CHAPTER V. REPARATIONS

1069. Many international treaties contain references to the rights to reparation for victims of serious human rights violations.[1793] This is linked to the right to remedy that provides that all victims should have an easy access to a procedure for obtaining reparation, via criminal, civil, administrative or disciplinary routes. The United Nations Organization adopted the "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" ("Reparation Principles"), which state that victims of such abuse have the right to adequate, effective and prompt reparation for harm suffered.[1794]

1070. Hundreds of thousands of victims have suffered psychological and physical damage as a result of the terrible violence they experienced between March 1993 and July 2003. This report does not provide details of the harm suffered by populations during the successive wars and conflicts, but does give a glimpse of the extent of the damage. The Mapping Team's work on the ground has brought to light the huge expectations on the part of victims in terms of reparations and their frustration at the privileges granted to combatants who were demobilised as part of the DDR programme, while they still receive nothing. It should also be emphasised that these populations, most of whom are in a disastrous economic situation, desperately wish for tangible steps towards reparation. These high expectations make the issue of reparations a particularly difficult one.

A. Types of reparation

1071. The right to reparation must take into account all harm suffered by the victim. The possible forms of material or non-material reparation are as follows: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

1072. The aim of restitution is to restore the victim to the original situation before the harm caused by the violations. This includes restoration of liberty for those in captivity or detention, restoration of civil or political rights, identity or even citizenship for those deprived of them, return of stolen property or of lost employment.

1073. Compensation aims to cover economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.

1074. Rehabilitation should include medical and psychological care as well as legal and social services. Particular emphasis is often given to former child soldiers and people

[1793] See the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (article 2.3), the International Convention on the Elimination of all forms of Racial Discrimination (article 6), the Convention against Torture (article 14), the Convention on the Rights of the Child (article 39) as well as the Rome Statute of the International Criminal Court (articles 19 and 68).

[1794] These principles, which were revised several times by the Commission for Human Rights, were finally adopted in their final version by the General Assembly in resolution 60/147 of 16 December 2005.

who have been raped; these categories of victims are most frequently traumatised by these experiences, and need this type of support.

1075. Satisfaction should include effective measures aimed at the cessation of continuing violations, verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared or abducted, public apology, judicial sanctions, inclusion of international law and human rights in educational material at all levels, and commemorations and tributes to the victims.

1076. Guarantees of non-repetition should include a series of reforms, particularly within the security forces and judicial system, which will be examined in more detail in the last chapter of this section.

1077. Under public international law and international human rights law, the State has the obligation to provide reparation for acts and omissions that can be attributed to the State, on its own territory or abroad. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.[1795]

1078. Reparations may be ordered as a result of national or international legal decisions or by a commission that is specially mandated to rule on this issue. Legal decisions often impose on victims the heavy burden of demonstrating under civil law that there was an offence that led to damages, and to prove under criminal law the identity of the perpetrator of the crime committed against them. Mechanisms that are devoted specifically to reparations are better suited to victims' needs and less demanding of them. They concentrate primarily on the damage suffered, and do not necessarily seek to attribute blame to a specific individual. Some States have, for example, established commissions that are responsible for developing reparation programmes or compensation funds.[1796]

B. The right to reparation in the context of the DRC

1. Responsibility for reparation

Congolese Government

1079. The right to reparation is clearly recognised in Congolese law. Article 258 of the Congolese civil code states the principle that "any act whatsoever that causes harm to another obliges the person by whose offence the harm was caused to make amends for this harm". Also, Article 259, according to which "A person is responsible not only for the harm caused by his/her own action, but also the harm caused by acts committed by persons answerable to him/her, or matters that are within his/her responsibility", is applicable to responsibilities of the State or its departments.

[1795] Resolution 60/147 of the General Assembly concerning 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, para. 16.

[1796] For example in Guatemala, Morocco, Brazil and Malawi. See Rule-of-Law Tools in Post-Conflict States: Reparations Programmes, p. 12, available at the following address: www.ohchr.org.

