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INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

SECOND PHASE

QUESTION OF REPARATION

REPLIES AND FURTHER EVIDENCE PROVIDED BY THE DEMOCRATIC REPUBLIC OF THE CONGO (FINAL VERSION)

VOLUME I

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[Translation by the Registry]

REPLIES AND FURTHER EVIDENCE PROVIDED BY THE DEMOCRATIC REPUBLIC OF THE CONGO IN CONNECTION WITH THE CASE CONCERNING *ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (DEMOCRATIC REPUBLIC OF THE CONGO* V. *UGANDA)*

(Second phase — Question of reparation)

CONTEXT

1 Article 62, paragraph 1, of the Rules of the International Court of Justice (ICJ) reads as follows:

> "1. The Court may at any time call upon the parties to produce such evidence or to give such explanations as the Court may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose."

On the basis of this provision, by its letter of 11 June 2018 listing 17 questions, the ICJ asked the DRC to produce further evidence and to provide explanations which the Court considered necessary for the elucidation of certain points in its Memorial.

Such is the context for the replies contained in this document, which has been provided in order to support and clarify the claims set out in the Memorial filed at the Court on 26 September 2016.

These replies take account of the questions addressed to the DRC by the Court, asking it in the main to provide further evidence in respect of its stated claims and to explain its methodology in calculating the amounts it is seeking.

The bulk of the requests made to the DRC by the Court are for further evidence to be supplied. The annexes that accompany the present document meet this concern of the Court. They have been selected taking account of the requirements specified by the Court in its Judgment of 19 December 2005 on armed activities in the territory of the DRC, in particular in paragraph 61. In this regard, the Court includes among the principles for the admission of evidence produced by the
2 Parties that it should derive from more than one source, that it must not have been prepared *in tempore suspecto* nor specially for this case, and that preference will be given to evidence from objectively neutral bodies.

The presentation of evidence by the DRC does comply with the principle of the burden of proof (*onus probandi*), namely that it is for the party alleging a fact to prove it. In this case it is for the DRC, which is alleging an injury, to prove it: *actori incubit probatio*. However, while endeavouring to meet this requirement, the DRC is bound to draw attention to the real and objective difficulties which it has encountered in gathering the evidence.

These difficulties will not escape the notice of Members of the Court, who are well aware of the fact that it was in Uganda's interest, during the five years when it occupied and controlled a substantial part of Congolese territory, to remove all traces of evidence which could be used against it. Likewise, the DRC would point out to Members of the Court that, as indicated in paragraph 61 of the 2005 Judgment, most of the evidence presented to the Court in relation to the victims was collected following interviews with the direct victims of Uganda's wrongful acts, or with their relatives.

That evidence consists of forms, on paper or in digital versions, containing information provided by the direct victims or their relatives. Also accompanying this document is video footage showing the destruction left at the sites of conflict by the Ugandan forces, as well as maps showing

the geographical regions occupied by Uganda, and maps giving information on the location of mining sites in the DRC and on the routes used to remove mineral resources.

The DRC will thus proceed to give its replies to the various questions put to it by the Court, accompanying them systematically with annexes in support of its claims.

Each annex has been given a reference number. When used more than once and in more than one place, the annex keeps the same number.

3 **Question 1. Could the Democratic Republic of the Congo (hereinafter DRC) provide the "victim identification forms" that were prepared and collected by the DRC's Expert Commission, as well as any additional evidence it might have regarding individual victims?**

1.1. The armed activities inflicted on the DRC by Uganda, Rwanda and Burundi created many victims, especially among the populations living on Congolese territory. The toll resulting from that war remains a heavy one today, in both material and humanitarian terms, and cannot be summarized in figures put forward by any party without giving insult to the innocent victims.

1.2. With regard to identifying the victims of the internationally wrongful acts attributed to Uganda, it is important to make clear that the victims identified by the Government Commission established by the DRC are not the only ones to have suffered from Uganda's unlawful activities on Congolese territory. In any war, there are unknown victims, and many more of these in the case of the DRC, since the Ugandan occupation prevented its Government from carrying out a complete census of individuals who had suffered harm because of the war of aggression.

1.3. The figures cited in this document are thus far short of the reality. The individuals identified here are not the only ones to have lost their lives as a result of the wrongful activities of Uganda on Congolese territory. Nor are they the only ones to have suffered material or non-material harm because of the war waged on Congolese territory by Uganda.

1.4. The victims identified and registered are persons who had suffered harm of some kind, within the meaning of the international texts on the subject, in particular United Nations resolutions, because of the unlawful armed activities of Uganda on the territory of the DRC.

4 1.5. In this regard, the annex to resolution 40/34 of 29 November 1985, "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" (Annex 1.0.1), defines the term "victim" as follows:

> "1. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
>
> 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, 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."[1]

1.6. This definition was used again in the text of resolution 60/147 adopted by the United Nations General Assembly on 16 December 2005, 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" (Annex 1.0.2). In part V of that resolution, it is stated that

[1] General Assembly resolution 40/34 of 29 Nov. 1985, Ann., Sec. A.

"victims are 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
5 persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."

1.7. The forms which accompany this document therefore relate to those victims who had suffered harm that left traces found by the experts. The Memorial submitted to the Court by the DRC describes in paragraphs 1.31 and 1.32 the methodology that was used in order to produce these forms.

1.8. The Memorial submitted to the Court by the DRC also describes the difficulties encountered in gathering evidence, in particular in paragraph 1.33. The Court, while taking account of the objective difficulties faced by the Congolese experts in seeking out evidence, will be able to consult the attached forms, which identify certain victims who suffered from Uganda's wrongful acts in one way or another (Annexes 1.1-1.5). All these forms were sorted into different categories (natural persons, the Congolese State, public corporations, commercial companies, private establishments, not-for-profit associations, NGOs and other entities) and then examined in detail and analysed using tables and comparison grids, indicating, among other things, the locations involved and the types of injury suffered.

1.9. Some forms relating to victims of the wrongful acts of Rwanda, whose killers were identified as Rwandans, have not been taken into account in the assessment presented by the DRC in these proceedings. These are included in Annexes 1.1-1.5, however, despite not being factored into the assessment.

1.10. The damage suffered was of various kinds, be it death, bodily harm, loss of property, flight into the forest or displacement following the use of violence by the Ugandan forces or by groups supported by Uganda.

1.11. Further evidence is provided by a video (Annex 1.11) on certain cases of atrocities committed by the Ugandan army in Kisangani, as well as a number of forms provided by associations of victims of the six-day war in Kisangani, likewise in Orientale province (Annex 1.5.1).

6 1.12. The video not only shows the scene of the crimes immediately following the hostilities (with decomposing bodies of the victims and of Ugandan and Rwandan soldiers, and bullet marks on several civilian buildings, for example the Kisangani general hospital, convents, the factory of Société textile de Kisangani (Sotexki), etc.), but also features testimony from numerous victims regarding the atrocities committed by the Ugandan army in the area of Congolese territory that was under its control.

1.13. In addition, the DRC is providing the Court with a report on the events in Kisangani, drawn up by the Government of the DRC in September 2002, the sixth part of which presents further information on the victims of the atrocities committed by Ugandan troops (Annex 1.12).

Question 2. Could the DRC produce evidence to support its estimates for the number of persons killed in direct attacks on civilians, the number of victims of personal injury, and the number of rape victims, in Ituri district, during the period of Uganda's occupation?

2.1. The scale of Uganda's armed activities against the DRC may be indicative of the potential damage resulting from this unlawful activity. As stated above, it was difficult, during an occupation and a war of aggression as savage as that waged by Uganda in the DRC for more than five years, to carry out a complete census of the direct and indirect victims of that conflict.

2.2. Moreover, the United Nations Secretary-General pointed to this in his special report on MONUC, stating that "[t]he total number of killings in Ituri in recent weeks is impossible to ascertain" (Annex 2.3.A). Hence the figures for the number of deaths in Ituri district put forward by any party can be no more than estimates. The wording of the Court's question no doubt takes account of the obstacles that of course stood in the way of those responsible for gathering evidence.

2.3. When the DRC puts forward, in paragraphs 3.22 and 3.23 of its Memorial, the figure of 60,000 victims in relation to Ituri, of whom two thirds (i.e. 40,000 people) died as a result of deliberate violence against civilians and the remaining third (20,000) lost their lives in other circumstances related to the conflicts between 1998 and 2003, these data are supported by numerous documents from a variety of sources, compiled for the most part *in tempore non suspecto*.

7

2.4. Among those sources, the DRC cites in this instance: the 2010 Mapping Report on the violations of human rights committed within the territory of the DRC, which describes in many of its paragraphs (in particular 366, 370, 408, 409 and 413) the cases of deliberate attacks on the lives of civilians carried out in Ituri during the period 1998 to 2003 (Annex 2.1); the report of the Special Rapporteur, Mr. Roberto Garretón, in accordance with General Assembly resolution 54/179 and Commission on Human Rights resolution 2000/15, approved by Economic and Social Council decision 2000/248 (Annex 2.2); the reports of the United Nations Secretary-General on MONUC, including the special report of 10 September 2002 (Annex 2.3.A), the second special report of 27 May 2003 on the United Nations mission (Annex 2.3.B) and the sixth report on MONUC of 12 February 2001 (Annex 2.3.C).

2.5. Another United Nations source cited by the DRC is the special report of 16 July 2004 on the events in Ituri, January 2002-December 2003 (Annex 2.4.B), which also provides further details of the attacks carried out by Ugandan troops.

2.6. The evidentiary value of these reports is unquestionable, the documents having been produced by bodies put in place by the United Nations, an organization of which both the parties to these proceedings are members.

2.7. The DRC also includes in its list of documentary evidence a number of *reports produced by international non-governmental organizations*. These bodies played an important role during the armed conflict and recorded cases of violations of human rights and international humanitarian law. Among them is the IRIN information network, which reported certain crimes committed by Ugandan troops in Ituri, on the territory of the DRC (see the IRIN Special Report on the Ituri clashes — [part one], Nairobi, 3 Mar. 2000, Annex 2.4.A). The same applies to the Human Rights Watch report of July 2003 on violations of human rights in Ituri (Annex 2.4.C).

8 2.8. It will be for the Court to assess the evidentiary value of the documents produced by the NGOs (in this case, IRIN and Human Rights Watch), in the knowledge that the information contained in these reports was gathered *in tempore non suspecto* and that these organizations were authorized to carry out their activities in areas of conflict; in this instance, they were able to send their personnel into occupied areas.

2.9. With regard to bodily harm, injuries and mutilation, the DRC has put forward the figure of 30,000 injured or mutilated in paragraph 3.29 of its Memorial. Of that figure, the DRC indicates that two thirds (i.e. 20,000) of those injured or mutilated were the victims of deliberate violence against civilians. The remaining third (10,000 people) were inhabitants of Ituri injured or mutilated in other circumstances related to the conflicts.

2.10. As with the loss of human life, the DRC's figure for the number of victims suffering bodily harm is merely an estimate, given the enormous difficulties involved in collecting evidence. The United Nations Secretary-General expressed a similar view in his second special report, stating that "countless others have been left maimed or severely mutilated" (see Annex 2.3.B).

2.11. In terms of rape, the DRC has given a figure of 1,710 victims, broken down into 610 cases of ordinary rape and 1,100 cases of aggravated rape (see Memorial of the DRC, paragraph 3.32).

2.12. In support of its figures, the DRC has presented to the Court the MONUC special report of 16 July 2004 on the events in Ituri, January 2002-December 2003 (see above and Annex 2.4.B), together with the 2010 Mapping Report on the most serious violations of human rights and international humanitarian law committed within the territory of the DRC. The information recorded by the DRC's own national Commission is supplemented by the items contained in Annex 2.1.

2.13. The DRC is also providing the Court with victim identification forms which are supported by the various reports referred to above. These records were prepared on the basis of interviews which the Commission established by the DRC Government carried out with women who had the courage to speak about their cases. A substantial number of victims, whom the DRC is
9 unable to identify further in connection with these proceedings, decided, as is often the case with rape victims, to remain silent for a variety of reasons, such as reprisals, stigmatization and so on (see Annexes 1.1-1.5.1 and 1.6.B-1.10.B).

Question 3. Could the DRC provide to the Court the evidence on which it bases its claims of US$300 for each person who fled his or her home to escape deliberate acts of violence against civilian populations, and US$100 for each person who was driven from his or her home by the fighting?

3.1. The displacement of populations is one of the consequences of armed conflicts, in particular wars waged with such barbarity as that which characterized the armed activities inflicted by Uganda on the DRC.

3.2. In order to save themselves, the populations were forced to leave their villages and abandon their homes, moving far away from their fields and normal surroundings.

This displacement inevitably brought suffering to the impoverished populations who could not take with them their fields, their livestock and other means of production. The expenditure involved in this displacement and the cost of surviving far from their usual surroundings, not to mention the physical and mental suffering as a result of such a precarious situation, are reflected in the sums put forward by the DRC for every victim of this ordeal.

3.3. In terms of evidence in support of its claim, the DRC has provided the Court with the MONUC reports on the refugees and displaced persons who fled their homes on account of the war waged against it by Uganda. One such report is the MONUC special report on the events in Ituri, covering the period 2002-2003 (Annex 2.4.B).

3.4. The Mapping Report also provides figures for the displacement of populations fleeing the hostilities (see in particular para. 413, Annex 2.1).

The report drawn up under the direction of the Special Rapporteur on the situation of human rights in the DRC gives figures for the persons forced to flee their homes by the unlawful activities of Uganda on the DRC's territory (report of the Special Rapporteur on the situation of human rights
10 in the DRC of 20 September 2000 (A/55/403), Annex 2.2). The same is true of the United Nations Secretary-General's second report on MONUC of 27 May 2003 (Annex 2.3.B).

3.5. All these reports supplement and reinforce the statements of victims as recorded in the victim identification forms prepared by the Expert Commission and submitted by the DRC (see Annexes 1.1-1.5.1), as well as the victim statements contained in the video which the DRC is now providing (Annex 1.11).

3.6. The sums claimed as reparation for the various forms of harm, both material (the precarious nature of life in the forest, abroad or far from places of work) and non-material (suffering and distress during marches, at abandoning homes and property, and having to live outdoors in bad weather), actually seem insignificant. However, they are put forward by the DRC as minimum figures which cannot reasonably be reduced if account is to be taken of the suffering endured by the different victims.

3.7. *With regard to the period of flight or absence from home surroundings*, the victim statements recorded in the identification forms give a sufficient indication of time spent in the forest (Annexes 1.1-1.5.1 and 1.6.A-1.10.A). However, some interviewees did not specify exactly how long they had suffered in the forest, and those who did so gave varying periods of time, in terms of days, months or even years, as evidenced in paragraph 413 of the Mapping Report (Annex 2.1). That being so, the DRC has adopted minimum periods to be applied to these displaced persons, according to the duration of the conflict in a locality.

