroad are not yet accurately known. There has been no government programme to identify these victims thoroughly, still less any non-governmental initiative. There are partial private and official reports on events which have led to serious violations, sometimes identifying the victims. This presents a genuine challenge to ensuring reparation. Obviously as time passes existing data may be lost, which makes the task of identification very difficult and uncertain. However no reparation programme can be carried out effectively without knowing who are the beneficiaries. One needs to establish who the victims are and who are those to be compensated in the DRC, where a large part of the population may be thought of as victims, if they are defined as “people who have suffered harm individually or as a group, particularly physical or mental harm, moral suffering, material loss or serious infringement of their basic rights, through acts or omissions which constitute violations of human rights. In some cases, according to local law, this may include close



family members or dependents of the direct victim and those who have suffered harm in coming to the aid of victims in a critical situation or in an effort to prevent victimisation”<sup>10</sup>.

Given the succession of armed conflicts and the nature of the crimes linked to them, victim profiles in the DRC take various forms in the harm suffered, its extent and the impact on individuals and communities. This raises the question of the means of reparation to be adopted. Victims need to be consulted and involved in any reparations process. However this process has to face the challenge that victims lack any organisation, “In this respect there are numerous victims of serious violations in the DRC spread throughout the country. The range of perpetrators and situations causing harm make it difficult to identify them and to create victims’ associations to spearhead effective pleas for setting up a comprehensive reparations process”.<sup>11</sup>

A further challenge is that of financing reparations.

### **I. 3. Financing and the reparations process**

Financing reparations in the DRC is a vital question. The lack of resources is frequently cited by the authorities to justify the non-payment of reparations in general and judicial awards in particular. There has however been no government study to estimate the cost of these reparations.<sup>12</sup>

It is important to note at this point that a large number of victims are suffering because their basic needs are not being met, as is the case for the majority of Congolese citizens, but their state of insecurity is worsened by the harm resulting from the serious violations. This demonstrates that the issue of reparations is linked to that of economic development. It is true that the financing of reparations has to be achieved against a background in which the basic social needs of the general



**Photo exhibition on the Day of Remembrance for victims of the wars in Kisangani.**

*Credit: Guy Mushiata/ICTJ*

population are not guaranteed. The same limited resources have to meet what initially seem to be competing needs in the DRC. Financing reparations in the DRC as in other post-conflict countries presents a problem of competing priorities and urgent needs.

In the face of this what process of mobilisation should be created to meet the challenge? I shall try to answer this question after considering the measures adopted by the ICC.

The factors which explain the current state of affairs concerning reparations in the DRC presented challenges for the ICC in implementing reparations in the cases it judged, particularly the first of them, that of Thomas Lubanga Dyilo. What solutions did it recommend in its judgments? Before dealing with this I shall give a brief presentation of the cases before the ICC concerning the DRC.

## **II. Brief presentation of the cases before the ICC concerning the DRC<sup>13</sup>**

### **II. 1. Summary**

The DRC referred consideration of its position to the ICC on 3<sup>rd</sup> March 2004 after ratifying the ICC Statute of Rome of 11th April 2003.

In June 2004 the ICC started investigations of the situation in the DRC. These only cover the period since the Statute of Rome came into force. They are currently focussed on the following provinces in the east of the country: Ituri, North-Kivu and South-Kivu. To date the ICC has examined six cases in the DRC, leading to two convictions (Thomas Lubanga Dyilo and Germain Katanga), an acquittal (Matthieu Ngundjolo Chui), a case in progress (Bosco Ntanganda), a case closed for lack of sufficient evidence (Mbarushimana) and a case still in its preliminary stage as the accused, Sylvestre Mudacumura, for whom an arrest warrant has been issued, has not yet been arrested and handed over to the Court.

So far the criminal prosecutions concerning the DRC have been for war crimes and crimes against humanity. 'The investigation into the situation in the DRC has led to several cases in which the alleged crimes were the following:

- War crimes: enrolment and conscription of children under 15 and making them play an active role in hostilities; murder and attempted murder; murder with intent; attacks on civilians; rape; sexual enslavement of civilians; looting; forced displacement of civilians; attacks on protected goods; destroying goods; mutilation; inhumane treatment; torture and attacks on human dignity.
- Crimes against humanity: murder and attempted murder; torture; rape; sexual enslavement; inhuman acts; persecution; forced population transfers; targeting civilians; destroying goods and looting.<sup>14</sup>

This study will only consider in detail the Thomas Lubanga Dyilo case.

## II. 2. The Thomas Lubanga Dyilo case<sup>15</sup>

Thomas Lubanga Dyilo (Lubanga) was prosecuted before the ICC for acts committed during the armed conflict in Ituri district in Orientale province.

Lubanga was one of the founders of the Congolese Patriotic Union (CPU), created on 15<sup>th</sup> September 2000, which had a military wing, the Patriotic Force for the Liberation of the Congo (PFLC). The CPU took control of Ituri in September 2002. Lubanga was President of the CPU/PFLC. The movement took part in an internal armed conflict from September 2002 to 13<sup>th</sup> August 2003 against the Congolese People's Army (CPA) and other militias including the Patriotic Resistance Force in Ituri (PRFI). During this time the military wing of the CPU widely recruited young men and boys under 15 forcibly and as 'volunteers'. Many witnesses have credibly and reliably reported that children under 15 were recruited forcibly or as 'volunteers' by the CPU/PFLC and sent either to its headquarters in Bunia or its military training camps, particularly in Kobu, Mandro and Mongbwalu.

Children were deployed as soldiers in Bunia, Tchomia, Kasenyi, Bogoro and other places, and took part in fighting, in particular in Kobu, Songolo and Mongbwalu. The CPU/PFLC also used children under 15 as military guards.