1080. Congolese law therefore complies with the principle of international law according to which "a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law".[1797] The Military High Court has clarified that, in order for such responsibility to be established, it is sufficient to show poor general conduct on the part of public services in general, to establish that there is poor organisation or faulty operation, the latter having been assessed objectively with reference to what can be expected of a modern public service operating normally.[1798]

1081. It is also useful to emphasise that under international law, each government inherits the obligations and responsibilities arising from the acts of previous governments. Several regimes successively came to power between 1993 and 2003. The AFDL was a rebel group that later came to power, and several rebel groups involved in the war between 1998 and 2002 became involved in the transition Government. In addition, the Kinshasa Government was often accused of directly or indirectly supporting rebel groups in several provinces.

1082. As part of the proposal made by the International Commission of Inquiry for Darfur, it was recommended that funding for payment of compensation to victims of crimes committed by Government forces or *de facto* agents of the Government should be provided by the Sudanese authorities, which should be requested by the Security Council to place the necessary sum into an escrow account. Funding for compensation of victims of crimes committed by rebels (whether or not the perpetrators have been identified and brought to trial) should be afforded through a trust fund to be established on the basis of international voluntary contributions.[1799]

1083. The Congolese Government should therefore be the first to contribute to a reparations programme. This contribution must be proportional to the State's budgetary capacity, but a suitable investment will demonstrate that the State recognises this legal and moral obligation, will provide a clear political signal of its willingness to help victims, and will stimulate contributions from other international partners in the programme.

Third-party states involved in violations

[1797] Resolution 60/147 of the General Assembly, para. 15.

[1798] Decision of the Military High Court of the DRC issued on 5 October 2004, cited as case law in the decision issued on 7 June 2006 by the military court in Équateur concerning the case recorded as RMP no. 154/PEN/SHOF/05 - RPA no. 014/2006, otherwise known as the Songo Mboyo case, page 43. The Équateur court considered, in its decision, that "the security of the population and of their property falls under the State's royal prerogatives as a public power, and the State must therefore keep constant watch over this", and that therefore "military personnel carrying out their functions must be considered to be an organ of the State" and draws the conclusion that the State is responsible, based on the fact that "military personnel based on Songo Mboyo, because of the faulty operation of the 9th FARDC battalion of which they were a part, failed in their primary duty to ensure the security of the population and their property.

[1799] **See *Report of the International Commission of Inquiry for Darfur to the Secretary-General, pursuant to Security Council resolution 1564* (2004) of 18 September 2004 (S/2005/60), paras. 601-603.**

1084. This report has identified countries that could be held responsible for serious violations of human rights committed by their national armies during the period under consideration in the DRC, and in particular Uganda, Rwanda, Burundi and Angola. Further investigation could result in determination of the extent to which other countries involved in the two wars in the DRC were responsible. The Security Council had previously considered that, in connection with the three wars in Kisangani in 1999 and 2000, "the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population in Kisangani".[1800] In a decision issued on 19 December 2005, the International Court of Justice ordered Uganda to pay reparations to the DRC for serious violations of human rights and of international humanitarian law committed by its armed forces on DRC territory, taking into account the invasion of DRC territory and the military occupation of Ituri by this State.[1801] The ICJ had to declare itself incompetent to rule on the DRC's request against Rwanda, as this country had not accepted the jurisdiction of the court.

1085. The principle established by the ICJ is clear. Third-party countries that have international responsibility for serious violations of human rights and of international humanitarian law also have the obligation to pay reparations to the State on whose territory these acts were committed and harm suffered, in the currency of the DRC. This obligation has its source in international customary law; it is not dependent on the ratification of any particular treaty by the State involved. The obligation exists regardless of whether there is a judgement by the ICJ.