Hence:

Location	*Minimum period of flight*
Kisangani	6 days
Ituri	30 days
Butembo	7 days
Beni	30 days
Gemena	7 days

11 3.8. *As regards the daily cost of living*, the DRC has calculated the equivalent of daily expenditure per individual in the Congo, on the basis of per capita GDP per day (World Bank/*Perspective monde*, Sherbrooke University, 28 Jan. 2016).

3.9. The amount put forward as the daily cost of living is based on the per capita GDP of US$753.20 for 2003, the year when the hostilities supposedly ended, taken from the database portal of Sherbrooke University (Canada), for the financial year 2015. The amounts are those considered to be the cost of living in peacetime.

3.10. Considering that during the war, foodstuffs became scarce and that in the forest, they were obviously difficult if not impossible to find, the amounts put forward by the DRC are extremely reasonable, since they are objectively far less than the reality. And in the worst cases, these displaced persons were forced to eat roots and leaves and consume water that was unfit to drink, whilst being exposed to all kinds of bad weather.

3.11. As regards the flat-rate compensation of US$300 or US$100 to be awarded to victims displaced to the forests, the DRC is seeking this compensation as reparation for the victims in respect of the non-material harm they suffered.

3.12. The DRC has in fact identified two scenarios: flight into the forest and the displacement of populations to the forest.

3.13. In the first of these, the non-material harm is chiefly the result of the fact that those who had to flee ceased working for the period when they were forced to hide in the forest. This harm consists in the trauma for those displaced resulting from the atrocities committed by the belligerents, the fear that such crimes would be repeated and the distress created by the lack of humanitarian assistance, the failure to prosecute the perpetrators of the crimes and uncertainty as to the future.

3.14. The sum considered reasonable for all this suffering is a fixed amount of US$300.

3.15. The second scenario is that of people who fled as a result of acts not (directly) targeted at them, which mainly included those who fled their homes for shorter periods. The non-material harm in this case resulted from their distress at having to abandon their homes, the fear of returning
12 to find them destroyed and of losing their property, and the suffering caused by members of the same family being forced apart by the hostilities.

3.16. The fixed amount which the DRC considers appropriate in respect of this type of harm is US$100.

3.17. The assessment in respect of flight into the forest takes account of the number of days spent in the forest, multiplied by per capita GDP per day (equivalent to the daily expenditure per individual in the Congo), to which total is added a fixed amount for non-material reparation for each victim (US$100 or US$300, according to the circumstances).

3.18. The criteria for assessing these types of harm were set out, by way of illustration, by the European Court of Human Rights (ECHR) in the *Selmouni* case. The ECHR held that the severity of the non-material harm

> "depends on all the *circumstances of the case*, such as the *duration of the treatment, its physical or mental effects* and, *in some cases, the sex, age and state of health of the victim*, etc." (ECHR, *Selmouni* v. *France*, Application No. 25803/94, Judgment of 28 July 1999, para. 100; emphasis added).

3.19. These parameters for assessment, which have been taken into account in the case of the Congolese displaced persons and refugees, in particular the length of suffering and its consequences, bear no comparison, for example, with those arrived at in the case between the Republic of Guinea and the DRC concerning reparation for the non-material injury suffered by Mr. Diallo. Indeed, in that case, the Court found that Mr. Diallo had been held in detention for [66] days (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, *Merits, Judgment*, *I.C.J. Reports 2010 (II)*, p. 662, para. 59) and had not been subjected to torture, but only inhuman and degrading treatment:

> "*The Court has taken into account the number of days for which Mr. Diallo was detained* and its earlier conclusion that *it had not been demonstrated that Mr. Diallo was mistreated in violation of* Article 10, paragraph 1, of the Covenant" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, *Compensation, Judgment*, *I.C.J. Reports 2012 (I)*, p. 334, para. 22; emphasis added).

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3.20. Nevertheless, in spite of all the above, the ICJ awarded Mr. Diallo the sum of US$85,000 as reparation for non-material harm. Comparing the parameters for assessment, the sums of US$300 and US$100 are manifestly reasonable.

3.21. For similar types of injury, generally relating to conditions of detention and the treatment of those involved in criminal cases, the ECHR awarded the sum of €8,000 in the case of *M.C.* v. *Bulgaria*[2] for an Article 3 violation, due to the distress and psychological trauma resulting at least partly from the failings of the authorities in dealing with the applicant's case of rape.

3.22. The ECHR awarded €3,000 to the applicant in the case of *Ostrovar* v. *Moldova*[3] for an Article 3 violation, due to the suffering, uncertainty and anxiety which he endured because of the conditions of his detention in prison.

3.23. In the case of *Labzov* v. *Russia*[4], the ECHR awarded the sum of €2,000 to the victim for an Article 3 violation on the grounds of the distress and hardship suffered. Likewise, the applicant received €2,000 in the case of *Nazarenko* v. *Ukraine*[5] for an Article 3 violation because of the poor conditions of his detention.

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[2] ECHR, *M.C.* v. *Bulgaria*, No. 39272/98, 4 Dec. 2003, para. 194.

[3] ECHR, *Ostrovar* v. *Moldova*, No. 35207/03, 13 Sept. 2005, para. 118.

[4] ECHR, *Labzov* v. *Russia*, No. 62208/00, 16 June 2005, para. 59.

[5] ECHR, *Nazarenko* v. *Ukraine*, No. 39483/98, 29 Apr. 2003, para. 172.

3.24. The DRC would further point out that in the case of the invasion of Kuwait by Iraq, those obliged to flee either country because of the resulting war had to have done so within a specified period of time to be eligible for reparation. Each person who fled was awarded a flat-rate sum of US$2,500. Where a family submitted a claim, a ceiling of US$8,000 was fixed. To receive this compensation, it was not necessary to produce evidence of the actual amount of loss (see S/AC.26/1992/10, Art. 35, para. 2 *(a)*).

14 3.25. Considering the living conditions imposed on the populations who fled into the forest, as well as the feelings and emotions to which this perilous displacement gave rise, and given that detention in European prisons is no more inhumane than being forced to live outdoors in bad weather, the sums being claimed by the DRC as reparation for non-material harm are reasonable.

Question 4. Could the DRC provide the Court with evidence and explain its methodology regarding the value of damaged educational establishments, healthcare establishments and administrative buildings, in Ituri district, due to wrongful acts attributable to Uganda?

4.1. In terms of evidence, account must be taken of the information given by the DRC on pages 240 and 241 of its Memorial (see also para. 3.49 on p. 106), as well as the United Nations Secretary-General's second special report on MONUC (S/2003/566 of 27 May 2003, para. 10) (Annex 2.3.B), which indicates that 200 schools were destroyed. This is borne out by other documents, such as the [MONUC] report of 16 July 2004 on the events in Ituri, January 2002-December 2003 (Annex 2.4.B), the report by Denis Tougas of 31 August 1999, *Justice et libération: la guerre des alliés en RDC et le droit à l'autodétermination du peuple congolais* (Annex 4.1.C)[6], and the Mapping Report of August 2010 (see pp. 100 and 101) (Annex 2.1).

4.2. In addition to the above, in the course of identifying the victims, the Commission received representatives of the administrative services, educational establishments and other social structures in Ituri district which had been victims of this kind of damage during the period of occupation.

4.3. These persons completed forms detailing the damage suffered (see Annexes 1.1-1.5.1).

4.4. As regards the methodology it employed in arriving at the sums of US$300, US$5,000 and US$10,000 that are listed on page 239 of its Memorial, the DRC relied on the estimates given by victims who had lost these types of dwellings in the region, using these to set the cost of
15 restoring buildings declared as destroyed but whose owners had not submitted estimates, where these latter dwellings were similar to or near the former.

4.5. The same method was used for the schools and other social structures whose owners declared the number of buildings and their characteristics.

4.6. The estimates made by the victims are thus available to the Court in the forms (see Annexes 1.6.C-1.10.C). The victims who did not give figures for the value of their dwellings did at

[6] On the same question, see also Anns. 4.1.A, 4.1.B and 4.1.D produced by the Groupe Justice et Libération of Kisangani.

least describe them, so as to allow the Commission to draw parallels between the various types of buildings.

4.7. In this way, the DRC was able to categorize the dwellings destroyed by the impact of the war into three groups. In that process, care was taken to keep the figures contained in the victims' declarations to a minimum on each occasion, even though some buildings were known to have been destroyed along with valuable fittings which have not been taken into account in the minimum assessment presented to the Court by the DRC.

4.8. As evidence of this, when the DRC requested the estimate of the Bureau Diocésain des Œuvres Médicales (BDOM — Diocesan Healthcare Office) for the buildings repaired by the Catholic Church (Annex 4.3), and of the Bureau Central de Coordination (BceCo — Central Co-ordination Office) for the reconstruction and repair of schools and hospitals in Ituri district, those estimates produced figures that were far in excess of those put forward by the DRC in its assessment (see Annex 4.2).

Question 5. Could the DRC provide the Court with evidence regarding the locations, ownership, average production, and concessions or licences for each mine and forest for which it claims compensation for illegal exploitation by Uganda?

5.1. The DRC's territory is immensely rich in natural resources, with abundant mineral reserves. Some researchers and institutions have even come to the conclusion that the armed conflicts which have punctuated the recent history of the DRC were caused by a desire for control of its natural resources and fuelled by the revenue generated by their trade.

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5.2. Thus the Ugandan forces who occupied a substantial area of the eastern part of the DRC were not there as goodwill observers. The documents produced on the war in the DRC confirm that the Ugandan troops not only took part in the looting and illegal exploitation of Congolese mineral resources in the areas under their control, but also that they allowed private groups to engage in this unlawful activity. For example, *the Court's 2005 Judgment on armed activities in the Congo*, citing the Porter Commission report, *confirms in paragraphs 238 to 240* that the Ugandan forces participated in the illegal exploitation of Congolese wealth and that, through their complicity and collusion, they encouraged private groups to do the same. Although the Court expresses reservations, in paragraph 242, as to the existence of a governmental policy of Uganda directed at exploitation, it nonetheless reaches the conclusion that private groups and Ugandan officers sent to the Congo were involved in this practice. The Court's reservation in no way eliminates Uganda's responsibility for the exploitation of Congolese wealth. Nor does it lessen Uganda's obligation to make reparation for this harm which its unlawful activities have caused to the DRC.

5.3. The mining sites under Ugandan control are shown on the maps which follow.

17 **Map No. 1 (below): Mining sites in the east of the DRC and in areas occupied by the Ugandan army**

Legend:

coltan	=	coltan
cassitérite	=	cassiterite
coltan/cassitérite	=	coltan/cassiterite
wolfram	=	wolfram
niobium	=	niobium
or	=	gold
diamant	=	diamond
route asphaltée	=	asphalt road
route en terre	=	dirt road
piste	=	track

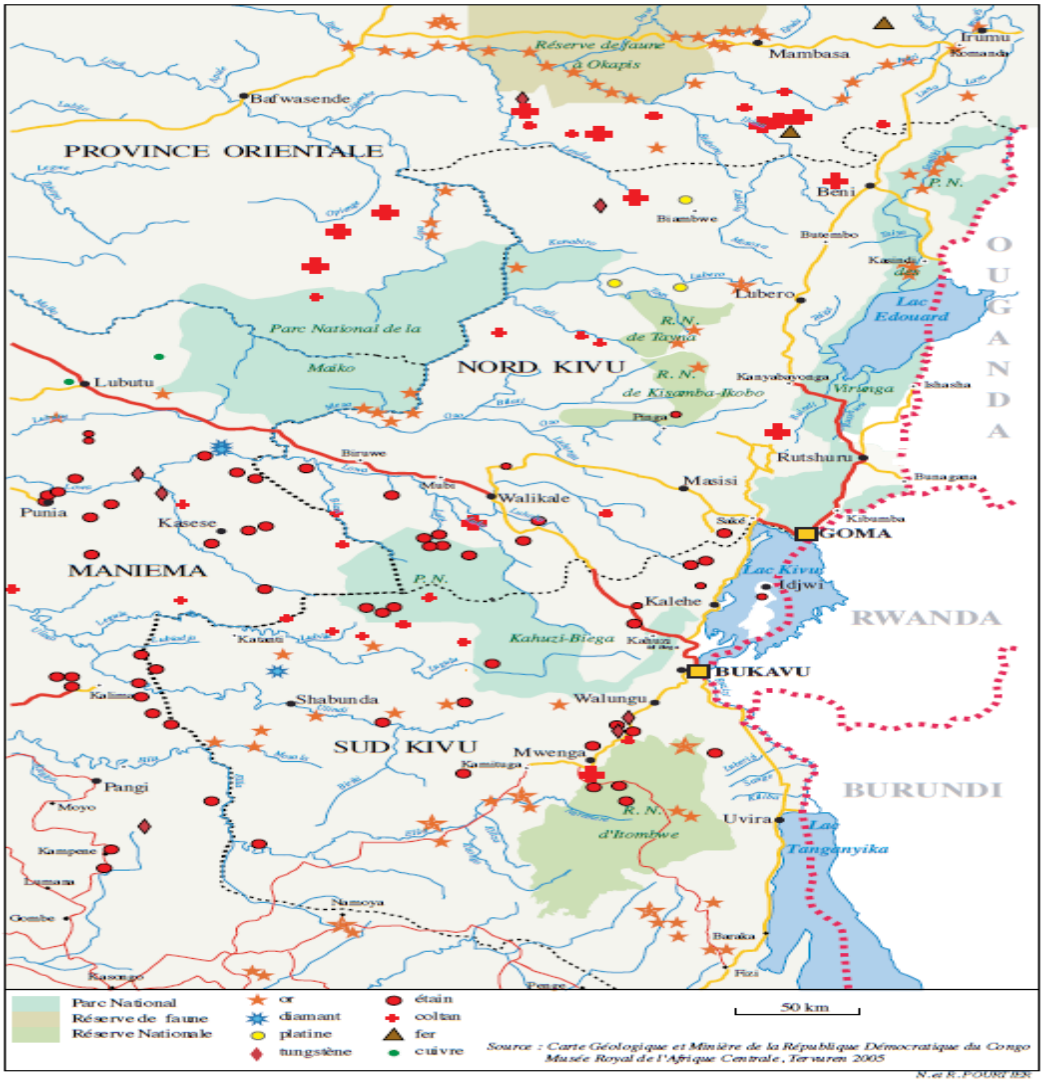
5.4. Map No. 1 shows the various minerals present in the eastern part of the DRC, and in particular those in the area that was under the control or simply under the occupation of Uganda. The legend indicates precisely where these minerals can be found. This is proof that the Ugandan forces occupied areas rich in minerals.

5.5. Map No. 1 is produced as evidence in these proceedings because it links each mineral to the various sites where it is exploited. These sites are named alongside the mineral symbol.