Lubanga was arrested for all of these actions and transferred to the Court on 17<sup>th</sup> March 2006. His arrest followed the issue of a warrant on 10<sup>th</sup> February 2006 by the 1<sup>st</sup> Preliminary Chamber of the ICC. Later on 14<sup>th</sup> March 2012 Lubanga was found guilty of war crimes consisting of the enrolment and conscription of children under 15 and making them play an active role in hostilities (as child soldiers). On 10<sup>th</sup> July 2012 he was sentenced to a total of 14 years imprisonment. The verdict and sentence were confirmed by the Appeal Court on 1<sup>st</sup> December 2014. Lubanga was transferred to a Congolese prison on 19<sup>th</sup> December 2015 to serve his sentence.

In addition to the sentence of imprisonment Lubanga was required to pay compensation to the victims of his crimes according to the principles and conditions laid down by the Court. To achieve this on 7<sup>th</sup> August 2012 the Court set out the principles applying to compensation for victims in the Lubanga case. On 3<sup>rd</sup> March 2015 the Appeal Court modified the ruling of the lower Court and required the Victims' Aid Fund (VAF)<sup>16</sup> to present a draft plan for distributing collective reparations to the 1<sup>st</sup> Chamber of the Court. This plan was presented on 3<sup>rd</sup> November 2015 and ratified by the 2<sup>nd</sup> Chamber of the Court on 21<sup>st</sup> October 2016. It ordered the starting of distribution of symbolic collective reparations to victims of the Lubanga case. The Court will give a ruling on collective reparations which are more than symbolic in due course.

My study concentrates on this final stage of the Lubanga case. To understand how the Court met the challenges of the situation in the DRC concerning reparations, I shall now analyse the rulings mentioned above.

### III. Analysis of the principles of reparations set out by the ICC in the Lubanga case

The Lubanga case before the ICC presents an opportunity to carry out the principles of international law on reparations. The ICC Statute of Rome contained the relevant rulings of the Principles concerning the Right to Reparations. For the DRC it is possible to reflect on how the Court will meet the challenges of the many variables of a reparations programme and how it will adapt its solutions to ensure compensation for the many victims of serious violations who are demanding justice. The Court's rulings are judicial ones, but the norms they establish may be very important for legislation, the beneficiaries, methods, the financing of reparations and the body responsible for distribution.

I shall look at the ICC rulings on reparations in the Lubanga case to examine these variables. Before doing so here is the list of relevant rulings to be examined:

- The Judgment of the Court dated 7<sup>th</sup> August 2015 on the Procedures and Principles applying to Reparations<sup>17</sup>;
- The Order of 3<sup>rd</sup> March 2015 concerning appeals against the Judgment of the Court on the Procedures and Principles applying to Reparations in the Thomas Lubanga Dyilo case<sup>18</sup>;
- The Modified Directive on Reparations in Appendix A of the Order on Reparations<sup>19</sup>;
- The document on reparations and draft plan<sup>20</sup> dated 3<sup>rd</sup> November 2015 from the Victims' Aid Fund and Appendix A concerning the draft plan on the distribution of compensation awarded to victims collectively<sup>21</sup>;
- The Directive to the Victims' Aid Fund to complete the draft distribution plan<sup>22</sup>.

These rulings will be examined under the following headings: the legal framework of reparations (III.1), the beneficiaries (III.2), methods (III.3), the financing of reparations (III.4) and the procedure for distributing reparations.

#### III. 1. The legal framework of reparations defined by the Court

The law on reparations applied by the ICC is set out in Articles 75 and 79 of the Statute of Rome and in Rules 99-99 of the Court Rules on Procedure and Proof.

This law is the base for various judgments listed above made by the Court in the Lubanga case.

By its judgments the Court acknowledges that reparation is a basic right and sets out the principles for its operation in each specific case. By its judgment on the principles and procedures to apply concerning reparations: "the Court acknowledges that the right to reparation is a basic human right, widely recognized and enshrined in international and regional treaties on human rights, and other international agreements such as the Basic Principles of the United Nations, the Declaration of the Basic Principles of Justice for victims of crime and the abuse of power, the Guidelines for Justice concerning child victims and witnesses of crime, the Nairobi Declaration, the Cape Town



Principles and best practice on the recruitment of children to military forces and the demobilisation and social reintegration of child soldiers in Africa and the Paris Principles. In setting out the present principles the Court has been guided by these international agreements and other authoritative reports on human rights”.<sup>23</sup>

The acknowledgment of reparation as a basic right is vitally important because it creates an obligation on those responsible for it which cannot be eliminated by the scarcity of resources. Victims of serious violations can continue to claim this right until it is satisfied. However within the legal framework specific principles govern victim access to reparation. These principles take account of the fact that ‘the Statute and Ruling on Procedure and Proof have introduced a reparation system in which international criminal law is increasingly aware of the need to go beyond the concept of retributive justice towards a more inclusive solution which encourages victims to take part in the process and realises the necessity of offering them useful support’.<sup>24</sup>

### ***III. 1. 1. The Principles of Reparation***

Analysis of the texts mentioned shows that the Court is insistent on the criminal aspect of its judgments, including those on reparations: reparations in specific cases are subject to logical judicial principles.

The Court has set out five principles<sup>25</sup> required by a Reparation Order in every case: it must be made against the person found guilty, it must establish the responsibility of the guilty person for the purpose of reparation and inform him/her of it, it must set out the reasons justifying the form of reparation required, it must establish the harm caused by the crimes which led to the verdict and it must define what is required to justify reparation, based on the link between the harm suffered and the crime committed.