1086. In its judgement, the ICJ gave a favourable reception to the DRC's request that the two parties reach an amicable agreement as to the sum due in reparations by Uganda, which would be determined by the Court only in the case of a disagreement between the parties. At the time of writing, negotiations on this subject are still underway, but these are linked to a wide-ranging process of normalisation of relations between the two countries, which could have a negative effect on the rights of victims in the name of good neighbourly relations and other diplomatic considerations.[1802] Furthermore, the sums received from Uganda must be wholly allocated to reparations, whether individual or collective. In order to guarantee that victims' rights are respected and that reparations are fairly granted during this process, victims' representatives must be included in current negotiations, in order to lend them greater legitimacy. Discussions should also be undertaken with the Governments of Rwanda and Angola, and with other governments that are responsible for serious violations of international human rights law and international humanitarian law. In the absence of decisions by the ICJ stating the extent of their responsibilities, international community involvement may be desirable.

[1800] Resolution 1304 (2000) dated 16 June 2000, para. 14.

[1801] ICJ, Armed Activities on the Territory of the Congo (*DRC* v. *Uganda*), 19 December 2005, para. 259-260.

[1802] Ngurdoto/Tanzania agreement concerning bilateral co-operation between the DRC and the Republic of Uganda, Ngurdoto/Tanzania, 8 September 2007, Chapter III - Political and Diplomatic Co-operation, article 8: Considering the Decision dated 19 December 2005 by the ICJ on the matter of the DRC versus Uganda, the Parties have agreed to form an *ad hoc* Committee that will be made responsible for studying this decision and recommending practical steps to be taken in order to implement it.

2. Existing reparation methods

Judicial approach

1087. The initial step for victims of serious violations of human rights and international humanitarian law in the DRC is to be referred to national tribunals in order to request conviction of the perpetrators of violations, and if the relevant conditions are met, the Congolese State for the payment of reparations. However, as seen in the previous section, military courts, which have exclusive jurisdiction in the area of crimes under international law, are not easily accessible to victims, who cannot refer cases to them directly. In fact, victims can only be constituted as a civil party after the case has been submitted to the military court by a military prosecutor, and if the latter does not act, victims have no direct access to the military judge.[1803] If cases are submitted to military courts, victims can be a civil party in the case at any time, from the point at which the case is referred to the court until the proceedings finish, via a declaration to the clerk or in the hearing, and the applicant should receive formal acknowledgement of this.[1804]

1088. In terms of legal precedent, some decisions made in the military justice system have established that the Congolese State was responsible for cases of serious crimes and human rights violations. Experience remains very negative. Despite convictions in law of perpetrators and the Government who were held legally responsible for reparations for victims, these decisions have not been enforced. Reduced access to justice, the high cost of legal fees, widespread corruption, the indigence of those found guilty and a lack of a clear procedure for waiving legal fees in cases of a total lack of financial resources from victims have all discouraged the pursuit of reparations, even when these are granted by the courts.

1089. Even the Congolese State, which has been found to be legally responsible on several occasions, has never paid what is owed. Within the Ministry of Justice, a Directorate for Disputes and Protocol was formed to take care of the reparations for harm suffered by victims in accordance with legal decisions in which the State is found to be legally responsible. This Directorate has not been in operation since it was created, mainly because of budgetary, equipment and capacity problems. For the financial year 2007, the Congolese Government had a derisory budget of 3 million Congolese francs (5,357 US dollars) for these reparations, which in any case was never disbursed. This sum is considerably below the sum awarded on average for a single case. For example, at the end of the symbolic trial for those accused of mass rape in Songo Mboyo in December 2003, the Congolese State was sentenced jointly and severally to pay 165,317 dollars to victims, a sum that has never been paid. The case law also show that there has been a lack of fairness in the sums awarded, in the absence of objective criteria to assess the harm suffered. As an example, in the Ankoro case, one victim was granted two dollars for a house that had been burnt down, because, caught off guard and pressed for a response, she stammered and asked for that derisory sum.

[1803] "The president of the military court in Bunia suggested that a valuable reform would be to give victims a direct right of access and military judges the power to require cases to be heard that the military prosecutor had not been willing to refer." See International parliamentary-expert mission, 2008, para. 53.