5.6. In order to confirm that these are in areas under Ugandan control and occupation, Map No. 1 shows the following locations: in Haut-Uélé district, the sites at Watsa, Durba, Gorumbwa,

18 Isiro, etc.; in Ituri district, at Mongbwalu, Adidi, Kilo-Moto, Djalassiga, Djugu, Bunia, Agbarabo, etc.; in North Kivu province, at Beni, Butembo, Lubero, etc.; and in Bas-Uélé district, at Bondo, etc.

19 **Map No. 2A (below): Mineral deposits in the east of the DRC in areas occupied or controlled by Ugandan forces**

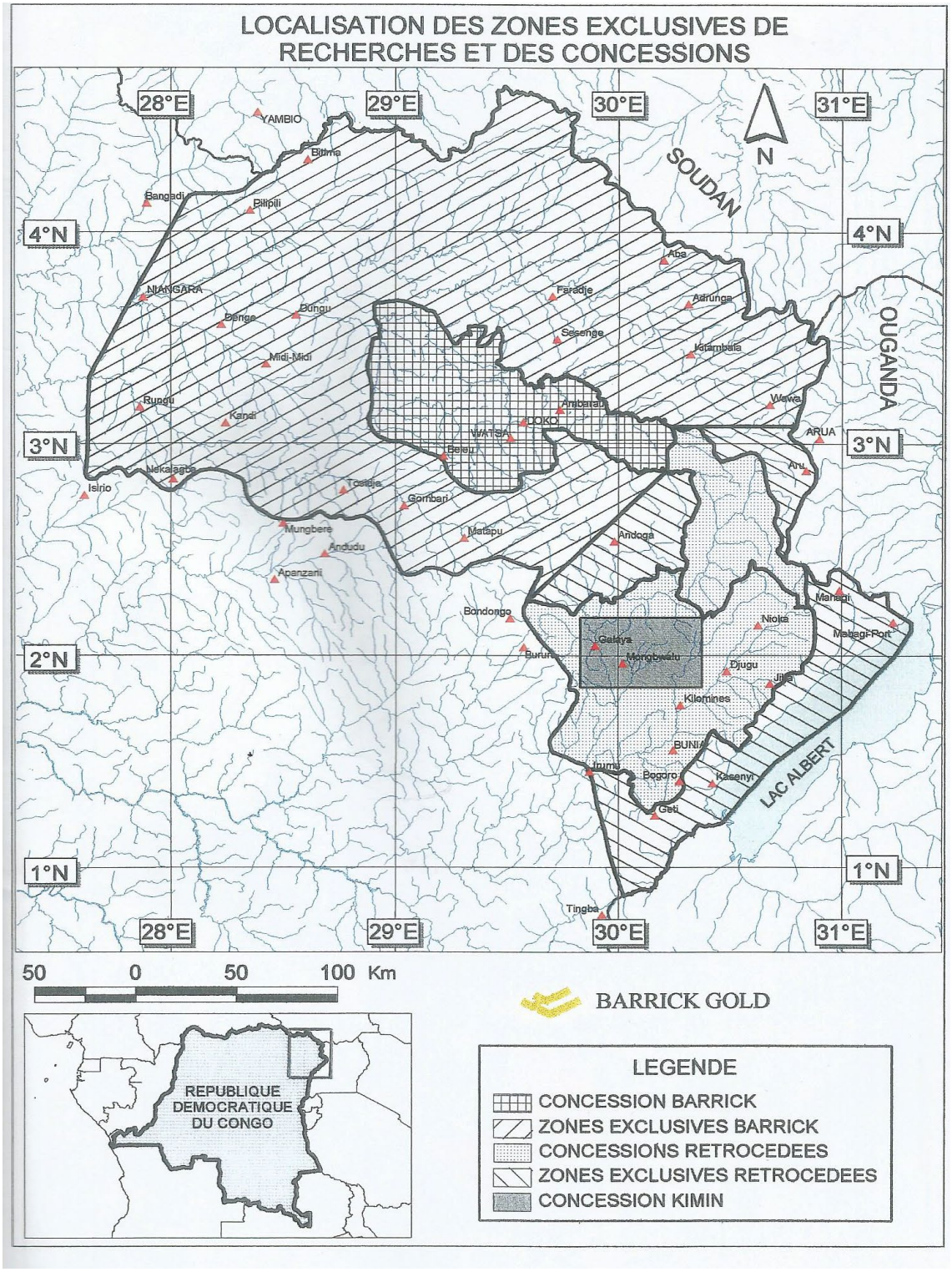


Legend:

Parc national	=	National park
Réserve de faune	=	Wildlife reserve
Réserve nationale	=	National reserve
or	=	gold
diamant	=	diamond
platine	=	platinum
tungstène	=	tungsten
étain	=	tin
coltan	=	coltan
fer	=	iron
cuivre	=	copper

Map No. 2A above, which complements the preceding map (No. 2 *[sic]*), shows the location of mineral deposits in the soil and subsoil in the east of the DRC. It also shows which minerals can be found in the areas controlled or occupied by Uganda.

20 **Map No. 2B (below): Location of exclusive prospecting areas and mining concessions in relation to the positions of Ugandan forces on DRC territory (see also Annex 5.1)**

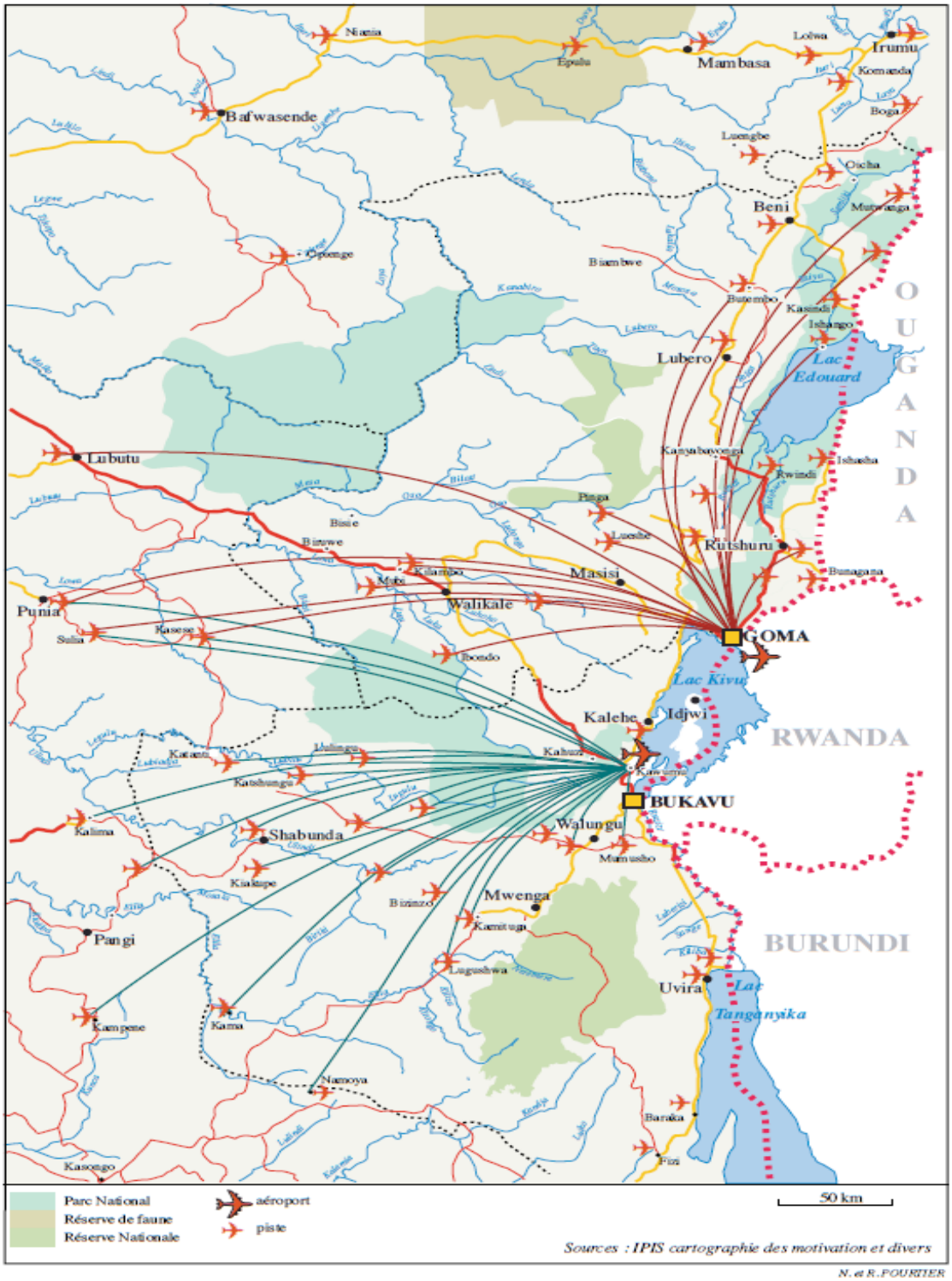


[Heading in map] Location of exclusive prospecting areas and concessions

Legend:

Concession Barrick	=	Barrick concession
Zones exclusives Barrick	=	Barrick exclusive areas
Concessions rétrocédées	=	Reassigned concessions
Zones exclusives retrocédées	=	Reassigned exclusive areas
Concession Kimin	=	Kimin concession

21 **Map No. 3 (below): Transporting of minerals by air in the area under the control of the Ugandan army**

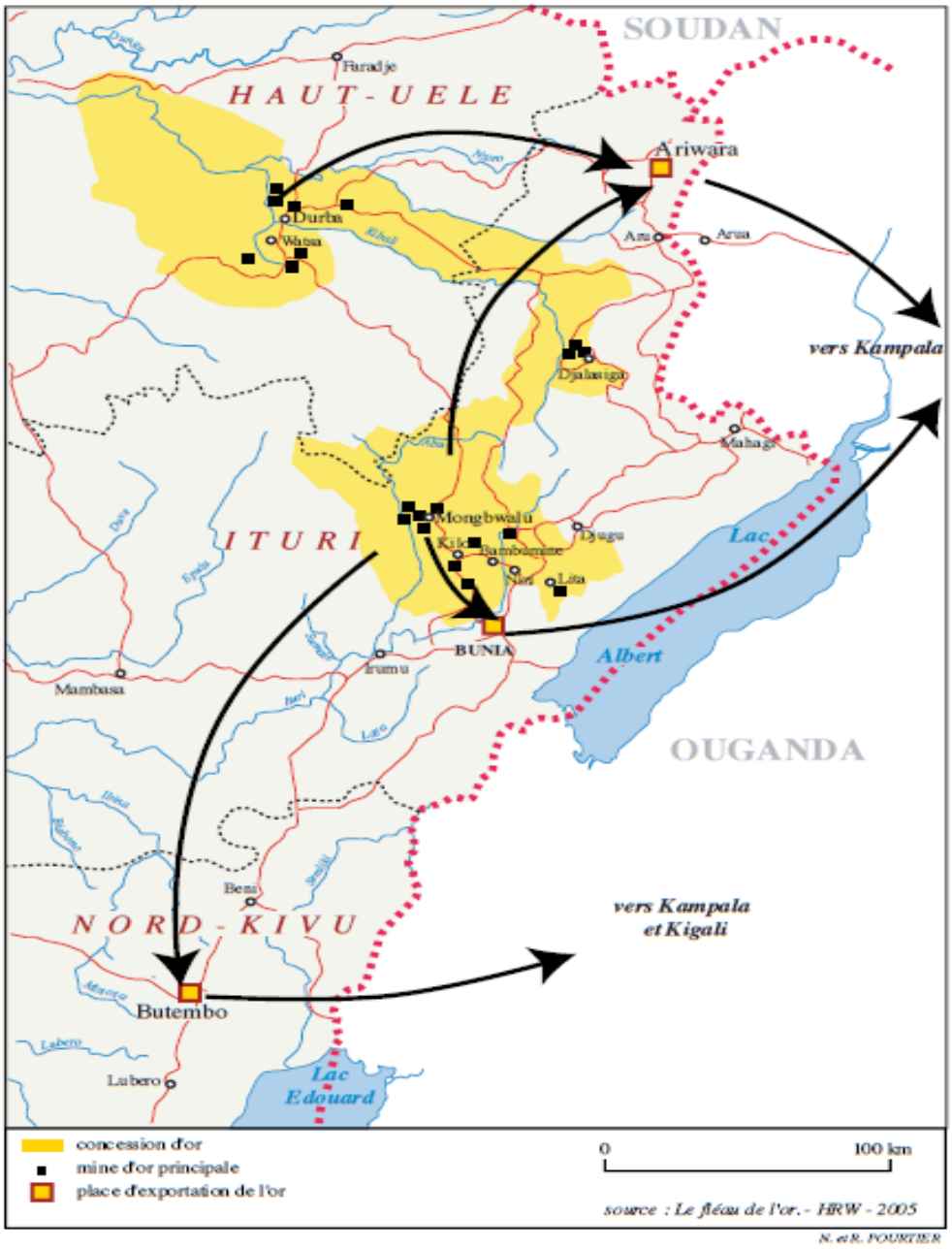


Legend:

Parc national	=	National park
Réserve de faune	=	Wildlife reserve
Réserve nationale	=	National reserve
aéroport	=	airport
piste	=	landing strip

22 5.7. Map No. 3 gives information on the transporting and exportation by air of minerals extracted in the DRC. These data show that the minerals are taken from the hinterland to Goma, the provincial capital of North Kivu, and then flown to Uganda.