#### *III. 1. 1. 1. The Reparation Order must be made against the person found guilty*

This principle requires a prior ruling on the guilt of the perpetrator of the crimes to be compensated: “Reparation Orders are intrinsically linked to the individual whose criminal responsibility has been established by a verdict of guilt and whose guilt is noted in a ruling about sentence”.<sup>26</sup>

In the Lubanga case there is verdict of his guilt declared by the Court on 14<sup>th</sup> March 2012<sup>27</sup> and a ruling about sentence on 12<sup>th</sup> July 2012.<sup>28</sup>

This verdict establishes Lubanga’s guilt as joint perpetrator of the war crimes of enrolling and conscripting children under 15 in the Patriotic Force for the Liberation of the Congo, and making them play an active role in combat between 1<sup>st</sup> September 2002 and 13<sup>th</sup> August 2003 in an internal armed conflict. He was sentenced to 14 years’ imprisonment for these crimes. These two decisions opened the way for reparations for the these crimes.

#### *III. 1. 1. 2. The Order must establish the responsibility of the guilty person for the purpose of reparation and inform him/her of it*

The area and extent of liability of a crime’s perpetrator needs to be established. What was the range of the acts involved? This liability is expressed in a sentence which

causally links the crime, the harm suffered by the victim and, as a consequence, his right to reparation. The Court considered that the Reparation Order should set out the personal liability of the guilty person for the compensation awarded and inform him of his liability. If the Victims' Aid Fund advanced the funds to carry out the Order, it should be able to reclaim them later from Thomas Lubanga. On this point the Appeal Court concluded that the lower Court was in error in not declaring Lubanga personally liable for collective reparations because of his current state of indigence. The requirement to compensate for harm arises from individual responsibility in law for the crimes causing the harm, and therefore the person judged to be responsible in law for those crimes is the one liable for compensation.

The Appeal Court considers that the 'principles concerning reparations' must also take account of the extent of the responsibility of the person sentenced. It accepts that the extent of liability for reparations of a person sentenced may vary, for example, in accordance with the nature of individual criminal liability determined against that person and the specific elements of that liability. Consequently the Appeal Court considers that the liability for reparation of a person sentenced must be proportionate to the harm caused and particularly to his role in the crimes for which he was found guilty in the specific context of the case.

In the Lubanga case enrolling and conscripting children under 15 in the Patriotic Force for the Liberation of the Congo, and making them play an active role in combat between 1<sup>st</sup> September 2002 and 13<sup>th</sup> August 2003 in an internal armed conflict are the crimes for which Thomas Lubanga was sentenced and therefore the direct cause of his sentence to remedy the harm caused by his action. The rights of the defence are also respected.

### *III. 1. 1. 3. The Order must set out the reasons justifying the form of reparation required*

Reparation may be individual or collective. The justifying reasons correspond to the aims the Court assigns to reparation. Accordingly it decides the type of reparation needed to reach the aim it has fixed.

In the Lubanga case the aims are to relieve victims' suffering, to dispense justice by reducing the consequences of the criminal acts, to discourage future violations, to assist the practical reintegration of child soldiers and to promote reconciliation between the man condemned, the victims and the communities affected.<sup>29</sup> The practical measures which make up the reparations are intended to achieve these aims.

In the Lubanga case the Court ordered collective reparations. In addition it noted the need for a number of methods of reparation taking account of the context and the needs of victims. It viewed collective reparations as both individual and collective redress and also highlighted symbolic reparations as an important part of these collective reparations with a preventive and transforming role.

The aims ascribed to reparations justify the forms of compensation to victims, in this instance collective reparations.

*III. 1. 1. 4. The Order must establish the harm caused by the crimes which led to the verdict*

Reparation must be a response to either material or moral harm. Achieving satisfactory reparation depends on entirely covering the range of consequences caused by the crime being punished. The Court considers that the relevant principle in this rule is that reparation must be based on the harm suffered following a crime which comes within the competence of the Court.<sup>30</sup> The idea of causality requires that in the absence of the crime the harm would not have occurred.

The causal link between the harm and the crime for the purpose of reparation has to be decided in the light of the specific nature of each case.<sup>31</sup>

The lower Court has two options available in assessing the seriousness of harm:

- It may, with or without the help of experts, in accordance with Article 97(2) of the Rules on Procedure and Proof, decide the extent of harm, loss and injuries, or with regard to the victims of the Reparation Order:
- It may define the direct or indirect harm to victims and decide the criteria to be applied by the Victims' Aid Fund in assessing the extent of either collective or individual harm. It must therefore clearly define the adverse effects arising from the crimes for which the person has been found guilty and how the Fund can assess compensation.

In the Lubanga case the harms which must receive compensation are as follows:<sup>32</sup>

For direct victims:

- I. Physical wounds and bruising;
- II. Psychological injuries and the development of psychological problems like suicidal tendencies, depression and unwillingness to communicate;
- III. Interruption and loss of scholarship;
- IV. Family separation;
- V. Exposure to a climate of violence and fear;
- VI. Problems socialising in the family and community group;
- VII. Problems in controlling aggressive tendencies;
- VIII. Underdeveloped ability for action in everyday life putting the victim at a disadvantage particularly in employment.

For indirect victims

- I. Psychological suffering caused by the sudden loss of a family member;
- II. Material deprivation accompanying the loss of income from family members;
- III. Loss, injury or harm suffered in trying to prevent further damage to a child from the crime;
- IV. Psychological and/or material suffering arising from the aggressiveness of former child soldiers displaced within their families and communities.

### *III. 1. 1. 5. The Order must define what is required to justify reparation, based on the link between the harm suffered and the crime committed*

Reparation must be sufficient and proportionate to the harm suffered. The injury, loss or infringement underlying the demand for reparation must result from the crime. The concept of 'harm' covers tort, infringement and injury. Harm need not necessarily be direct, but the victim must have suffered from it personally. It may be material, physical and psychological. The harm suffered from the crimes for which the perpetrator has been sentenced determines the eligibility of victims for compensation.