[1804] See article 226 of the law dated 18 November 2002 concerning the Code of Military Justice.

1090. It is the responsibility of the Congolese State to fulfil its obligations towards the victims. The Directorate for Disputes and Protocol should be restored to its former condition and should be provided with a budget that would enable it to provide satisfaction to victims. If the State does not have the resources immediately to pay all reparations granted by its tribunals, it should plan for staged payments over several years, but should start to pay part of what is due as soon as possible, to send the signal that it considers its obligations to pay reparations as a high priority. Finally, an exclusively judicial approach that requires perpetrators to be held responsible will never enable victims to receive full satisfaction, given the limitations of the judicial system in terms of the number of crimes committed between 1993 and 2003, and the number of victims involved. Alternatives to the judicial route must be explored, using the example of the ICC's Victims Trust Fund active in the DRC, which has developed new approaches to reparations.

ICC Victims Trust Fund

1091. The ICC's Victims Trust Fund ("The Fund") has the mission of helping the most vulnerable victims affected by crimes within the jurisdiction of the Court.[1805] The fund supports rehabilitation for victims and their families, working with local and international associations, experts, NGOs, authorities and UN bodies with the aim of designing, implementing and funding projects that directly meet the physical, material and psychological needs of victims that are linked to harm caused by crimes that are within the Court's jurisdiction. By promoting local initiatives, the fund aims to enable victims to rebuild their own lives and give them some hope for the future.

1092. The Fund provides finance, under its secondary non-judicial mandate, for projects developed in partnership with victims, their families and communities, via intermediaries, in order to support rehabilitation activities. Since 2008 the Fund has supported 16 projects in the DRC, in particular providing psychological support, physical rehabilitation and material assistance for the victims of sexual violence, former child soldiers, and the families of those who were assassinated. The Fund also supports projects that promote a culture of peace among communities affected by the conflicts in Ituri and North Kivu.[1806] The activities of the Fund must be encouraged and financed by the international community, as a concrete demonstration of recognition by the ICC's member states "that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity".[1807] The Fund nonetheless remains limited, by its mandate, to action to help victims of crimes falling under the competence of the ICC, meaning crimes committed after 1 July 2002. Some aspects of the Fund's work could inspire the Congolese State when it establishes its own reparation programme. If the International Criminal Court finds a defendant guilty, the Fund's function will be to organise reparation for the accused's victims, in the context of its legal mandate concerning reparations.

[1805] ICC-ASP/4/Res.3.

[1806] Programme Progress Report.

[1807] Section 2 of the Preamble to the Rome Statute.

3. National reparation programme

1093. Consideration should be given to specific reparations aiming to provide justice for the victims of the most serious crimes committed in the DRC. Investment from the international community may be needed in order to implement this, but these measures should also be supported by those States that are considered to bear responsibility, in addition to the Congolese State, with a view to promoting national reconciliation. The involvement of the Congolese State would appear to be indispensable and is expected by the population.[1808] The Congolese State should thus consider creating a national reparation programme, using the principles mentioned above.

Consultation process

1094. As reparations have a greater impact on victims than any other transitional justice measure, a consultation process must be undertaken before any initiative is begun in this area. As a victims' representative reminded us using Gandhi's words: "everything you're doing for me, without me, is done against me ".[1809] At the very least, victims' associations and grassroots civil society organisations working in this field should be involved in such a process. Likewise, it is important that from now on victims be helped to form associations, and to organise themselves to ensure their opinions are heard during consultations.

1095. Consultation of victims should at a minimum cover the most important issues linked to reparations: 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. Such a programme should in any case bring together the rights of victims and the obligations of the State on the one hand, and the expectations of victims and the severe budgetary restrictions suffered by the Congolese State on the other.