Map No. 4 (below): Production and trading of gold in Ituri

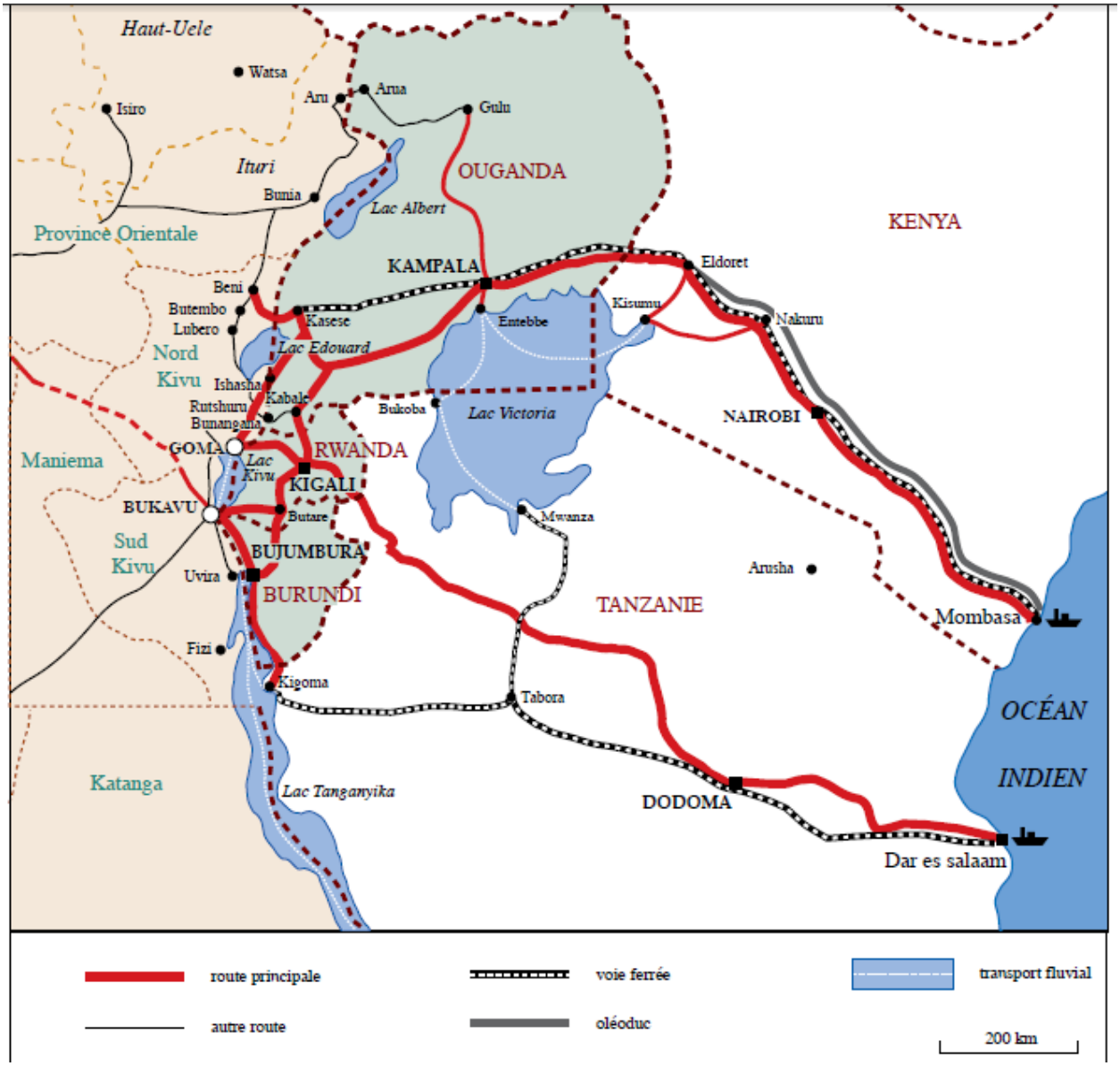


Legend:

[Text in map]	=	to Kampala / to Kampala and Kigali
concession d'or	=	gold concession
mine d'or principale	=	principal gold mine
place d'exportation de l'or	=	place from which gold exported

5.8. Map No. 4 complements Map No. 3 and illustrates the trade route for minerals, principally gold, showing their final destination to be Uganda. This was the same route used by the Ugandan looters and by private groups operating with the blessing or encouragement of the Ugandan army.

23 **Map No. 5 (below): Access corridors east of the DRC**



Legend:

route principale	=	main road
voie ferrée	=	railway
transport fluvial	=	waterway
autre route	=	other road
oléoduc	=	oil pipeline

5.9. Map No. 5 shows the road transport circuit for minerals extracted in the DRC. It appears that the destination for the minerals illegally purchased or exploited is in Uganda.

5.10. During the period from 1998 to 2003, the mining sites located in the area controlled or occupied by Uganda were taken over by public and private bodies authorized to do so by private
24 armed groups and Ugandan officers. Most of their production went to Uganda, to such an extent that its exports of minerals skyrocketed during the period in question.

Gold exports and production in Uganda (kg)

	1994	1996	2000	2004	2006	2007
Exports	225	3,206	7,303	5,465	6,937	3,556
Production	2	3	56	178	22	25

Source: D. Fahey (2008), "Le fleuve d'or: the production and trade of gold from Mongbwalu, DRC", pp. 357-383. In *L'Afrique des grands lacs, Annuaire 2007-2008*, L'Harmattan.

The evolution of Uganda's mineral production and exports is extensively documented in a study by International Alert entitled "The Role of the Exploitation of Natural Resources in Fuelling and Prolonging Crises in the Eastern DRC" (Annex 5.6, pp. 23 and 51).

5.11. The figures provided in the above table show that Uganda's gold exports increased exponentially from the beginning of the UPDF's presence on Congolese territory, i.e. in 1996 until 2003, and then diminished following the end of the war. This is borne out by the Addendum to the report of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (Annex 5.2, p. 8, paras. 27-28).

5.12. Similarly, while these exports grew, production barely increased. It even fell after the end of the occupation.

25 **Map No. 6 (below): Destination of gold from the DRC (see also Annex 5.7, pp. 7 *et seq*.)**

Legend:

[Heading in map]	=	Great Lakes Region
[Text boxes outside map]	=	to UAE via Juba, South Sudan / to UAE (Dubai) / to Dar es Salaam

5.13. Evidence of the illegal exploitation of natural resources may also be found in the official reports of United Nations bodies and in the reports of NGOs.

5.14. In this respect, account should be taken of the Mapping Report (Annex 2.1, para. 756; see also Sec. II, Chap. III, paras. 726-782, of the same report), which describes the attacks by the

Ugandan forces and their Congolese underlings to gain control of the mining sites. These sites are named in the report.

5.15. Mention may also be made here of the document produced by Human Rights Watch (Annex 5.5) on "The Curse of Gold" in the DRC.

5.16. The DRC is attaching to this document the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC of 12 April 2001 (Annex 5.10), and also the final Porter Report of November 2002 (Annex 5.8).

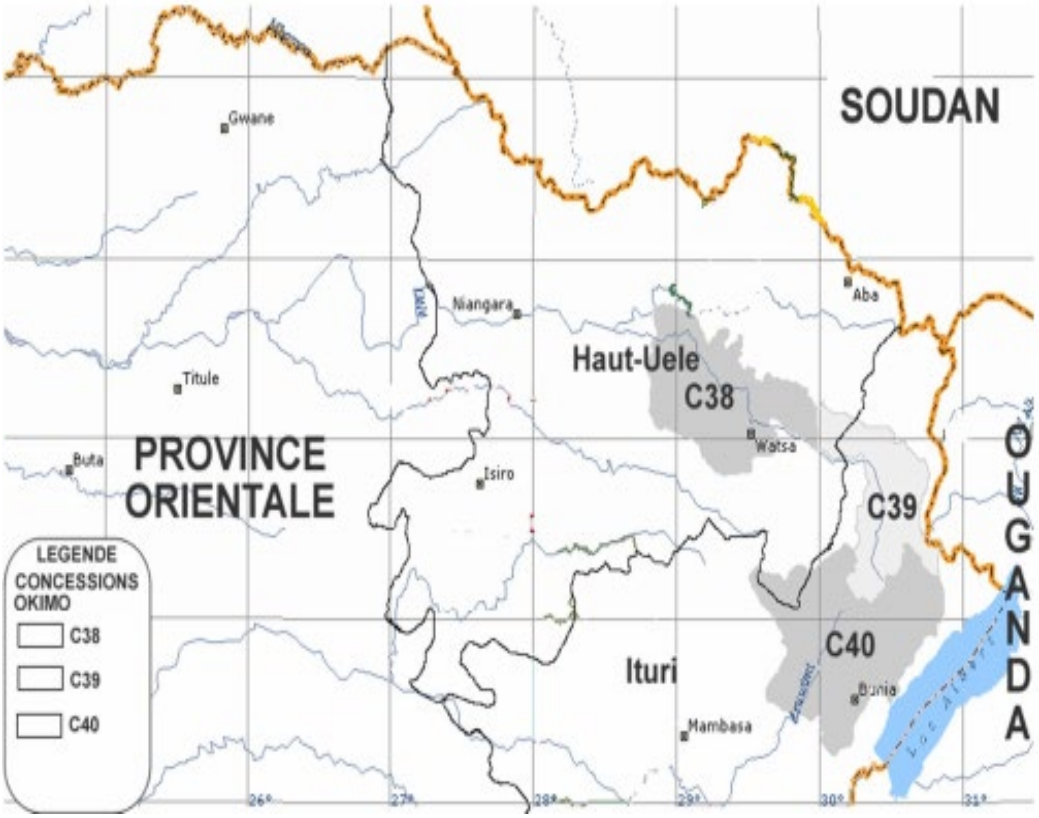
5.17. With regard to the licences for the concessions concerned by the illegal exploitation of minerals, it is important to note that some operators had obtained licences from the Congolese Government well before the start of the war of aggression waged by Uganda (OKIMO, for example), but that their activities were subsequently beyond the control of the Congolese State due
26 to the Ugandan occupation (Annex 5.9). This caused immense damage to the DRC, for which reparation must now be made. Consequently, reparation is required for the damage suffered because of the occupation even in respect of those sites holding licences issued by the Congolese State, since the undertakings were no longer operating to the benefit of that State.

5.18. Because the Ugandan occupation prevented the DRC from ensuring that the operators complied with the relevant regulations, and because Uganda benefited from the revenue from mining activities that were no longer under the control of the Congolese State, it is normal for more than one reason for the DRC to be able to claim back the significant losses which this caused to it, as illustrated by the average annual production of some 5,112 kg of gold, broken down as follows: 3,600 kg for the mine at Gorumbwa, 432 kg for the mines at Durba, and 1,080 kg for those at Adidi (Annex 5.5).

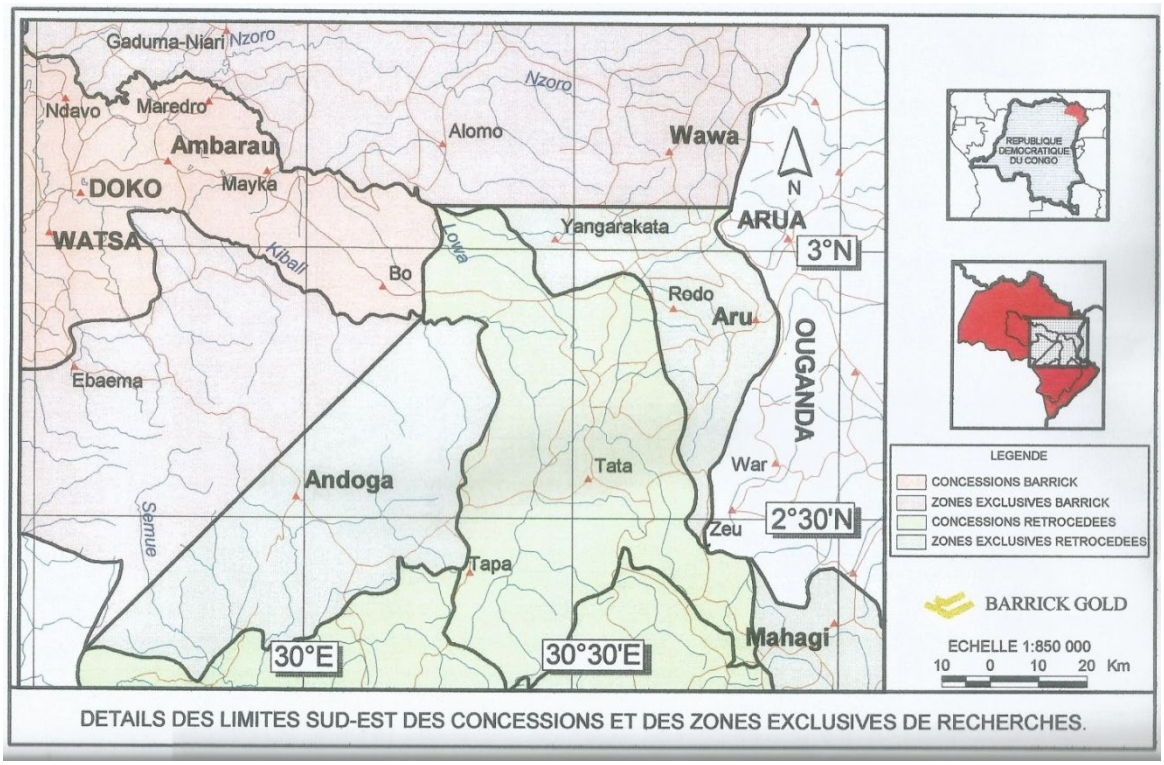
Illegal exploitation — and exploitation under licences issued to private individuals by the Congolese State, the proceeds from which eluded that State due to Uganda's unlawful activities — yielded dividends that went to Uganda alone. Since this unlawful enrichment was the consequence of a violation of international law, the DRC, which paid the price of that violation, is entitled to seek reparation from the State that profited, Uganda.

The Court cannot consider profits resulting from an unlawful activity to be lawful, simply because certain — minority — operators held licences issued by the Congolese State, when it is known that the proceeds anticipated in exchange for the operating licences issued by that State were actually funnelled into Uganda's accounts.

27 **Map No. 7A (below): Concessions Nos. 38, 39 and 40 in the goldfield of Kilo-Moto**



Map No. 7B (below): Boundaries of OKIMO's exclusive concessions



Legend:

[Title at foot of map] = Details of the south-eastern boundaries of the concessions and exclusive prospecting areas

28 5.19. Other operators subsequently obtained licences from the private groups and Ugandan forces (see, for example, Annex 5.8, the Porter Commission report, p. 54, point 20).

5.20. As regards the illegal exploitation of Congolese timber between 1998 and 2003, it may well be said that the Congolese forests paid the costs of the war of aggression inflicted on the DRC by Uganda.

5.21. In the first place, the illegal exploitation of the DRC's timber during the period from 1998 to 2003 has been the subject of numerous reports, including the Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (see Annex 5.2, paras. 48-55).

5.22. The same information is provided in the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC of 12 April 2001, (S/2001/357, para. 47; see Annex 5.10).

5.23. Uganda was not only the Power which allowed members of its armed forces to illegally exploit the natural resources of the DRC, but also the Power which, through the occupation of Ituri, created the right conditions for the profitable looting of wealth, including the DRC's timber.

5.24. As regards the location of the forestry concessions that were illegally exploited, the DRC has indicated that the woodlands to have suffered most from the effects of deforestation as a result of the war waged by Uganda are situated in the following areas: *Djugu, Mambassa, Beni, Komanda, Luna, Mont Moyo* and *Aboro*.

5.25. Among the concession-holders that benefited from the illegal exploitation of Congolese timber, mention should be made of DARA Forest, identified as a Thai-Congolese company which based itself in Ituri at the end of 1998, having purchased its operating licence from a private armed group, RCD-[ML], after the Government of the DRC had refused it a licence a year before the war broke out, and whose activities during the period of Ugandan occupation and control have been described in particular by the Porter Commission (Annex 5.8), and in the Addendum to the report
29 of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (Annex 5.2, pp. 12-13, para. 48), the Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (Annex 5.3) and the Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (Annex 5.4, pp. 21 to 27).

5.26. In addition, the timber treated in Mangina (North Kivu) transited through Uganda to Mombasa and was transported by the TMK freight company.

Question 6. Could Uganda explain if there were any procedures in place between 1998 and 2003 in Uganda to determine the origin of gold, diamonds, timber or coltan dealt with in Uganda or exported from Uganda?