This principle provides the base to understand the Court's response concerning the eligibility of victims of sexual violence in the Lubanga case. The Appeal Court confirmed the principle that reparations must be granted for the harm suffered from a crime within the Court's jurisdiction. It specifically addressed the question of whether sexual violence could be considered as 'harm' resulting from the crimes for which Thomas Lubanga had been found guilty. The Court decided that it was not possible as he had not been convicted of crimes of sexual violence and sexual violence was not included in determining the sentence when assessing the gravity of the crimes for which he was sentenced.

However this does not prevent victims of sexual violence from benefiting from the aid provided by the Victims' Aid Fund under its discretionary mandate. The draft operation plan prepared by the Victims' Aid Fund should also include a process of referral to the relevant NGOs operating in the affected areas which provide help to victims of sexual and sexist violence.

### **III. 2. Beneficiaries of reparations and the principles for their selection**

For the ICC beneficiaries of reparations are

- Direct victims:<sup>33</sup> in the Lubanga case these are the children recruited and used in the conflict and members of their families. It is necessary to show the link between family members and the child soldiers recognized as victims.
- Indirect victims:<sup>34</sup> this group may include individuals who have suffered harm while helping direct victims or intervening on their behalf, e.g. trying to prevent one or more of the crimes considered or who suffered personal harm as a result of these crimes, whether or not they took part in the trial.
- Legal entities<sup>35</sup> by virtue of Article 85-b of the Rules.

The ICC insists on the following principles in selecting victims:

- All victims must be treated fairly and in the same way, whether or not they took part in the trial.
- Crime victims, whether or not they took part in the trial or requested official reparation, must be able to benefit from collective reparations, as must family and community members who fulfil the required conditions for reparation.
- Access to reparation follows the principle of dignity, non-discrimination, non-stigmatisation and the possibility of positive discrimination. "The Court may adopt



measures of positive discrimination to guarantee particularly vulnerable victims equal, real and assured access to the right of reparation.”<sup>36</sup>

- An approach which takes account of age and sex differences of victims (e.g. children) must govern the general principles of reparation to ease its application to all of them. In conformity with Rule 86 of the Rules on Principles and Procedures the Court must take account of harm linked to the age of victims as well as to their needs. In addition the differing repercussions that these crimes may have on boys and girls must be considered.
- Reparations are entirely voluntary, so the victims’ consent is required.<sup>37</sup>

### **III. 3. The methods of reparation**

Reparations are made after the trial by the person convicted. Article 75 of the Statute lists restitution, indemnification and rehabilitation as forms of reparation, but the list is not exhaustive. Other types of reparation may also be appropriate, such as those having symbolic, preventive or transformative value.<sup>38</sup>

The Court may grant individual reparation, collective reparation or both, according to Rule 97 of the Rules on Procedure and Proof, depending on what, in its view, is most suitable for victims in the case. The number of victims may be considered important in deciding that collective reparation is more suitable. Collective reparation has the advantage of assisting an entire community and helping the members to rebuild their lives.

Reparations must, whenever possible, be guided by the local culture and customs, unless these lead to discrimination and exclusion or prevent victims from fully exercising their legal rights.

The Court accepts the need for the following principles of positive discrimination and sex recognition to operate in granting reparation:

- For child victims the Court should be guided by the Convention on the Rights of the Child and the basic principle of ‘the primary interest of the child’ enshrined in it. Any ruling on this subject must also take account of differences between the sexes.<sup>39</sup>
- For victims of sexual violence the Court must take account of the complex consequences of these crimes which are felt at several levels: they may extend over a long time and may affect men and boys as well as women and girls and even their respective families and communities; they make it necessary to take integrated, multidisciplinary action adapted to the situation.<sup>40</sup>

Applying the points analysed above the Court decided to grant collective reparation to the victims in the Lubanga case. This must meet the following criteria:

- It should remedy the harm done to the victims both individually and collectively.
- The Court should seek to provide medical care for victims (particularly psychiatric and psychological care), as well as assistance towards general rehabilitation, housing, education and training.<sup>41</sup>

- The reparation programmes must include measures to reintegrate former child soldiers, to prevent these young men from becoming victims and objects of discrimination and stigmatisation.
- Child victims require special attention. Reparation processes as well as the Orders and programmes for child soldiers should as far as possible encourage development of the victim's personality, his talents and aptitudes and, more generally, promoting respect for human rights and basic freedoms.<sup>42</sup>
- The need to direct reparations towards independent programmes to allow victims, their families and their community to benefit over time.
- Members of a community are entitled to reparation where the harm they suffered meets the conditions required for redress against the crimes of Thomas Lubanga.
- The possibility exists for the Board of the Victims' Aid Fund, in carrying out its mandate under Rule 50a of the Fund's Rules, to include the members of the relevant communities in the aid programmes set up in the zone of operations in the DRC, when they do not meet the conditions mentioned above.
- Thomas Lubanga's liability for reparations includes places not mentioned in the Judgment, but which are named in specific contexts.

According to the Victims' Aid Fund consultations at various places in Ituri<sup>43</sup> have led to the identification of harm linked to the crime of enrolment and conscription of children in order to use them in conflict, and of possible solutions to reduce this harm. These solutions "may be ranged under four headings: i) restoring the physical and psychological health of victims; ii) giving victims access to formal or informal education; iii) socio-economic development and promoting employment, particularly professional training; iv) encouraging community reconciliation and raising awareness of the fight against recruiting child soldiers".<sup>44</sup>

The fact remains that the distribution of reparation requires significant financial means.