Scope of application of a reparations programme

1096. The most important issue to resolve when creating any reparations mechanism is about how to determine who should receive help from such a programme. The United Nations General Assembly has defined victims 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 that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."[1810]

[1808] According to surveys carried out by ICTJ in its study mentioned above, 60% of the population in the east of the country consider that the State should pay reparations for victims of crimes committed during the war - in comparison with 21% who consider that the international community should pay.

[1809] Contribution made by a representative from a victims' association during the round-table meeting on transitional justice, organised by the Mapping Exercise in Bukavu, 12 May 2009.

[1810] Resolution 60/147 of the General Assembly.

1097. The Congolese authorities, or those responsible for designing a reparations programme, will need to decide whether all victims, according to the definition by the General Assembly, should benefit, or define the type of violation that will be subject to reparation under the programme, particularly if the programme includes a provision to grant individual reparation to victims. A recent study showed that 81% of the population in North and South Kivu and in Ituri have been displaced at least once.[1811] Forced displacement certainly constitutes harm that is linked to serious violations. At first sight, it would appear difficult to design a programme that could offer reparation to all victims whose rights have been violated, which in the case of the DRC could represent a very high percentage of the country's population, particularly in the regions that were worst affected by the conflicts.

1098. With this in mind, the experience of the Truth Commission in Timor-Leste could indicate a possible solution. It observed that:

> "All East Timorese people have been touched and victimised by the conflict in one way or another. However, in the course of its contact with many communities the Commission became acutely aware of those among us who still suffer daily from the consequences of the conflict and whose children will inherit the disadvantages their parents face as a consequence of their victimisation. They include those who live in extreme poverty, are disabled, or who — due to misunderstandings — are shunned or discriminated against by their communities."[1812]

1099. This was the case, for example, for women raped by the occupying Indonesian forces, who subsequently gave birth to mixed-race children. "We are all victims but not all victims are equal. We must acknowledge this reality and lend a hand to those who are most vulnerable", the Commission concluded.

1100. Several criteria can be used to limit the scope of a programme and focus on those who have suffered the most and are in most need of assistance, without trivialising the suffering of others in the process. The seriousness of the violation, the consequences for the victims' physical or mental health, stigmatisation, possible repetition of the violations over time, and the current socio-economic status of the victims are all valid criteria. An inclusive consultation process would help to identify the priorities and shape the programme in line with the actual situation on the ground in the DRC.

Types of reparations: individual, collective, material and symbolic

1101. As mentioned above, there are different kinds of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The last of these will be dealt with in more detail in the section on the institutional reforms required.

[1811] ICTJ "Living with fear".

[1812] Commission for Reception, Truth and Reconciliation Timor-Leste (CAVR), 2005. Chega! Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste: Executive Summary, p. 200. Available at the following address [in English]: http://etan.org/news/2006/cavr.htm. Placed online 23 August 2007.

Individual or collective reparations

1102. Although the right to reparations is an individual right of victims, States can also offer reparations to whole communities, which often suffer collectively from the violations committed.[1813] In the context of the DRC, where tens of thousands of victims were harmed, a vast programme of individual reparations is difficult to envisage. Insofar as hundreds of communities were attacked at one time or another, whole villages burnt down and basic infrastructure such as schools and hospitals destroyed, collective reparations seem particularly appropriate.[1814]

1103. The principle of collective reparations is, however, highly controversial, on the basis that if they are material, their reparative nature is not always very clear. First of all, these measures benefit all citizens and not just the victims. It is inconceivable that a school or hospital could be built and its use limited only to the victims of the violations. Measures of this kind are generally covered by development programmes and reflect the acknowledged economic and social rights of all citizens, for example, the right to education or health.[1815] In spite of these criticisms, which are well founded, there is undoubtedly a place for collective measures in the DRC. In a context in which the vast majority of the country does not have basic infrastructures, sometimes precisely because of its having been destroyed during the conflicts, prioritising certain development projects for the benefit of the victims' communities could be seen as a kind of reparation.