6.1. This is primarily a question for Uganda. However, the DRC would point out that it is incumbent on every State, under general international law, to exercise effective control over its territory, in such a way that the activities carried out there cause no injury to other States. It may be ascertained here whether Uganda is participating in programmes that require States to identify the

origin of valuable materials (certification), in order to avoid the buying or selling of blood minerals.

6.2. In the light of this, the Court may be unable to give credit to Uganda's argument entailing a breach of its international obligations.

Question 7. Has either Party so far investigated or prosecuted any individuals in relation to violations of international humanitarian law in the DRC in the period 1998-2003?

7.1. The DRC has declared zero tolerance of impunity for the serious international crimes committed on its territory and abroad. To this end, it has not only embarked on legislative reforms to put in place an appropriate framework of rules for the punishment of serious crimes, but also given its civil and military courts the powers to punish such crimes.

30 7.2. The laws and institutions which it has thus established have enabled the DRC to prosecute a number of perpetrators of serious crimes, in particular those of international crimes committed after 2004, i.e. after the signing of the peace agreement with Uganda and the official withdrawal of the latter's troops from Congolese territory.

7.3. Nevertheless, with regard to the crimes committed during the period from 1998 to 2003, a study of Congolese case law reveals that, with the exception of a few isolated criminal judgments (*Chief Prosecutor at the Military High Court and Officer of the Public Prosecutor* v. *Brigadier Generals Goda Sukpa, Germain Katanga and others*, RMP No. 0121/NBT/05, RP No. 007/2013; *Chief Prosecutor at the Military High Court, Public Prosecutor and civil parties* v. *Brigadier General Jérôme Kakwavu Bukande*, RP No. 004/2010 and RP No. 005/12; *Chief Prosecutor and Public Prosecutor* v. *Kahma Panga Mandro and others*; *Senior Military Prosecutor at the Military Court of Kinshasa/Gombe and Public Prosecutor* v. *Justin Mata Banaloki, alias Cobra*; *Garrison Military Prosecutor, Public Prosecutor and civil parties* v. *the person known as Kakado Barnaba Yonga*), the Congolese courts have not yet opened investigations into such crimes, the foreign soldiers concerned having in all likelihood returned to their respective countries.

[Translator's note: there is no paragraph 7.4 in the original text.]

7.5. In general terms, therefore, there is no doubting the desire of the Congolese Government to punish the serious crimes committed during this period, such crimes being subject to no limitation of time.

7.6. This desire is reflected in particular by the DRC's referral to the International Criminal Court (ICC) of certain instances in which serious crimes were committed on its territory. One such instance was the situation in Ituri, in respect of which the ICC brought proceedings against Thomas Lubanga and Matthieu Ngondjolou, two warlords who operated in the region controlled by Uganda.

7.7. In the *Lubanga* case, the ICC not only found the accused guilty, but also ordered measures by way of reparation. Is it possible to consider that the reparation awarded to the victims of Mr. Lubanga's actions exonerates Uganda from its duty of reparation? What might be the
31 consequences of the sentencing of Thomas Lubanga by the ICC, in terms of Uganda's obligation to make reparation for the wrongful international acts committed on Congolese territory?

7.8. Thomas Lubanga was found guilty on 14 March 2012 of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities. The enlisting and conscription of children are therefore the only crimes for which Mr. Lubanga was sentenced.

7.9. Furthermore, these were children enlisted in his movement, the UPC, and not in other rebel movements, the enlisting of children having been very much in vogue in that area.

7.10. On 7 August 2012, Trial Chamber I of the ICC issued a decision on the principles to be implemented for reparations to victims. On 3 March 2015, the Appeals Chamber amended the Trial Chamber's order for reparations.

7.11. At the same time, the portion awarded to the children enlisted in the UPC by Thomas Lubanga, the estimates for which have been provided by the ICC, can be contained within the unallocated margin in the estimates put forward by the DRC in its present claims.

7.12. In the light of the above, a direct link can be held to exist between the charges brought against Thomas Lubanga and the Ugandan occupation which stirred up the conflict between the Hema and Lendu ethnic groups.

7.13. Moreover, the DRC is not aware of any proceedings being opened in Uganda against the perpetrators of the serious crimes committed in the DRC which might result not only in the sentencing of those accused, but also in reparation being made for the injury caused to numerous Congolese victims.

Question 8. In relation to unlawful acts of which irregular forces does the DRC claim compensation from Uganda?

8.1. With regard to the relationship between Uganda and the armed groups, two types of links were identified by the ICJ in its Judgment on the merits of 19 December 2005. The Court found that, by supporting armed groups which carried out military activities on Congolese territory and at the same time violated the rules of international humanitarian law, Uganda had breached its
32 international obligations, in particular its duty not to interfere in the internal affairs of another State. It was difficult, however, since it had not been involved in the creation of such groups, to consider the latter as organs of the Ugandan State and to attribute responsibility for their actions to Uganda (see paras. 158-160 of the 2005 Judgment).

8.2. At the same time, as the occupying Power in Ituri district (see para. 178 of the 2005 Judgment), Uganda was required to perform its obligations under the applicable laws and customs, in particular Article 43 of the Hague Regulations of 1907. In accordance with that provision, Uganda was obliged to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.

8.3. Having thus failed in its duty of diligence, in that of maintaining order and securing respect by all, in the area under its occupation, for the rules of international humanitarian law and international law on human rights, and in its obligation to ensure respect for those rights, Uganda bears the responsibility for all these violations. The ICJ reached the same conclusion in deciding as follows (in para. 179 of the 2005 Judgment):

> "The Court, having concluded that Uganda was an occupying Power in Ituri at the relevant time, finds that Uganda's responsibility is engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account."

8.4. It is on the basis of these types of violations of international law that the DRC is seeking reparation from Uganda for the harm resulting from the unlawful actions of the armed groups it was supporting, and of those it was not supporting, where these were all blithely operating in the region (Ituri) under its occupation.

33

8.5. In the light of the above, the DRC is claiming compensation from Uganda for the unlawful acts of the following irregular forces: the Union des Patriotes Congolais (UPC), the Maï-Maï Simba militia, the "Chui Mobil Force" militia, the Front de Résistance Patriotique en Ituri (FRPI) militia, the Rassemblement des Congolais pour la Démocratie/Mouvement de Libération (RDC/[ML]), the Union des Démocrates Congolais (UDC), the RCD/N, the Forces Armées du Peuple Congolais (FAPC) and the PUSIC.

Question 9. Could the DRC explain the basis on which it attributes to Uganda 45 per cent of the responsibility for damage caused by States and armed groups not supported by Uganda?

9.1. In raising this concern, the ICJ is seeking clarification on the principle, rule or evidence whereby the DRC attributes to Uganda responsibility not only for the wrongful acts of its own agents and the armed groups it was supporting, but also for wrongful acts committed by third States and armed groups it was not supporting.

9.2. It must therefore be demonstrated on the basis of which principle Uganda may be called upon to make reparation for the damage or injury resulting from the wrongful acts of third States and armed groups not supported by it.

9.3. After indicating the basis for attributing responsibility to Uganda for the wrongful acts of third States and armed groups not supported by Uganda, it must be explained how the DRC arrived at a figure of *45 per cent, and neither more nor less*.

9.4. There are indeed several passages in the DRC's Memorial where responsibility is attributed to Uganda for the wrongful acts of States and armed groups it was not supporting.

9.5. One such assertion can be found at paragraph 1.08 of the Memorial, which broaches the multiple causes of an injury.

34 9.6. A further instance can be found at paragraph 1.24. In this particular paragraph, the DRC states that it attributes to Uganda 45 per cent of the damage arising from wrongful acts committed by third States and armed groups not supported by Uganda.

9.7. In addition, the DRC makes the same claim at paragraph 6.31, which concerns macroeconomic injury.

9.8. With regard to the basis on which the DRC reaches such a conclusion, it should first be noted that when the DRC states that it attributes to Uganda responsibility for wrongful acts by third States and by groups it was not supporting, it is a very subtle way, *on the one hand, of attributing to Uganda its own responsibility for having itself breached certain international obligations, and, on the other, of attributing to Uganda the burden of reparation for injuries resulting from its own wrongful acts,* those acts of Uganda being associated with the wrongful acts of other actors, third States or private groups, thus ensuring that this combination of causes — wrongful acts by several actors — does not result in responsibility being denied by all, and that responsibility is attributed to all those actors, each in proportion to the role they played.

A. The responsibility of Uganda for the acts of others actors, third States or private groups not supported by it, on account of the breach of international obligations incumbent on Uganda.

When the DRC attributes to Uganda responsibility for certain internationally wrongful acts materially committed by certain actors, third States or private groups, it relies in part on the duties and *obligations imposed by international law on an occupying Power*.

9.9. Indeed, in its 2005 Judgment on the responsibility of Uganda, the ICJ reached the conclusion that "regardless of whether or not General Kazini, commander of the Ugandan forces in
35 the DRC, acted in violation of orders and was punished as a result, his conduct is clear evidence of the fact that Uganda established and exercised authority in Ituri as an occupying Power."[7]

9.10. The Court further concluded that

> "Uganda was the occupying Power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party."[8]

9.11. Thereafter, at paragraph 179 of the same Judgment, the Court considered that Uganda's responsibility was therefore engaged

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[7] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 230, para. 176.

[8] *Ibid.*, p. 231, para. 178.

> "both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account".

9.12. Having established that Uganda was an occupying Power in certain areas of the DRC's territory, and having recalled the obligations incumbent on an occupying Power under international law and the consequences of violating those obligations, the Court, in its conclusion, found Uganda responsible in particular for lack of vigilance in preventing violations of human rights and international humanitarian law by other actors.

9.13. Accordingly, to call upon Uganda to make reparation for the injury arising from acts materially committed by other actors, and by private groups in particular, in areas in which that State was an occupying Power, is the logical consequence of the principle that any internationally wrongful act engages the responsibility of the State, a responsibility which naturally entails reparation for damage.

36 9.14. It is thus on this basis, among others, that the DRC attributes to Uganda the duty to make reparation for the damage caused by the acts of armed groups which nevertheless did not enjoy Uganda's support.

9.15. In Chapter 3 of its Memorial, the DRC thus attributes to Uganda responsibility for certain injuries arising from the acts of private groups. The causal link between the harm, the internationally wrongful act of the group that did not enjoy the support of Uganda and Uganda's internationally wrongful act arising from its failure to comply with its obligations as an occupying Power, as established by the ICJ, is, in this regard, direct, uninterrupted and continuing.

9.16. The injuries examined in Chapter 3 of the DRC's Memorial, in particular those described in paragraph 3.41 onwards, can be included in this category.

When the DRC attributes to Uganda responsibility for certain internationally wrongful acts materially committed by certain actors, third States or private groups, it also relies on the internationally wrongful act of Uganda, *without which the internationally wrongful acts of other actors, third States or private groups would not have occurred*.

9.17. The DRC also attributes to Uganda the burden of reparation for damage arising from the internationally wrongful acts of other actors, of third States in particular, because without the internationally wrongful act of Uganda, those of other actors would not have produced the injuries complained of.

9.18. In the chain of causation, the internationally wrongful act of Uganda appears to be the key factor without which the injury would not have arisen.

9.19. It is for Uganda here, contrary to the previous point, to assume the burden of its own internationally wrongful acts, regardless of the wrongful acts of other actors.

9.20. It is on this basis that the DRC relies in this instance for the injuries examined in Chapter 4 of its Memorial relating to the hostilities between the Ugandan and Rwandan armies in the city of Kisangani.

This is what is provided in paragraph 4.12 of its Memorial.

37 **B. The responsibility of Uganda for its internationally wrongful acts which occurred concurrently with those of other actors in a plurality of factors**

9.21. The DRC also attributes to Uganda the burden of reparation for damage *caused at the same time by* the internationally wrongful acts of several actors. *Uganda is not being attributed the burden of reparation for the damage caused by the internationally wrongful acts of other actors, but is rather being asked to pay for some of the injury caused by the combined action of several actors, including action taken by itself.*

9.22. Since the injury was caused by the combined action of several actors, the burden of reparation must rightly be shared among all the actors concerned, according to the role played by each one. These are not injuries resulting from the wrongful activities of a single actor, but from the combined and accumulated activity of several actors.

9.23. This includes the macroeconomic injury examined in Chapter 6 of the DRC's Memorial. This injury — which is understood as being the effect of the war of aggression on economic activity (in terms of loss of revenue), on growth and on GDP — cannot be borne by a single State, since the war of aggression was waged by several States.

9.24. Since that war — which was inflicted on the DRC and slowed down and even halted that country's economic activity — was not caused by Uganda alone, but by Uganda and other States, it was necessary for Uganda to be held liable for the share corresponding to its role in that war; Uganda is thereby assuming its own responsibility and not being held accountable for the acts of others.

In this regard, see paragraph 6.31 of the DRC's Memorial.

9.25 *Customary international law, as codified by Article 47 of the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, is clear on this subject, providing as follows in the case of a plurality of responsible States*:

> "1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.
>
> 2. Paragraph 1:

38 *(a)* Does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;

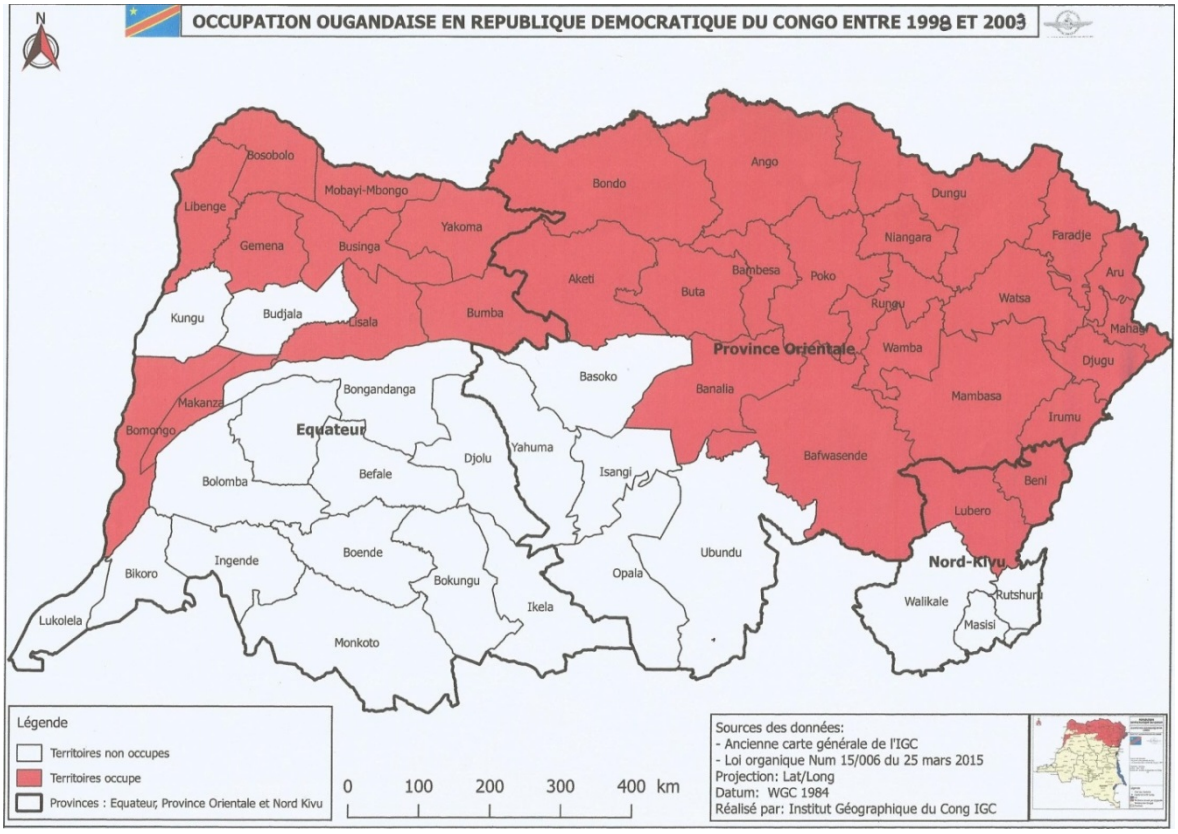
(b) Is without prejudice to any right of recourse against the other responsible States."