### **III. 4. Financing reparation**

For the ICC financing reparation is the responsibility of the person sentenced. His assets and possessions are the source of payment of reparations. If the person is destitute or insolvent the Court may order the Victims' Aid Fund to intervene, as it may in measures within the Fund's general aid mandate.

The signatory States of the Statute of Rome have set up a Fund for the benefit of victims of crimes subject to the Court's jurisdiction to provide the funds needed to meet the Court's reparation orders.

However reparations ordered by the Court do not excuse States of their responsibility to grant reparations to victims under other treaties or national legislation.

### III. 5. The Reparation Process

With regard to the application of reparations the ICC gives primary importance to consulting victims and also to multidisciplinary expertise. The Court decided that:

- Victims should be consulted on matters like identifying beneficiaries for reparation and their priorities. The Appeal Court modified the Order of the Court so as to require the Victims' Aid Fund to consult with victims who took part in the trial and those who presented individual requests on matters concerning, among other things, the conception and nature of collective reparations.
- A multidisciplinary team of experts should be assembled to assist the Court in the following areas:
  - a) Assessing the the harm suffered by victims in the case;
  - b) The effect of the crimes of enrolling and conscripting children under 15 and forcing them to play an active role in conflict on their families and communities;
  - c) Identifying, together with the victims and their communities, the most suitable form of reparation in the case;
  - d) Deciding which individuals, bodies, groups, and communities should receive reparation and access to funds for this purpose.<sup>45</sup>
- To ensure a wide reach and genuine usefulness for reparation measures it is vital to increase awareness through programmes for both sexes and different ethnic groups and also through dialogue between the Court and the individuals affected and their community.<sup>46</sup> The declaration of guilt and the sentence probably have great importance for victims and their family and community. The wide publicity given to the Judgment may also raise awareness about enrolling and conscripting children under 15 and forcing them to play an active role in conflict, and may help to dissuade others tempted to commit these crimes.<sup>47</sup>

After this analysis of the principles recommended by the ICC I shall examine their potential for improving the situation in the DRC.

### IV. Contribution of the ICC principles to the issue of reparation for victims of serious violations in the DRC

In this section I shall outline the contribution that the ICC principles set out in the Lubanga case may have on the specific variables of the DRC relating to reparations for violations of human rights. These variables concern the legal framework of reparations (IV.1), victim profiles (IV.2), their needs and the means and conditions for gaining compensation (IV.3), finance (IV.4), and the process for working out a comprehensive reparation policy in the DRC (IV.5).

#### **IV. 1. The legal framework of reparations**

I have emphasised already that reparation in the DRC follows an objective view focused on the concept of offence, not on the harm suffered by the victim. The only path available to victims is a judicial one. Furthermore judicial practice is far from international standards in this domain, being limited to offering compensation as the prime means of reparation. This view, which seems narrow, is inadequate to cope with the consequences of serious violations, given the nature of these. In reality many victims are unable to gain satisfaction for their basic right to reparation for the harm they suffered. In contrast, going over the principles set out by the ICC, it is noticeable that the Court gives a wider interpretation of the applicable law, as laid out for example in Article 75 of the Statute of Rome. This allows the complex nature of reparation to be adapted by linking objective and subjective views of it. In this way reparation is subject to concrete objectives aiming to meet the purposes of criminal justice or of a broader concept of justice itself. This interpretation stands between an overly-narrow conception of reparation and a wider one, such as can be drawn from programmes of reparation in transitional justice.

This approach by the Court to interpreting the judicial framework is positive as it may help to set standards for an administrative reparation programme arising from judicial reparations.

Asserting the principle that the perpetrator is responsible for reparation within the limit of the harm caused by his crime, does not exclude the financing of reparations by an ad hoc body, which may seek repayment from a penniless perpetrator when his circumstances improve. In addition this body may guarantee reparations for harm over and above that for which the perpetrator has been sentenced measures within the framework of the Victims' Aid Fund's general aid mandate.

This approach should be at the heart of legislation in the DRC to develop judicial practice not only by broadening the concept of victims to direct and indirect ones, but also by changing methods of reparation to material and/or symbolic, individual and/or collective ones.

In passing I should mention that the legislation to apply the Statute of Rome failed to include explicitly the legal bases of reparation of the Statute of Rome.<sup>48</sup> Nonetheless their direct application, according to Article 215 of the Congolese constitution,<sup>49</sup> is assured by the judges so as to promote this basic right of victims of serious violations.

#### **IV. 2. Victim profiles in the DRC<sup>50</sup>**

There are numerous victims of serious violations in the DRC spread throughout the country. The range of perpetrators and situations causing harm makes it difficult to identify victims and also to set up victims' associations to spearhead effective advocacy in favour of a comprehensive reparation process. The range of harms and their severity make it difficult to classify victims and potentially to adapt reparations appropriately and manage the delays for victims that may occur in a reparation programme.



As a result it is difficult to guarantee reparation to all victims by judicial means. An administrative reparation programme is needed to overcome this. It seems sensible in both judicial and administrative approaches to reparation in the DRC to consider the relevant statements of the ICC concerning the beneficiaries of reparations:

- Consideration of different groups of victims and their definition: 'victims' must include indirect as well as direct victims. Legal entities are also entitled to reparation. Judicial practice in the DRC demonstrates that indirect victims and legal entities who are victims of crime are rarely involved in reparations. Consequently reparation focused on direct victims exclude many who have genuinely suffered serious harm. This is particularly true of whole communities who have seen their infrastructure (schools, hospitals etc.) destroyed because they sheltered people targeted during the armed conflict.
- Fair treatment of victims means that all victims must be treated in the same way, not favouring a single group because, perhaps, they filled in a form of identification at the time. In the DRC this requires an identification process for victims. The legal practice of independent representation of victims of violations at a trial<sup>51</sup> in order to be eligible for reparation must move towards taking account of all the victims of the crimes being tried. The law does allow the automatic award of damages and interest, but this clause is not consistently applied by the Congolese criminal courts.
- Application of the principles of dignity, non-discrimination and non-stigmatisation and the possibility of positive discrimination: everyone in the DRC may be considered a victim given the extent of violations. At the same time some victims are in a more vulnerable situation because of the harm they suffered. This must be asserted in every reparation process. It allows the adoption of measures to help those most vulnerable without breaching the principle of non-discrimination. It assumes that the victims themselves and the community as a whole share and accept the reality of this.
- Inclusion of an approach by gender in any judicial or administrative reparation process. Armed conflicts impacted victims differently according to their age and sex. The consequences in terms of harm suffered are largely dependent on this. It is known, for example, that rape was used as a weapon for a long time in the conflicts in the DRC. Women who were raped live with the consequences of these crimes in a unique way. The reparation programme has to address this.

Victim consent to reparation: as with any guaranteed right a person may choose to renounce it. This will also be true for victims in the DRC. They must agree to reparations and the method of application.

### **IV. 3. Victims' needs and the methods of reparation**

The victims of serious violations in the DRC are usually living in a socio-economically vulnerable situation, often made worse by what they have suffered. Beyond their need for psycho-medical support they specifically have to confront problems of food, lodging

and education for their children. The entire Congolese population is indeed faced with this situation, given the widespread poverty of the country. However the victims are more severely affected because of the violations.

The results of surveys on the ground demonstrate that their poverty influences the methods of reparation desired by victims, whatever the nature of the harm they suffered and its consequences: "Victims' expectations are strongly influenced by their current health, psychological, social and economic circumstances. The harm suffered following the serious violations continues in most cases to affect their daily lives. They still suffer more or less directly the consequences of past crimes. Most have been unable to improve their socio-economic conditions and see themselves as abandoned by the Congolese State which is scarcely concerned by their circumstances. For this reason they see reparations essentially as an answer to their current needs."<sup>52</sup> When you ask what method of reparation they desire victims in the DRC give priority to satisfying their current material needs.

The results of a wider survey conducted by the International Centre for Transitional Justice, published in 2008, are still valid and confirm the tendency of victims to prefer material reparation. The ICTJ report says the following about reparations: "The survey then asked participants what was needed by the conflict victims in the east of the Congo. This question was asked without mentioning acknowledgment of responsibility or offering justice to victims. This allowed participants to express a wide variety of material needs whose satisfaction represented for them a form of non-judicial reparation to compensate for their suffering. The commonest answers focused on material compensation for victims, financial (40%), housing (28%), food (28%), and other forms of material compensation (40%). Most participants indicated that this reparation should be offered to individuals and whole communities (43%); 35% said that reparations should go only to individuals, while 22% thought on the contrary that they should go only to communities. One in five participants judged it necessary to punish the perpetrators to give justice to victims, while 17% stated that it was also important to acknowledge the victims' suffering officially. Only 15% of participants mentioned psychological assistance, though 20% of Ituri inhabitants did so. This aspect needs to be examined in the context of an almost entire absence of official psychological support services in the east of the DRC, which highlights the need to make this support available to victims."<sup>53</sup>

Victims prefer material reparation, particularly individual or collective financial compensation. I have already noted that currently in the DRC the only means of gaining reparation is judicial. Analysis of court decisions on reparation in cases of international crimes shows that they essentially award damages in the form of financial compensation. This presents challenges as those condemned, who are usually destitute, and even the Congolese State, often found liable in civil law, do not pay the awards. Sometimes the high number of victims involved in a trial influences the level of reparation awarded, without considering the circumstances of each victim. Lastly, legal entities and communities are often excluded from reparation.

Limiting reparation to a single means does not reflect victims' wishes, nor does it fulfil Article 75 of the Statute which lists restitution, indemnity and rehabilitation as forms of

reparation. Concerning the means of reparation I therefore consider that the policy to apply in the DRC should include the following principles arising from decisions of the ICC:

- Combining forms and types of reparation taking into consideration their acceptance in local society;
- Collective reparations must address the harm suffered individually and collectively, e.g. medical care (psychiatric and psychological), general help with rehabilitation (housing, education and training);
- The primary interest of children as the condition for deciding means of reparations;
- Taking account of victims' sex in decision-making;
- Reintegrating victims to avoid marginalisation;
- Making victims independent for the future.

Obviously it is vital to consider available resources in deciding the forms and means of reparation in the DRC.



**Victims handicapped as a result of injuries suffered, processing to the cemetery for war victims in Kisangani on the Day of Remembrance.**

*Credit: Guy Mushiata/ICTJ*

#### **IV. 4. Financing reparations**

Financing reparations is a crucial question in the DRC. Currently reparations, usually judicial in nature, are due from those convicted and those with liability for them under civil law, i.e. the State for its officials. In this instance the reparations due are drawn from the modest general budget for justice.



**Victims in procession to the cemetery for war victims in Kisangani on the Day of Remembrance organised on 10<sup>th</sup> June 2013.**  
*Credit: Guy Mushiata/ICTJ*

In addition the government does not see reparations as a priority. To date the Congolese government as part of its strategy to combat sexual violence has set up a Reparation Fund for Victims of Sexual Violence, but this Fund is not yet in operation. In the light of this, what can be taken from the ICC model to improve the financing of reparations in the DRC.

The Lubanga judgment states that those convicted are the only persons liable for reparations due for their crimes but that the Victims' Aid Fund may pay the reparations and try to recover them later. The sources of finance listed by the ICC are the perpetrator's assets, the Fund's own resources and donations to the Fund.