1104. In addition, certain collective measures of specific benefit to the victims could be identified in consultation with the victims themselves. A community project designed to locate the remains of individuals recorded as having disappeared, or to build a medical centre with dedicated rehabilitation units for specific groups, such as victims of rape or mutilation, are just two examples of collective measures that address the needs of victims directly.

1105. A consultation process could be set up to identify a limited number of communities that were particularly affected, based on the seriousness of the violations and their consequences. These communities would then be consulted to identify an appropriate method of collective reparation. In this respect, the current report could be a useful working document to determine which communities were particularly affected by violations of international human rights law and international humanitarian law.

1106. Clearly, a programme of collective reparations would not satisfy victims who are seeking individual reparations. Transparent information and the involvement of NGOs and local authorities should help to communicate the thinking behind collective measures. In order to manage the victims very high expectations, certain kinds of

[1813] Peru and Guatemala are two examples of countries that have set up collective reparations programmes to support communities affected by serious violations of human rights and international humanitarian law. See www.ictj.org/en/research/projects/research6/thematic-studies/2537.html.

[1814] This is the case, for example, in Peru and Guatemala.

[1815] See Reparations Programmes, Rule-of-law tools for post-conflict states, p. 25-27, available at: www.ohchr.org.

individual reparations should be envisaged and discussed with the communities for the direct victims of serious bodily injury, taking into account the resources available. Low cost measures for the victims could be taken, such as exempting them from medical, school or legal fees. The relatives of people who have disappeared, in particular orphans, would need to be included amongst the beneficiaries of these kinds of measures – at least within the communities that were most affected.

Material and symbolic reparations

1107. Reparations can also be symbolic and non-material. Such reparations involve a process of public and official recognition of the violations and their consequences for the victims. This may take the form of a public apology from the government or Head of State on behalf of the nation, for example, or even from the foreign governments involved in the conflict. Other initiatives aimed at preserving the memory of the violations may be envisaged, including museums and memorials, or even low-cost initiatives such as the introduction of a Remembrance Day for the victims. These initiatives have two main objectives. First, they serve as symbolic reparation for the victims of the violations, who thus receive public recognition of their suffering. Second, they send out a message of "never again" to the whole of society, that such events must never be repeated. Similar measures also contribute to preventing any attempts to rewrite history, or even to forget it.

1108. Although public recognition can be achieved without significant resources and without the need for a long process, the State has been almost completely silent with regard to the violations committed in the DRC over the period in question. In the Kilwa trial, the victims (who were demanding reparation for damages suffered following the massacres) called on the judge in particular to require the Congolese State to "publicly recognise the human rights violations perpetrated by certain members of the FARDC in Kilwa, to apologise to the victims and to pay deserved tribute to them [...]".[1816] The judge did not agree to this request.

1109. The victims' need for recognition is, however, unquestionable, and sincere and public initiatives of recognition and apology could play an important role in the process of rebuilding both the social fabric and the victims' trust in State institutions. The need to preserve the memory of the violations is an important one. On 10 June each year, the Groupe Lotus, a Congolese NGO based in Kisangani, holds a memorial to the victims of the different conflicts endured by this town. On 24 February every year, the Catholic Church organises masses right across the country to commemorate the massacre of Christians who were demonstrating on 24 February 1990 for the re-opening of the Sovereign National Conference, unilaterally suspended by Mobutu. In its report on the Kasika massacre of 24 August 1998, the *Collectif d'actions pour le développement des droits de l'homme* (CADDHOM) called for the creation of an Institute of National Remembrance tasked with erecting monuments wherever massacres had occurred, and recording the names of the victims on them.[1817] In the Kilwa case mentioned above, the

[1816] Decision RP No. 010/2006, delivered by the Katanga Military Court on 28 June 2007, on the Kilwa events, 2004, pp. 29-31.

lawyers of the civil parties also called on the Court, on behalf of the victims, to "dedicate a monument to them in Kilwa to immortalise the memory of those who died".[1818]

1110. Memorials commemorating the victims have been erected at some locations, though it is impossible to list them all in this report. In South Kivu, three memorials (at Lusinda, Makobola and Mwenga) were built with funds from a 2006 legislative election candidate. In Uvira, the RCD had a memorial built to the Banyamulenge killed at Kalemie by the FAC. In 2005, at Kenge, in Bandundu province, the Government had a memorial erected to commemorate the victims of the 1997 war, at the instigation of a minister from the province.