The figure of 45 per cent

9.26. The figure of 45 per cent was reached on the basis of the extent of the wrongful action of each of the actors. In this regard, the aggressors essentially comprised three State actors, to which the private groups answered: Rwanda, Uganda and Burundi. The latter was recognized as playing a smaller role. The role of Rwanda was found to have been almost as large as that of Uganda.

9.27. Uganda's role, summed up as 45 per cent, corresponds to the *area occupied* by that State (the extent in particular). (See map No. 8).

Map No. 8 (below): Extent of Congolese territory controlled and occupied by Uganda



[Heading in map] Ugandan occupation in the Democratic Republic of the Congo between 1998 and 2003

Legend:

Territoires non occupés	=	Unoccupied territories
Territoires occupé[s]	=	Occupied territories
Provinces: Equateur, Province Orientale et Nord Kivu	=	Provinces: Equateur, Orientale and North Kivu

39 9.28. Indeed, in adopting this percentage, the DRC does not take account of the wealth buried in and beneath the ground of the area under Ugandan control; it takes account only of the surface area of the part of Congolese territory controlled by Uganda and the loss of revenue caused by the slowdown in economic activity, also in the part not controlled by Uganda, without there being any duplication.

Question 10. Could the DRC explain its methodology in calculating the averages of awards by domestic Congolese courts in cases of death, personal injury, rape and child soldiers, on which the DRC relies? Could the DRC supply all cases on which it relied in the calculation of these averages, as well as cases excluded?

10.1. In its Memorial the DRC indeed states that, given the number of victims and their many and varied individual situations, it is difficult to take account of the specific circumstances of each one in calculating the amounts to be awarded in reparation.

10.2. That is why it had recourse to a flat-rate model in determining the amounts to be awarded to those victims.

The Court would first like to know how the DRC obtained this model.

A. The methodology used to obtain the averages of awards in cases concerning death, personal injury, rape and child soldiers

10.3. The DRC referred to *the average of the sums awarded by way of compensation in judgments rendered by its courts, having eliminated those without any statement of reasons,* which it used to calculate the amounts to be awarded to each category.

40 Therefore the Court must first of all be provided with *the average of the sums awarded by the Congolese courts* (para. 7.08 of the Memorial).

10.4. The decisions handed down by the Congolese courts made reparation awards ranging from US$10,000 to over US$100,000. The DRC has provided the Court with a sample of decisions in Annexes 10.1 and 10.2.

10.5. In Annex 10.1, the Court will find judgment No. RPA 230 of 20 May 2013 of the South Kivu Military Court. In that decision the court reached the conclusion that for reparation in cases of death the amount should be US$50,000, on the basis of equity.

10.6. Regarding reparation in cases of rape, the court applied the sum of US$5,000, based on equity.

10.7. For reparation due for personal injury, the court applied the sum of US$900.

10.8. The DRC has also provided the ICJ with judgment RP No. 071/09, 009/010 and 074/010 of the Ituri Military Garrison Tribunal (see Annex 10.2). In that decision, the Military Tribunal made awards ranging from US$50,000 to US$750,000 for acts of rape and death.

Question 11. Could the DRC provide more detail on its methodology regarding the use of *loss of future income* as the basis of claims for compensation in respect of deaths that were not the result of deliberate acts of violence?

11.1. To determine the amounts due in reparation for deaths not resulting from deliberate acts of violence, the DRC began by ascertaining the *average age* of the victims. This was set at 27 years (see Memorial of the DRC, para. 7.09). How did the DRC arrive at 27 years?

11.2. The DRC obtained the average age (27 years) of all the victims of non-deliberate acts of violence based on a calculation of the *average of their ages*. These were the ages declared by the people interviewed (see Annexes 1.1-1.5.1). The average itself was obtained by adding together the
41 ages given in the forms, those indicated by the victims interviewed, and dividing that sum by the number of victims (age of all the victims divided by the number of declared victims).

11.3. It then determined the *average income* that each victim might have anticipated earning if he or she had not died as a result of Uganda's wrongful acts. It is noted that this was calculated on the basis of the per capita gross domestic product (GDP) and was fixed at US$753.20. The gross domestic product per person (per capita GDP), i.e. US$753.20, was obtained for the fiscal year 2015 from the database portal of Sherbrooke University.

11.4. The DRC simply made use of these universally recognized data supplied by the International Bank for Reconstruction and Development (BIRD).

11.5. In its calculations, the DRC also took into account a *life expectancy of 52.11 years* to obtain, on the basis of the average age of the victims, the *length of life lost* (years of life lost) during which the victims would have earned a minimum income.

11.6. This length of life lost was obtained by measuring the average age against life expectancy, in other words the length of life lost was obtained by subtracting the average age of the victims from their life expectancy, i.e. 52.11 years – 27 years = *25.11 years*.

11.7. The DRC had no choice but to use the "average age" parameter rather than the age of each victim. One of the main reasons for this was the need to level out its claims, so as not to obtain different figures for the several thousand victims who are to receive such reparation. It was also necessary to use the average age, because the precise age of certain victims was not indicated; in such cases, the average would always seem to be the most objective parameter. Otherwise, it would have been difficult to arrive at objective claims for reparation.

11.8. Still with regard to the DRC's methodology, the question might also be raised as to why it did not rely on the length of life lost by each victim. Having used the average age, the DRC consequently had no choice but to rely on the average length of life and the average income. The DRC used an average to obtain the average income and the average length of life for the same reasons as those mentioned regarding the average age.

42 11.9. Life expectancy, for its part, is a figure which is universally recognized for each State. The one taken into account in this process was provided by the World Bank and can be consulted on the web portal of Sherbrooke University.

11.10. This is the basis on which the DRC obtained the length of life lost. It represents the number of years each victim was expected to live.

11.11. An assessment based on future income or lost earnings is not a Congolese invention. It has been applied extensively in international reparations law for some years now, in particular at the Inter-American Court of Human Rights (IACtHR).

11.12. In the jurisprudence of that Court, claims based on loss of future income have been characterized as damage to a "project of life". For victims who have survived, this notion has been defined as "the changes that a wrongful act causes in a person's life"[9]. This is the same understanding that the IACtHR had when it considered damage to a project of life as "changes of a non-pecuniary nature in the person's everyday life"[10].

11.13. This may refer to the difficulty people have in going on with their lives as they were before the wrongful act was committed and their studies interrupted.

11.14. The notion of damage to a project of life is thus based on lost opportunities and earnings. In this respect, the ICC has clearly defined the concept of project of life and lost opportunities, a concept which it acknowledges borrowing from the jurisprudence of the IACtHR. In paragraph 86 of its decision on reparations in the *Lubanga* case, the ICC states:

> "The OPCV suggest that individual compensation for former child soldiers ought to be based on the concept of the 'project of life' developed by the IACtHR. *This concept addresses the damage to the victims' future, taking into account their circumstances, potential, ambitions and goals, and their overall anticipated 'life plan'*."[11]

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11.15. In the jurisprudence of the African Court on Human and Peoples' Rights (ACtHPR), the concept of damage to a project of life appears in the enumerative definition of moral harm provided by this human rights court in the case of *Reverend Christopher R. Mtikila* v. *The United Republic of Tanzania*. The ACtHPR found that

> "[t]he term 'moral' damages in international law includes damages for the suffering and afflictions caused to the direct victim, the emotional distress of the family members and *non-material changes in the living conditions of the victim, if alive, and the family*."[12]

11.16. Thus, founding victims' claims on the "future income" lost by each of them actually consists in assessing earning potential and lost opportunities and earnings.

11.17. Human life cannot be assigned a monetary value. However, for the purpose of awarding fair and equitable monetary reparations for death, it is a reasonable approach to take account of the lost earnings caused by the loss of someone dear, not only for the deceased victims themselves but above all for their surviving family members and dependants.

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[9] See A. Martin-Achard, "De la réparation pécuniaire du tort moral", Thesis, Geneva, 1908, pp. 155 *et seq*. *[translation by the Registry]*.

[10] IACtHR, *Gutiérrez-Soler* v. *Colombia*, judgment of 12 Sept. 2005 (merits, reparations and costs), Series C, No. 132, para. 82.

[11] ICC, Trial Chamber I, *Situation in the Democratic Republic of the Congo in the case of The Prosecutor* v. *Thomas Lubanga Dyilo*, decision establishing the principles and procedures to be applied to reparations, 7 Aug. 2012, No. ICC-01/04-01/06, para. 8[6]; emphasis added.

[12] ACtHPR, *Reverend Christopher R. Mtikila* v. *The United Republic of Tanzania*, Application No. 011/2011, ruling on reparations of 13 June 2014, para. [34]; emphasis added.

11.18. The parameters used by the DRC to determine the amount of lost earnings for each victim are both reasonable and realistic.

Question 12. Could the DRC clarify whether material and non-material harm is included in its valuation of injury to persons, in particular with respect to rape and the recruitment of child soldiers?

44 12.1. As regards its valuation of injury to victims of rape, the DRC states in paragraph 7.24 of its Memorial that it includes a material and non-material dimension. The DRC contends that the material aspects of the harm suffered by the victims of rape mainly comprise the costs incurred for medical treatment. The data used for valuation in this regard are objective and taken from the list of prices applied by public and private hospitals in the eastern regions of the DRC.

12.2. Other overlapping information was provided to the DRC by medical professionals operating in eastern parts of the country.

12.3. The DRC also stated that it had included non-material harm in its calculations when assessing the damage resulting from rape. In the DRC's view, this category of harm lies in the humiliating nature of rape, the ostracization of its victims and the consequent distress.

12.4. The non-material harm resulting from rape is sufficiently grave in that it may lead victims to feel ashamed of themselves and cause them to take their own life. Rape causes moral damage which is seldom forgotten by the victim, etc. (see para. 7.22 of the Memorial).

12.5. Some of the rape victims identified in this case suffered particularly grave consequences. The aggravated circumstances resulted in serious physical injuries, deformities of the female genitalia, pregnancy, etc.

12.6. For cases of aggravated rape, the DRC has chosen to use nominal sums which have no real connection to the material and non-material damage comprising the harm actually suffered by the victims, a number of whom continue to suffer to this day. The suffering endured by a victim of rape cannot in any court or in anyone's conscience be equated to the value attributed to it by the DRC. Nor can the costs incurred for the medical treatment of rape, when the victim suffered physical injuries or became pregnant as a result of the rape, be valued at this level.

12.7. The sum is, one might say, purely nominal, fixed by the DRC to relieve the suffering of those victims who are seeking justice.

45 12.8. As regards the valuation with respect to the recruitment of child soldiers, the DRC also stated that this type of injury involved both material and non-material harm (see para. 7.26 of the Memorial).

12.9. In its Memorial, the DRC states that the material harm caused by the recruitment of child soldiers lies in a denial of access to education and a loss of opportunities for those children and their families, etc.

12.10. As for the non-material harm, according to paragraph 7.2[6] of the DRC's Memorial, this lies in the trauma resulting from the children being torn from their families and exposed to various forms of ill-treatment and the violence of war.

Question 13. Can the DRC explain its methodology for the calculation of property damage in Kisangani (US$17,323,998), in Beni (US$5,526,527) and in Butembo (US$2,680,000)?

13.1. The property damage values set out in the DRC's Memorial for Kisangani, Beni and Butembo have been revised downwards following factual corrections consisting in removing duplicates with no corresponding identification forms (Annexes 1.6.C, 1.7.C, 1.10.C and 1.6.D, 1.7.D, 1.10.D).

13.2. In the DRC's view, these corrections, which were made using the EVADO 1.1 software, do not worsen the Respondent's situation and cannot cause it any prejudice.

13.3. In its claims relating to compensation for the property damage incurred in Kisangani, Beni and Butembo as a result of the Ugandan aggression, the DRC puts forward the following corrected figures: US$15,197,287.33 for *Kisangani* (Annex 1.10.D), US$5,022,087 for *Beni* (Annex 1.6.D) and US$2,616,444 for *Butembo* (Annex 1.7.D).

13.4. The methodology used to obtain these figures consists in compiling the victim statements for each town using the EVADO 1.1 software. Lists of the items lost and their values (Annexes 1.6.E to 1.10.E) were recorded in the software, which automatically added those values together to produce the figures in question.

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13.5. With regard to Beni, the DRC states, in paragraph 2.25 of its Memorial, the number of victims identified as having lost property as a result of the war waged by Uganda in this part of the Congolese territory.

13.6. A list of the 816 victims and the market value of the items they lost is annexed to this document (Annexes 1.6.C and 1.6.F). The software simply made it possible to compile the cost of each item and to calculate the total cost for each location. The DRC claims US$5,022,087 for Beni (see Annex 13.1 and EVADO 1.1 software).

13.7. In Butembo, the DRC registered and identified 216 victims (Annexes 1.7.C and 1.7.F) whose property was destroyed or lost, as mentioned in paragraphs 2.36 and 2.37 of its Memorial. The purpose-built EVADO 1.1 software made it possible to compile the costs for each item and to calculate the total cost for each location (Annex 1.7.D). The DRC claims US$2,616,444 in respect of Butembo.

13.8. In Kisangani, massive damage was caused to various types of infrastructure. This damage is set out in several reports, in particular those drawn up by the Kisangani Lotus Group (Annexes 13.1, 13.2, 13.3 and 13.4) and by COJESKI (Annex 13.5). Along the same lines, see also Annex 1.12.

13.9. In paragraphs 4.22 and 4.24 of its Memorial, the DRC states the number of victims who incurred property damage. Lists identifying the victims and giving the market value of each

item have been provided to the Court. The EVADO 1.1 software made the calculation which resulted in the figure of US$15,197,287.33 claimed by the DRC.