To ensure an effective reparation policy in the DRC it seems reasonable to consider the creation of a single reparation fund. The current Fund for Victims of Sexual Violence may provide a starting point for this. It would take charge of judicial and administrative reparations. Its principal income will be a substantial initial capital sum from the State and also from other sources such as judicial fines and taxes on economic and financial beneficiaries of the conflicts<sup>54</sup>, e.g. the indemnity owed to the DRC by the Ugandan government after a ruling by the ICC in 2005<sup>55</sup> fining companies and individuals which profited from the illegal exploitation of the natural resources of the DRC during successive conflicts.

As for its duration, the programme might initially be set up as an ad hoc entity and later become permanent in the light of its performance.

#### **IV. 5. The Reparation Process**

Any effective process for distributing reparations to victims of serious violations will be focused on their participation in creating and applying that process. As mentioned above, the DRC has yet to create a comprehensive reparation process, or even consult on doing so.





**Derelict building behind the Town Hall in Kisangani used as the office of the Association of War Victims.**

*Credit: Guy Mushiata/ICTJ*

The principles set out by the ICC give prime importance to consulting not only on victims' needs but also on the forms, types and measures of reparation that they prefer. Before and after these consultations action to increase awareness designed for the beneficiaries is required. As the Lubanga case showed multidisciplinary expertise is also needed. This will provide an unquestionable extra value which should be noted in creating a wider reparation programme in the DRC. A further consideration not specially highlighted in the Lubanga judgment is the representation of victims within the body administering reparations. This will guarantee that their interests are assessed by their peers among others.

## V. Conclusion

In the Thomas Lubanga Dyilo case the ICC fixed the principles applying to reparations for the first time. These principles are aligned with the judicial framework set out in the Treaty of Rome and other complementary texts like the Ruling on Procedure and Proof. These principles make it possible to establish the range covered by legal texts on reparations and so ease their application in particular circumstances.

From the analysis above it is clear that these principles concern the legal framework, beneficiaries, methods of reparation, financing and application. One may say that the norms laid down by the ICC, while ensuring respect for the rights of the defence, place victims once more at the heart of the question of reparations and aim to foster best practice in this area in accordance with international law.

Why then have I shown interest in these principles elaborated in a legal context? What link do they have with the situation in the DRC which is a State where the right to reparation remains unsatisfied, leaving many victims awaiting justice for harm suffered through human rights' violations? The answer lies in the effort to apply the principle of complementarity between the ICC and national jurisdictions which must





**Visit to the exhibition of photos of the injuries suffered during the wars on the Day of Remembrance for victims of the wars in Kisangani.**

*Credit: Guy Mushiata/ICTJ*

also help to make restorative justice for victims a reality. Even if it is clear that the question of reparation for human rights' violations goes beyond solutions offered by the courts and requires the application of measures in the ambit of transitional justice.

Certainly analysis of the current reparation situation in the DRC does not reveal a shining picture. It is clear that though the State has shown no hurry to meet the victims' need for restorative justice, they are not tiring in the struggle. Reparation is a basic right and the Congolese government is required by international and national law to find a suitable way to meet its obligation. In this sense my study is an analysis for the future seeking to promote the right to reparation in the DRC.

The principles set out by the ICC may *mutatis mutandis* be applied in the DRC in reforms to improve current legislation on reparation, judicial practice, and, in particular, to set up an administrative reparation programme. In comparing the norms established by the ICC with the current situation, I have set out relevant norms for applying the right to reparation in the DRC. I have done this while taking account of the variables neces-



**Wreath laying by the President of the Association of War Victims of Kisangani on the 10<sup>th</sup> anniversary Day of Remembrance for the war in Kisangani.**

*Credit: Guy Mushiata/ICTJ*

sary for an effective Congolese reparation policy, i.e. the legal framework, beneficiaries, reparation measures, financing and the process of instrumentation.

Following this it seems reasonable to conclude that the norms for reparation defined by the ICC may make a significant contribution in the DRC if the political authorities demonstrate a genuine will for justice towards the victims of serious violations in order to strengthen legality and national reconciliation. However, one question remains: how do the authorities and others involved view the suggested norms, and how can these principles be adequately applied to give real effect to the right to reparation of numerous victims of violations of human rights in the DRC?

## Endnotes

<sup>1</sup> UN High Commission for Human Rights (HCHR) Democratic Republic of Congo 1993-2003, Mapping Project of the UN High Commission for Human Rights (HCHR) concerning the most serious violations of human rights' and international humanitarian law committed between March 1993 and June 2003, August 2010 p.17, para.15

<sup>2</sup> Katanga province was split into four new provinces: Tanganyika, Upper Lomami, Upper Katanga and Lualaba according to Article 2 of the Constitution of the DRC.

<sup>3</sup> The right to reparation is guaranteed in international law as well as Congolese national law. The content can be found in the Universal Declaration of Human Rights (Art.8), the International Pact on Civil and Political Rights (Art.2.3), the International Convention on the Elimination of all Forms of Racial Discrimination (Art.6), the Convention against Torture (Art.14), the Convention on the Rights of the Child (Art.39), as well as the Statute of Rome of the ICC (Art.75), Resolution 60/147 of 16<sup>th</sup> December 2005 of the UN General Assembly on the basic principles and directives concerning the right to appeal and to reparation for victims of gross breaches of international human rights' law and serious violations of international humanitarian law, the constitution of the DRC, the Congolese Civil Code etc.