1111. While these acts of remembrance must be encouraged, theirs goals need to be clearly delineated. Remembrance should bring a society together, not divide it. Memorials must not stand as an indictment of a particular group or individual; other justice mechanisms exist for this purpose. Rather, they should commemorate all the victims who have suffered at the hands of all parties to the conflict. In this respect, the initiative of Groupe Lotus, in honour of all the victims of the three Kisangani wars, must be acknowledged. On the other hand, the Makobola memorial would appear to have been erected more to lay blame on a particular group in the context of an electoral campaign than to commemorate the victims of one of the worst massacres in Congo's history. Far from helping to reconcile communities, this type of initiative is of course likely to create tensions that may rekindle certain disputes.

1112. The Congolese Government, the TRC and the body responsible for the reparations programme should encourage remembrance initiatives and establish directives to prevent the creation of injurious or harmful memorials. CADDHOM's idea to create a national memorial institute should be explored. It should be stressed that these ventures would be more advantageous if carried out alongside truth-seeking measures, making them the first symbols of a growing collective remembrance. In order to have the greatest effect on the victims, all of these symbolic gestures should go hand-in-hand with education projects in human rights and peace, which are in themselves a form of reparation.

Implementing the reparations programme

1113. There are several options for the implementation of a national reparations programme, notably via a TRC, a compensation commission, or a compensation fund.

1114. It was anticipated that the TCR established in the DRC during the transition period under the terms of the peace agreements would initiate a victim reparation programme, following the example of a number of other countries. The TRC did not address the matter of reparations for reasons cited earlier in this text. By hearing the accounts of hundreds or thousands of victims, a new TRC would certainly be in a

[1817] D. Mwati Bulambo, Collectif d'actions pour le développement des droits de l'homme au Congo-Kinshasa. "*Programme de lutte contre les crimes impunis, 24 août 1998: Massacres de Kasika au Sud-Kivu*", Paris, 24 August 2008.

[1818] Decision RP No. 010/2006 delivered by the Katanga Military Court on 28 June 2007, on the Kilwa events, 2004, pp. 29-31.

position to participate in developing a reparation programme, if its mandate allows it to formulate such recommendations. This contribution could enable the needs and the desires of victims to be reflected by suggesting reparation methods and types, and helping to identify categories of victims who would be entitled to reparation. However, granting the TRC the prerogative to award reparations presents a significant risk to its primary, truth-seeking role. Not only could this encourage false testimony where people are motivated by financial reward, it could also literally paralyse its operations by increasing the number of victims involved in the TRC's work. Furthermore, the extra work involved in developing and implementing a reparation programme would delay both the drafting of reports on truth-seeking and also the actual awarding of reparations.

1115. For all of these reasons, a national implementation agency, a reparation commission, or a indemnification fund, which would have as its exclusive task the creation and implementation of a programme to indemnify the victims of conflict in the DRC, is the most appropriate mechanism with which to address the issue of reparations. This body must have sufficient independence and prerogatives in order to define and identify the categories of victims who have claims to various types of reparation to be granted individually and collectively.

1116. The establishment of a compensation commission was, for example, recommended by the International Commission of Inquiry on Darfur, given the nature and the gravity of the crimes committed and whether or not the perpetrators of the crimes have been identified.[1819] Such a commission could focus all its energies on the question of reparation, and could receive a mandate broad enough to be able to consider all the types of reparation listed above. It could establish relatively simple – and above all, free – procedures to enable victims to access the commission more easily than any court of law. The burden of proof would also be lower, since the identification of guilty parties would not be a precondition for reparation. Its budget should be commensurate with its mandate. Another solution could be to simply use a fund for victim assistance, like that of the ICC, which could process reparation requests from the victims of certain serious violations. The fund would be managed by existing government bodies, for example within the Ministry of Justice, but would have to offer sufficient guarantees of probity and operate transparently. This type of fund could potentially hand out compensation more quickly and with minimal bureaucracy, although few Government programmes have gone in this direction.