13.10. In short, the DRC relied on the lists of items lost or destroyed as a result of the war waged by Uganda in these three locations, and on the local market values of those various items. For its part, the EVADO 1.1 software facilitated the calculations which yielded the various figures contained in the Memorial.

Question 14. Can the DRC explain its *methodology* for assessing the proportion of each type of dwelling destroyed in Ituri district and the reconstruction costs for the dwellings?

47 14.1. In its Memorial, the DRC requested financial compensation for the destruction of dwellings in Ituri district (see pp. 100-103). Further to the inquiries carried out by the Commission set up to identify the victims of Uganda's unlawful activities, the DRC distinguished three (3) types of dwellings. These three (3) types of dwelling did not have the same value. On pages 103 to 104 of its Memorial, the DRC states that among those destroyed were light, intermediate and luxury dwellings.

14.2. The DRC estimated 80 per cent of the dwellings destroyed to be light dwellings, 15 per cent to be intermediate dwellings and 5 per cent to be luxury dwellings.

14.3. To arrive at these percentages determining the proportion of each type of construction destroyed, *the DRC first identified the areas where the destruction had taken place. It then used the testimony recorded in the victim identification forms (see Annexes 1.1-1.6), as well as information contained in reports drawn up by the missions of inquiry established by the organs of the United Nations, to assign a percentage to each type of building concerned*.

14.4. The DRC determined the proportion of each type of construction by considering how much of the destruction and other damage was caused to buildings located in rural areas and how much was caused to buildings located in urban areas.

14.5. In their testimony before the mission of inquiry, a number of the victims whose homes had been destroyed described the properties they had lost and the materials used to construct them. Knowing the cost of such properties in this region of the DRC, the lowest possible price was fixed.

14.6. The proportions were generated using all the information on dwellings recorded by the victims in Ituri district in the EVADO 1.1 software designed by the DRC. The DRC has provided the Court with a list of the items lost by victims in Ituri district from 1998 to 2003 (see Annex 1.9.E).

48 **Question 15. Could the DRC explain in more detail the basis on which it claims US$100,000,000 as a measure of satisfaction for non-material harm caused by Uganda to the DRC?**

15.1. The non-material harm suffered by a State is essentially the result of a violation of its sovereignty. Infringements of State sovereignty cause damage which is moral, in that it entails a measure of shame, humiliation and suffering within the national community.

In scholarly opinion, Clarisse Barthe-Gay depicts the moral damage suffered by a State as including all the following elements (see C. Barthe-Gay, "Reflexions sur la satisfaction en droit international", *Annuaire Français de droit international*, 2003, Vol. 49, 2003, p. 107):

> "Moral damage constitutes *an affront to a State, an attack on its dignity, its honour and/or its prestige*. It results, for example, from the *denigration of an emblem of the State* (flag, national ensign), *offences against its representatives* (Heads of State, government or diplomatic or consular mission) or even *violations of its sovereignty or territorial integrity*."[13]

In this regard, Pierre d'Argent confirms in his book entitled *Les réparations de guerre en droit international public: la responsabilité internationale des Etats à l'épreuve de la guerre* (Brussels/Paris, Bruylant/LGDJ, 2002) that "the infringement of sovereignty is of a purely non-material character"[14].

15.2. In the present case between the DRC and Uganda, the Court previously stated the following in its 2005 Judgment:

> "Upon examination of the case file, given the character of the internationally wrongful acts for which Uganda has been found responsible (illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of
49 Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resources), the Court considers that those acts resulted in injury to the DRC and to persons on its territory. Having satisfied itself that this injury was caused to the DRC by Uganda, the Court finds that Uganda has an obligation to make reparation accordingly." (*I.C.J. Reports 2005*, p. 257, para. 259; see also p. 227, para. 165.)

15.3. In terms of evaluating the non-material damage suffered by a State as a result of a violation of its sovereignty, satisfaction proves to be the best form of redress. Pierre d'Argent considers satisfaction to be the form that reparation assumes in human rights law to make good the non-material harm suffered by a State (P. d'Argent, *op. cit*., p. 717).

15.4. According to the *Dictionnaire manuel de diplomatie et de droit international public et privé*, a State is entitled to seek satisfaction from another State which, by any act, has made an attack on its honour or its dignity (C. Calvo, *Dictionnaire manuel de diplomatie et de droit international public et privé*, Clark, New Jersey, The Lawbook Exchange, Ltd., 2009, p. 379).

15.5. Satisfaction can take several forms: it is obtained through condemnation of a State, but can also be achieved through the payment of a symbolic amount. It is accepted that satisfaction may take the form of a monetary payment.

15.6. In this regard, Dumberry notes that it is also possible to find satisfaction applied in financial form (P. Dumberry, *op. cit. [sic]*, p. 10).

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[13] C. Barthe-Gay, *op. cit.*, p. 107 *[translation by the Registry]*.

[14] P. d'Argent, *op. cit*., p. 597 *[translation by the Registry]*.

15.7. Financial satisfaction does not appear in the latest document of the International Law Commission (ILC) on the responsibility of States for internationally wrongful acts. However, Article 45, paragraph 2, of the 1996 draft articles states that satisfaction may take the form of nominal damages. The payment of a symbolic amount to give satisfaction to the victim — State or individual — is not to be confused with compensation. The difference between them resides in their intended function. Financial satisfaction aims to provide relief to the victim, whereas compensation is an equivalent payment.

15.8. Although financial satisfaction does not appear in the ILC's most recent document from 2001, it is used by a number of courts and tribunals principally called on to address questions
50 of reparation for non-material harm. This is true of the African Court of Human and Peoples' Rights (ACtHPR), which awarded financial satisfaction in the case of the *Beneficiaries of the Late Norbert Zongo* et al.

15.9. The *S.S. I'm Alone* case is another example of financial reparation constituting a measure of satisfaction, not compensation. The sum paid by the United States as reparation for the non-material damage suffered by Canada constituted financial satisfaction (see the decision in the case of the *S.S. I'm Alone (Canada* v. *United States)*, *Reports of International Arbitral Awards (RIAA)*, Vol. III, p. 1618). One could also cite the *Heirs of Jean Manimat Case* (see the decision in the *Heirs of Jean Manimat Case*, Mixed Claims Commission (France-Venezuela), 1905, *RIAA*, Vol. X, p. 55. In this regard, see also the decision in the *Arends Case*, Mixed Claims Commission (Netherlands-Venezuela), 1903, *RIAA*, Vol. X, p. 729)[15].

15.10. In this case, the sum awarded to Manimat's sister for the moral damage caused by the death of her brother served as financial satisfaction, because its purpose was symbolic (see the decision in the *Heirs of Jean Manimat Case*, Mixed Claims Commission (France-Venezuela), 1905, *RIAA*, Vol. X, p. 55. In this regard, see also the decision in the *Arends Case*, Mixed Claims Commission (Netherlands-Venezuela), 1903, *RIAA*, Vol. X, p. 729).

15.11. In this instance, the evaluation criterion for determining the amount to be paid is the gravity of the wrongful act. This is confirmed in particular by Article 37, paragraph 3, of the ILC's draft articles, which stipulates that:

> "Satisfaction *shall not be out of proportion to the injury* and may not take a form humiliating to the responsible State." (Emphasis added.)

The same restriction appears in Article 9, paragraph 2, of the International Law Association's resolution, which states that: "Satisfaction shall not be out of proportion to the harm."

15.12. In its 2005 Judgment on the merits, the Court ruled that:

51 "The unlawful military intervention by Uganda was of *such a magnitude and duration that the Court considers it to be a grave violation* of the prohibition on the use of force expressed in Article 2, paragraph 4, of the Charter." (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 227, para. 165.)

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[15] See the decision in the *Heirs of Jean Manimat Case*, Mixed Claims Commission (France-Venezuela), 1905, *RIAA*, Vol. X, p. 55. In this regard, see also the decision in the *Arends Case*, Mixed Claims Commission (Netherlands-Venezuela), 1903, *RIAA*, Vol. X, p. 729.

15.13. The Court, in determining, by reference to its duration, the gravity of the wrongful act on which it should base its assessment, takes account of the five (5) years of Uganda's occupation of a large part of Congolese territory.

15.14. Indeed, that occupation was neither a mere invasion, nor a lightning raid by Ugandan troops on Congolese territory. This is the initial justification for the DRC's US$100,000,000 claim.

15.15. Further, without taking account of the duration of the occupation, the mere gravity of the wrongful act, which consisted of dispatching troops and supporting irregular forces, substituting the Congolese administration for a Ugandan one, constitutes the most intolerable form of interference, the most intolerable form of the use of force and, therefore, the most intolerable form of an infringement of sovereignty.

15.16. During the settlement of the *Rainbow Warrior* case, New Zealand presented a Memorandum in which it requested, in addition to an official apology, financial reparation from France, stating that New Zealand was "entitled to compensation for the violation of sovereignty and the affront and insult that that involved" (see J. Charpentier, "L'affaire du Rainbow Warrior: le règlement interétatique", *Annuaire français de droit international*, Vol. 32, 1986, p. 881).

15.17. On that occasion, France made a payment of US$7 million by way of reparation. That sum has always been characterized as including, in addition to some of the costs incurred as a result of the incident in question, financial satisfaction, or, rather, compensation for the moral damage caused.

52 **Question 16. Could the DRC explain the legal basis for the creation of a fund to promote reconciliation between the Hema and Lendu ethnic groups in Ituri district as a measure of satisfaction payable by Uganda?**

16.1. In its 2005 Judgment, the Court found

> "that there is also persuasive evidence that the UPDF incited ethnic conflicts and took no action to prevent such conflicts in Ituri district. The reports of the Special Rapporteur of the Commission on Human Rights (doc. A/55/403 of 20 September 2000, para. 26 and E/CN/4/2001/40 of 1 February 2001, para. 31) state that the Ugandan presence in Ituri caused a conflict between the Hema (of Ugandan origin) and the Lendu. According to these reports, land was seized from the Lendu by the Hema with the encouragement and military support of Ugandan soldiers. The reports also state that the confrontations in August 2000 resulted in some 10,000 deaths and the displacement of some 50,000 people, and that since the beginning of the conflict the UPDF had failed to take action to put an end to the violence. The Sixth Report of the Secretary-General on MONUC (doc. S/2001/128 of 12 February 2001, para. 56) stated that 'UPDF troops stood by during the killings and failed to protect the civilians'." (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 240, para. 209.)

16.2. It was thus Uganda which provoked the bloody ethnic conflict between the Hema and the Lendu. A real and lasting reconciliation between those two communities has yet to be achieved following that conflict. The creation of a reconciliation fund to re-establish a peaceful coexistence constitutes a form of reparation for this type of injury.

16.3. It therefore makes sense for Uganda, as a consequence of its activities on the territory of the DRC, to assume responsibility for helping to restore friendly relations between the two communities. The fund would contribute to the *restitutio in integrum* by enabling the communities in question to make peace with one another.

53 16.4. The Arbitral Tribunal established in the *Rainbow Warrior* case stated the following in its decision:

> "in the light of the above decisions, [the Arbitral Tribunal] recommends that the Governments of the French Republic and of New Zealand *set up a fund to promote close and friendly relations between the citizens of the two countries*, and that the Government of the French Republic make an initial contribution equivalent to $US 2 million to that fund" (*Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair, Decision of 30 April 1990, Reports of International Arbitral Awards*, Vol. XX, Part III, p. 275, subpara. 9 of the operative clause; emphasis added).

16.5. In our view, this precedent could serve as a basis to better achieve the objective of any ultimate reparation, namely restoring the situation of the victim to how it was before the wrongful act which caused the damage. When the damage in question consists of the breakdown of relations between two ethnic communities, restoration of the situation involves establishing a programme of reconciliation, which will require the allocation of a dedicated fund. (See also: J. Charpentier, "L'affaire du *Rainbow Warrior*: la sentence arbitrale du 30 avril 1990 (Nouvelle Zélande c. France)", *Annuaire français du droit international*, 1990, Vol. 36, pp. 395-407.)

Question 17. Can both Parties submit their views with respect to collective reparations, including the form they should take?

17.1. When an internationally wrongful act results in a large number of victims, the reparation awarded may take two forms: it may be awarded to each victim on an individual basis, or it may be awarded collectively to the victims as a whole.

54 17.2. It is important to note that both forms of reparation — individual and collective — have advantages and drawbacks.

17.3. The DRC will first set out what it considers to be the advantages of collective reparations, as well as the drawbacks inherent therein, before explaining why it prefers a dual form of both individual and collective reparations, in view of the varied and disparate nature of the damage to be compensated.

The DRC's understanding of the notion of collective reparations and the advantages associated with this form of reparation

17.4. From the outset, it should be noted that there is no consensus definition of "collective reparations" in international law. However, there is agreement that this concept refers to both *reparations intended for specific groups of people* and *reparations intended for the community as a whole*. This was the view taken by certain victim protection organizations in the proceedings before the International Criminal Court (ICC) in the case of *The Prosecutor* v. *Thomas Lubanga Dyilo*.

17.5. Collective reparations as such do not take account of the injuries suffered by each victim. In principle, their purpose is to make reparation for the damage suffered by groups of people, considered separately and differently from their component members. Thus, collective reparations do not exclusively serve actual and direct victims; they benefit the entire community to which those victims belong.

17.6. In terms of possible advantages, it should be noted that collective reparations are well suited to injuries affecting groups of sufficiently united and homogeneous people, with the amounts awarded benefitting both the group as a whole as well as each of its members. Collective reparation thus makes it possible to tailor reparations for an injury which has affected a group, even if its members also suffered from that injury indirectly.

17.7. Collective reparations make it possible to avoid discrimination among the beneficiaries of the reparation. Indeed, with individual reparations, the amounts awarded depend on the harm that each recipient has suffered, since each victim's injuries are unique. Individual reparations cannot be applied in the case of injuries which have affected groups of people collectively. Dealing
55 with the members of such a group individually carries a risk of discrimination.

17.8. Moreover, collective reparations clearly appear to be less costly than individual reparations. This is because it is easier to assess an injury affecting a particular victim or group than it is to assess a number of injuries affecting a number of victims individually. It is less expensive to make reparation for an injury that has affected a single victim than it is to have to make reparation for injuries which have affected several victims. This is why, when faced with multiple victims, those responsible for making reparation prefer collective reparations to individual ones, the first option being less costly, despite its many drawbacks.

17.9. Furthermore, according to some non-governmental organizations which took part in the ICC hearings on victim reparations in the case of *The Prosecutor* v. *Thomas Lubanga Dyilo*, awarding individual reparations to certain victims — former child soldiers in the *Lubanga* case — could be perceived as discriminatory, since part of the population considers that these children have committed crimes and should not be rewarded by the international community for doing so. It was this consideration which persuaded the ICC to lean in favour of collective reparations.