<sup>4</sup> Gérard CORNU, Vocabulaire juridique, PUF, Paris, 1987, p.686

<sup>5</sup> GINCHARD,S & DEBARD,T (sous la direction de), Lexique des termes juridiques, 23<sup>e</sup> édition, Paris, Dalloz, 2015

<sup>6</sup> UN General Assembly, Resolution 60/147 on the Basic principles and directives concerning the right to appeal and to reparation for victims of gross breaches of international human rights' law and serious violations of international humanitarian law, para.16. <http://www.ohchr.org/FR/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

<sup>7</sup> PARMAR,S and MUSHIATA,G, Déni de justice. Les victimes de crimes graves ne reçoivent pas les réparations ordonnées par la Cour de justice en République Démocratique du Congo, ICTJ Briefing paper, février 2013, p.1

<sup>8</sup> UN General Assembly o.c. Para 9

<sup>9</sup> UN General Assembly o.c. Para 9

<sup>10</sup> UN General Assembly,o.c., para.8

<sup>11</sup> MUSHIATA,G., Promouvoir le droit à la réparation en RDC, Cahiers du CERUKI Nouvelle série, no.52 (2016)

<sup>12</sup> An approximate total figure for reparations ordered by the courts against the State can be obtained from the Ministry of Justice. However many judgments are not transmitted to the authorities owing to the complexity of the procedure.

<sup>13</sup> Information on <https://www.icc-cpi.int/drc?In=fr>

<sup>14</sup> <https://www.icc-cpi.int/drc?In=fr> (last accessed 17<sup>th</sup> November 2016)



- <sup>15</sup> For further information <https://www.icc-pi.int/drc/lubanga/Documents/LubangaFra.pdf>
- <sup>16</sup> <http://www.trustfundforvictims.org>
- <sup>17</sup> [https://www.icc-cpi.int/CourtRecords/CR2013\\_01508.PDF](https://www.icc-cpi.int/CourtRecords/CR2013_01508.PDF)
- <sup>18</sup> [https://www.icc-cpi.int/CourtRecords/CR2015\\_02631.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_02631.PDF)
- <sup>19</sup> [https://www.icc-cpi.int/RelatedRecords/CR2015\\_02633.PDF](https://www.icc-cpi.int/RelatedRecords/CR2015_02633.PDF)
- <sup>20</sup> [https://www.icc-cpi.int/CourtRecords/CR2016\\_00673.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_00673.PDF)
- <sup>21</sup> [https://www.icc-cpi.int/RelatedRecords/CR2016\\_00675.PDF](https://www.icc-cpi.int/RelatedRecords/CR2016_00675.PDF)
- <sup>22</sup> [https://www.icc-cpi.int/CourtRecords/CR2016\\_01033.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_01033.PDF)
- <sup>23</sup> Ruling on Principles and Procedures, para 185
- <sup>24</sup> Modified Directive, para 1
- <sup>25</sup> Order on Reparation, para 1
- <sup>26</sup> Order on Reparation, para.65
- <sup>27</sup> [https://www.icc-cpi.int/CourtRecords/CR2012\\_08207.PDF](https://www.icc-cpi.int/CourtRecords/CR2012_08207.PDF)
- <sup>28</sup> [https://www.icc-cpi.int/CourtRecords/CR2012\\_08206.PDF](https://www.icc-cpi.int/CourtRecords/CR2012_08206.PDF)
- <sup>29</sup> Document concerning Reparations and Draft Plan for Implementation, p.90-1
- <sup>30</sup> Order on Reparations, para.79
- <sup>31</sup> Ibid., para.80
- <sup>32</sup> Modified Directive, para.58
- <sup>33</sup> Rules on Principles and Procedures, para.194
- <sup>34</sup> Idem, para.196
- <sup>35</sup> Idem, para.197
- <sup>36</sup> Ibidem, para.200
- <sup>37</sup> Rules on Principles and Procedures, para.160
- <sup>38</sup> Rules on Principles and Procedures, para.222
- <sup>39</sup> Idem, p.22-3
- <sup>40</sup> Rules on Principles and Procedures, para.207
- <sup>41</sup> Ibidem, para.221
- <sup>42</sup> Idem, para.213
- <sup>43</sup> Document concerning Reparations and Draft Plan for Implementation, p.27-36
- <sup>44</sup> Idem, para.68
- <sup>45</sup> Rules on Principles and Procedures, para.263
- <sup>46</sup> Idem, para.205

<sup>47</sup> Modified Directive, para.43

<sup>48</sup> This legislation has modified the Code of Criminal Procedure, the Military Criminal Code and the Congolese Criminal Code.

<sup>49</sup> This Article sets out the monism of Congolese law and states: 'Treaties and international agreements regularly concluded have from the time of their publication a higher authority than laws, as long as such treaty or agreement is applied by the other party.'

<sup>50</sup> MUSHIATA,G., Promouvoir le droit à la réparation en RDC, Cahiers du CERUKI Nouvelle série, no.52 (2016), pp.283-297

<sup>51</sup> Article 69 of the Code of Criminal Procedure; Article 226 of the Military Legal Code

<sup>52</sup> MUSHIATA, G., o.c.,p.291

<sup>53</sup> VINCK,P.,PHAM, P., SULIMAN,B., SHIGEKANE,S., Vivre dans la peur. Une étude réalisée au sein de la population sur la paix, la justice et la réconciliation sociale dans l'Est de la RDC, Université de Californie à Berkeley, Université de Tulane, Centre International pour la Justice Transitionnelle, Août 2008, p.57-8

<sup>54</sup> A prime cause of the armed conflict in the DRC was exploitation of mineral resources. Many national and international companies took unjustified advantage of the situation. It is possible to advocate the taxation of unjustified profits made by these companies, frequently by violations of human rights, particularly those of the population of mining areas.

<sup>55</sup> ICC, Case on Armed Activity in the Congo (DRC v Uganda) 19<sup>th</sup> December 2005. According to the terms of this ruling, the DRC and Uganda were to hold bilateral talks to fix the level of compensation, and if these failed to refer the case to the Court again. The two countries have yet to reach agreement and the DRC has appealed to the Court.





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