1117. A commission nevertheless has definite advantages over a straightforward fund. Firstly, in the absence of a truth-seeking mechanism, a reparations commission could fulfil certain needs in terms of public acknowledgement of the victims' suffering and offer victims a platform of sorts to make their voices heard. Secondly, it would in theory be more transparent, which is especially important in a country where there are serious issues of corruption within its institutions.

Financing the reparations

[1819] *Report of the International Commission of Inquiry on Darfur to the Secretary-General* (S/2005/60).

1118. The matter of financing reparations in a country emerging from conflict is a perennial problem, given the many priorities and urgent situations that it must face. As indicated above, the victims require an investment on the part of the Congolese Government in terms of reparations. Countries with an obligation to pay reparations to the DRC should contribute. In addition to these sources of funding, a serious and credible reparations programme would merit the support of the international community, particularly from countries who have already invested in the rebuilding of the country. This contribution could take a number of forms, from financial participation in support of the programme's initial implementation to technical assistance for the new reparations mechanism. Third party countries, international organisations and NGOs may furthermore choose to fund or implement certain specific reparation projects. They may also facilitate the victim consultation process.

1119. Any sum of money seized from perpetrators of crimes under international law committed in the DRC, whatever their nationality and regardless of which judicial authority seized the money, can also be directed towards such reparation mechanisms. The same is the case for reparations paid by third-party countries responsible for violating their obligations to the DRC under international humanitarian law, as in the case of Uganda. It may even be possible to consider prosecution of some companies, whether or not they are linked to serious violations of human rights, which illegally exploited the DRC's natural resources, with a view to obtaining compensation that would be channelled into the reparations mechanism.

1120. Considering the principles of individual criminal responsibility, natural persons as well as corporate entities such as multinationals could be ordered to pay compensation to the victims of crimes for which they are found criminally responsible by a competent court. For example, a complaint was lodged with the UK Government against the company Afrimex, mainly regarding its role in financing RCD-Goma.[1820] The ICC prescribes a set of principles aimed at ensuring that reparations are made to the victims of crimes committed by a convicted person.[1821] As part of the follow-up on the arms embargo imposed in Security Council Resolution 1493 (2003), in its Resolution 1807 (2008) the Security Council decided that the freezing of assets and the prevention of travel would also "apply to the following individuals (...) as designated by the Committee: individuals operating in the DRC and committing serious violations of international law involving the targeting of children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement".[1822] While this provision applies to acts committed after the Resolution was adopted, it is nonetheless valid as an example of how parties to a conflict can contribute to reparation mechanisms that would be created for all the victims.

Conclusion

[1820] As a National Contact Point created under the new, strengthened procedures established by the Government for considering breaches of the OECD Guidelines for Multinational Enterprises, see Global Witness press release of 21 February 2007. Available online at the following address: www.globalwitness.org/media_library_detail.php/510/en/global_witness_calls_upon_the_uk_government_to_hol, and other documents available at this site.

[1821] See in particular Articles 75 and 93 of the Rome Statute, and associated texts.

[1822] Security Council Resolution 1807 (2008), 28 July 2003, paragraph 13, item *e*.

1121. A comprehensive and creative approach to the issue of reparation is clearly required. All the victims of serious violations of human rights and international humanitarian law are entitled to some form of reparation. Even if it seems as though collective reparation is easier to implement, individual reparation must nevertheless be considered in some cases, particularly those in which the consequences of the violations continue to have a major impact on the lives of victims. Some victims will continue to seek reparation via legal channels, but this will not be the case for the vast majority of victims who, without the establishment of a purpose-built mechanism, will never be able to access the reparations they are owed.