17.10. At the same time, it was clearly stated in the *Lubanga* case that the ICC Trust Fund for Victims did not have the means to cover individual reparations. In view of the cost to the Trust Fund of individual reparations compared with collective reparations, the latter was preferred over the former.

The DRC's preference in this case

17.11. The present case, in which the Court has been requested to award reparations to the DRC and, through it, to the many victims of Uganda's internationally wrongful acts, is different from the *Lubanga* case in several respects.

17.12. First, the victims did not suffer the same types of injuries. In the *Lubanga* case, the ICC was faced with the question of awarding reparations to former child soldiers recruited by
56 the rebel movement led by Thomas Lubanga. These former child soldiers had fought alongside Thomas Lubanga, who had thus deprived them of many of the fundamental rights to which children are entitled. They had engaged in combat and, in their innocence, had sometimes victimized others.

Victims themselves, they were now living alongside those they had victimized, who, despite the argument that child soldiers are innocent and cannot be held criminally responsible, would have found it very hard to understand how individual compensation could be awarded to each of their former aggressors.

17.13. What the victims of former child soldiers would have seen as a reward given to criminals cannot be measured against the loss of a child or brother, a leg or an eye. There is no denying the harm suffered by children who have been deprived of their fundamental rights, including the right to an education and the right to live in a family environment conducive to their education, but the damage suffered by someone who has lost a family member is different from that of someone who has been prevented from going to school. Above all, no one can justifiably consider it unfair for the Court to award equitable amounts, fixed on the basis of the injury actually suffered and adjusted according to the context in which the assessments were made, to victims who could not be considered aggressors under any circumstances.

17.14. For this reason, the DRC considers that, while the ICC was able to award collective reparations in respect of former child soldiers, in particular by establishing a social rehabilitation fund and vocational training centres, these types of initiatives cannot be used to make reparation for the injury caused by the loss of a family member.

17.15. Although former child soldiers may obtain satisfaction through actions to support all children, people who have seen a relative killed will not truly have a sense of justice until they have been cared for individually.

17.16. In view of the foregoing, the situation submitted to the Court, with its various types of damage, does not lend itself to the application of a single form of reparation. Even though satisfaction for certain types of damage, such as the ethnic hatred which consumed relations between two ethnic groups, could be obtained through the creation of a fund intended to reconcile the two communities — since the victims here are the communities, not their individual members — other forms of injury cannot be wiped out by this type of collective reparation.

57 17.17. If ten thousand people each lose a family member, they will not obtain full satisfaction through a fund earmarked for their community, even if they are all members of the same community. The pain and suffering experienced by each person will be individual. Conversely, if the group to which they belong was targeted, and each of its members attacked in an attempt to decimate the group as a whole, then it would also be necessary, in addition to erasing each member's individual grief over the loss of a relative, to award collective reparations for the benefit of the group as a whole.

17.18. This is what led the DRC, in its Memorial, to propose various forms of reparation taking account of the nature of the injury to be compensated.

17.19. The DRC will undoubtedly face the argument that the Ugandan State is not wealthy enough to pay the amounts required to make individual reparation to the many Congolese victims. In response to this argument, the Court will be duty-bound to pursue the goal of effective and full reparation for the injury suffered. To avoid leaving certain victims with a sense of injustice, this is the ultimate aim that should guide the Court. Just as the amounts awarded should not be influenced by the poverty of the victims, since the point is not to enrich them, nor should the situation of the

perpetrator of the wrongful act be taken into consideration. The nature of the reparation must depend on the injury alone.

17.20. However, whenever collective reparations can be applied and can ensure that the objective of making full reparation is achieved, without fear of discrimination and without giving the impression of making partial reparation for certain types of damage, the DRC considers that this solution is not to be excluded.

17.21. Moreover, the DRC itself has already proposed similar measures or measures effecting collective reparations, in particular the establishment of a fund to promote reconciliation between two neighbouring ethnic communities.

17.22. However, the DRC also considers that it is unfair to award collective reparations for individual injuries, even if those injuries affect a large number of people.

17.23. In view of the number of victims, whenever reparations are to be made for individual injuries, the DRC has fixed amounts that, in total, are no different from the sums that would have
58 been obtained if the decision had been made to seek collective reparations. Indeed, regardless of whether reparation takes a collective or an individual form, it is only ever fair if it delivers justice, i.e. if it wipes out all the consequences of the wrongful act and makes full reparation for the injury incurred.

17.24. The amounts the DRC is seeking for the victims who witnessed the death of a family member as a result of the war waged by Uganda, who survived the loss of a limb or who were sexually abused, are far lower than the per-victim amounts applied by specialized human rights courts (the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights). Although the DRC's assessments are based on individual considerations — which is fair considering that the injuries differ in each instance — the total amounts provided are those which would probably be awarded to the victims if collective reparations were the best option.

17.25. The DRC is thus of the view that collective reparations are appropriate for some types of damage in this case, and not advisable for others. That is why it is arguing for a combination of individual and collective reparations.

17.26. While it is fair to say that the aim of reparations must not be to enrich victims, it is also not the objective to leave part of an injury without solution, or to fail to wipe out certain consequences of a wrongful act, on the pretext that the provider of the funds is poor or lacks the resources to do so.

17.27. The DRC may also face the argument that opting for individual reparations to make good the harm caused by murder, bodily injury and rape will produce discriminatory results, because a number of victims who were not identified or registered by the Commission will be left out when individual reparations are distributed.

17.28. While it is acknowledged that the victims identified are not the only ones who suffered harm as a result of Uganda's unlawful activities, it should also be noted that collective

reparations do not address the injuries suffered by the victims, but rather those suffered by a group which has been formed artificially but which does not really exist.

59 17.29. Although individual victims may come together as an association, this does not mean they form a grup with interests to protect and to which reparations can be awarded. That association may be given a name, but it is bound to disappear once reparations are awarded, there being no permanent and solid ties between its members.

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ANNEXES

The numbers assigned to the annexes correspond to the question numbers. They consist of the question number (1 to 17), followed by the annex number. For example, Annex 1.0 is an annex referenced in Question 1 and its sequence number is 0. Annex 1.2 is an annex referenced in Question 1 and its sequence number is 2.

When an annex is first referenced or mentioned in one question and later mentioned in another question, it retains the same number. Thus, if Annex 1.1 is referenced in Question 2, it does not become Annex 2.1, it remains Annex 1.1.

The same annex numbers are used in the body of the written pleading, in both the print version and on the CD-ROM.

The annexes contain the following:

— Annexes 1.0.1 and 1.0.2 consist of United Nations resolutions relating to the definition of the notion of victim;

— Annexes 1.1 to 1.5 consist of victim identification forms;

— Annex 1.5.1 consists of [victim identification forms for] the victims registered by the association of victims of the war in Kisangani;

— Annexes 1.6 to 1.10 consist of assessment reports for deaths;

— Annexes 1.6.A to 1.10.A consist of assessment reports for damage caused by displacement and flight into the forest;

— Annexes 1.6.B to 1.10.B consist of assessment reports for damage caused by bodily harm for each location;

— Annexes 1.6.C to 1.10.C consist of assessment reports for damage caused by loss of property and looting for each location;

— Annexes 1.6.D to 1.10.D consist of summary assessment tables of property lost for each location;

— Annexes 1.6.E to 1.10.E consist of lists of property lost for each location;

— Annexes 1.6.F to 1.10.F consist of summary tables of instances of property loss for each location;

In the annexes relating to identification forms, the first number corresponds to the question number (1) and the second number corresponds to the following:

— 0: United Nations General Assembly resolutions;

— 1: Beni;

— 2: Butembo;

— 3: Gemena;

— 4: Ituri;

— 5: Kisangani.

In the annexes relating to assessments, the first number corresponds to the question number (1) and the second number corresponds to the following:

— 6 (A-F): Beni;

— 7 (A-F): Butembo;

— 8 (A-F): Gemena;

— 9 (A-F): Ituri;

— 10 (A-F): Kisangani.

Question 1

Annex 1.0.1 United Nations General Assembly resolution 40/34 of 29 November 1985, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Annex 1.0.2 United Nations General Assembly resolution 60/147 of 16 December 2005, 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

Annex 1.1 Victim identification forms for Beni

Annex 1.2 Victim identification forms for Butembo

Annex 1.3 Victim identification forms for Gemena

Annex 1.4 Victim identification forms for Ituri

Annex 1.5 Victim identification forms for Kisangani

Annex 1.5.1 Additional victim identification forms for Kisangani

Annex 1.6 Assessment report of massacres (deaths) in Beni

Annex 1.7 Assessment report of massacres (deaths) in Butembo

Annex 1.8 Assessment report of massacres (deaths) in Gemena

Annex 1.9 Assessment report of massacres (deaths) in Ituri

Annex 1.10 Assessment report of massacres (deaths) in Kisangani

Annex 1.6.A Assessment report of flight into the forest by victims in Beni

Annex 1.7.A Assessment report of flight into the forest by victims in Butembo

Annex 1.8.A Assessment report of flight into the forest by victims in Gemena

Annex 1.9.A Assessment report of flight into the forest by victims in Ituri

Annex 1.10.A Assessment report of flight into the forest by victims in Kisangani

Annex 1.6.B Assessment of bodily harm to victims in Beni

Annex 1.7.B Assessment of bodily harm to victims in Butembo

Annex 1.8.B Assessment of bodily harm to victims in Gemena

Annex 1.9.B Assessment of bodily harm to victims in Ituri

Annex 1.10.B Assessment of bodily harm to victims in Kisangani

Annex 1.6.C Assessment of property lost by victims in Beni

Annex 1.7.C Assessment of property lost by victims in Butembo

Annex 1.8.C Assessment of property lost by victims in Gemena

Annex 1.9.C Assessment of property lost by victims in Ituri

Annex 1.10.C Assessment of property lost by victims in Kisangani

Annex 1.6.D Summary assessment table of property lost in Beni

Annex 1.7.D Summary assessment table of property lost in Butembo

Annex 1.8.D Summary assessment table of property lost in Gemena

Annex 1.9.D Summary assessment table of property lost in Ituri

Annex 1.10.D Summary assessment table of property lost in Kisangani

Annex 1.6.E List of property lost in Beni, 1998-2003

Annex 1.7.E List of property lost in Butembo, 1998-2003

Annex 1.8.E List of property lost in Gemena, 1998-2003

Annex 1.9.E List of property lost in Ituri, 1998-2003

Annex 1.10.E List of property lost in Kisangani, 1998-2003

Annex 1.6.F Summary table of instances of property loss in Beni, 1998-2003

Annex 1.7.F Summary table of instances of property loss in Butembo, 1998-2003

Annex 1.8.F Summary table of instances of property loss in Gemena, 1998-2003

Annex 1.9.F Summary table of instances of property loss in Ituri, 1998-2003

Annex 1.10.F Summary table of instances of property loss in Kisangani, 1998-2003

Annex 1.11 Video containing victim statements and attesting to the atrocities committed by the Ugandan army in Kisangani during the six-day war

Annex 1.12 Report on the events in Kisangani between August 1999 and May 2002

Question 2

Annex 2.1 United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, August 2010 (excerpts)

Annex 2.2 United Nations Commission on Human Rights, Fifty-sixth Session, *Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission on Human Rights resolution 1999/56*, document E/CN.4/2000/42, 18 January 2000 (excerpts)

Annex 2.3.A United Nations Security Council, *Special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, document S/2002/1005, 10 September 2002

Annex 2.3.B United Nations Security Council, *Second special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo,* document S/2003/566, 27 May 2003

Annex 2.3.C United Nations Security Council, *Sixth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, document S/2001/128, 12 February 2001 (excerpts)

Annex 2.4.A IRIN, *Special Report on the Ituri clashes — [part one]*, Nairobi, 3 March 2000

Annex 2.4.B MONUC, *Special report on the events in Ituri, January 2002-December 2003*, document S/2004/573, 16 July 2004

Annex 2.4.C Human Rights Watch, *Ituri: "Covered in Blood". Ethnically Targeted Violence in Northeastern DR Congo,* Vol. 15, No. 11 (A), July 2003

Question 4

Annex 4.1.A Groupe Justice et Libération, "La guerre du Congo à Kisangani et les violations des droits de l'homme du 2 août au 17 septembre 1998", Kisangani, 18 September 1998

Annex 4.1.B Groupe Justice et Libération, "La guerre des alliés à Kisangani et le droit international humanitaire", 12 May 1999

Annex 4.1.C Groupe Justice et Libération, "La guerre des alliés en R.D.C. et le droit à l'autodétermination du peuple congolais", 31 August 1999

Annex 4.1.D Groupe Justice et Libération, "La guerre des Alliés à Kisangani (du 5 mai au 10 juin 2000) et le droit à la paix", 30 June 2000

Annex 4.2 Cost of repair of buildings in Ituri by BCeCo

Annex 4.3 Cost of repairs to buildings belonging to the Catholic church by BDOM, Archdiocese of Kisangani

Question 5

Annex 5.1 Map of mining concessions in the Congo, 30 June 1960

Annex 5.2 United Nations Security Council, *Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, document S/2001/1072, 13 November 2001 (excerpts)

Annex 5.3 United Nations Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, document S/2002/565, 22 May 2002

Annex 5.4 United Nations Security Council, *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, document S/2002/1146, 16 October 2002

Annex 5.5 Human Rights Watch, *The Curse of Gold. Democratic Republic of Congo*, April 2005 (excerpts)

Annex 5.6 International Alert, *The Role of the Exploitation of Natural Resources in Fuelling and Prolonging Crises in the Eastern DRC*, January 2010

Annex 5.7 Partnership Africa Canada, *All that Glitters is Not Gold: Dubai, Congo and the Illicit Trade of Conflict Minerals*, May 2014

Annex 5.8 Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo 2001 ("Porter Commission"), *Final Report*, November 2002

Annex 5.9 Location of exclusive prospecting areas and concessions

Annex 5.10 United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, document S/2001/357, 12 April 2001

Question 10

Annex 10.1 Judgment, *Bulletin des arrêts de la Haute cour militaire — Sud Kivu*

Annex 10.2 Avocats Sans Frontières, *Recueil de décisions de justice et de notes de plaidoiries en matière de crimes internationaux*

Question 13

Annex 13.1 Lotus Group, *Report of the Kisangani Lotus Group*, 15 October 1998

Annex 13.2 Lotus Group, *The Consequences of Rivalries within the Rebel Alliances and Factions in North-Eastern Congo. The Kisangani War*, September 1999

Annex 13.3 Lotus Group, *Conflict between Uganda and Rwanda in Kisangani*, Kisangani, May 2000

Annex 13.4 Lotus Group, *Rapport sur la guerre de six jours à Kisangani*, July 2000

Annex 13.5 South Kivu Civil Society — Collective of South Kivu (DRC) Youth Organizations and Associations (COJESKI), *Events in the occupied provinces of the DRC — large-scale violations of human rights and international humanitarian law reaching fever pitch, Six-monthly report covering the period from 1 April to 30 September 1999*, October 1999

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